

Act CVIII of 2001

on certain issues of electronic commerce services and information society services¹

With a view to promoting the development of electronic commerce and thereby the economic growth, and further, in order to improve the international competitiveness of the Hungarian economy through services associated with the information society and to protect the consumers' rights in electronic commerce relations, the Parliament, in accordance with European regulations has passed the following Act:

Scope

Article 1

(1) The provisions of this Act shall apply to:

a) information society services provided from the territory of the Republic of Hungary or targeting the territory of the Republic of Hungary;

b) natural and legal persons and organisations without legal personality considered to be recipients of the services or service providers in respect of the services identified in subparagraph *a)*.

(2)² Service providers established in the territory of other Member States to the Agreement on the European Economic Area and providing services targeting the Republic of Hungary shall not be subject to the requirements pertaining to the coordinated field.

(3) This Act shall not be applied to the information society services provided and used in court or other official proceedings and shall be without prejudice to legal acts on the protection of personal data.

(4)³ This Act shall not be applied to private communications specified herein.

Definitions

Article 2

For the purposes of this Act:

a) *Electronic commerce service*: means information society services for the purpose of selling, purchasing or exchanging goods and services on a commercial basis;

b) *Electronic means*: means the application of wireline, radiowave, optical or other electromagnetic devices for the purpose of electronic data processing, storage or transmission;

*c)*⁴ *Service provided from the territory of the Member States to the Agreement on the European Economic Area*: means information society services provided by a service provider that carries out actual activities at its head office, premises or residence located in the territory of any Member State to the Agreement on the European Economic Area in connection with the given information society service;

¹ Promulgated: 24 December, 2001

² Established: Article 1 of Act CLXXI of 2005. Effective: from 1 January, 2006

³ Established: Article 2 of Act CLXXI of 2005. Effective: from 1 January, 2006

⁴ Established: Article 15 (2) of Act LXIX of 2004. Effective: from 10 July, 2004.

d) *Recipient of the service*: means the natural or legal person or organisation without legal personality that uses information society service;

e) *Information*: means any data, signal or image that can be processed, stored and transmitted by electronic means irrespective of whether its content is protected by law;

f)¹ *Information society service*: means distant services provided by electronic means, generally against payment, and accessed by the recipient of the service individually;

g) *Service targeting the territory of the Republic of Hungary*: means any service which is reasonably presumed to be intended to be made available to recipient of the services in Hungary based on the used language, currency or other circumstances;

h) *Service provided from the territory of the Republic of Hungary*: means information society services provided by a service provider that carries out actual activities at its head office, premises or residence located on the territory of the Republic of Hungary in connection with the given information society service;

i)² *Regulated profession*: means the profession specified in Article 25(4) of Act C of 2001 on the recognition of foreign certificates and degrees;

j)³

k)⁴ *Service provider*: means the natural or legal person or organisation without legal personality providing information society services;

l)⁵ *Intermediary service provider*: means the information society service provider which

la) forwards the information supplied by the recipient of the service via the telecommunications network or ensures access to the telecommunications network (simple data transmission and provision of access);

lb) forwards the information supplied by the recipient of the service via the telecommunications network, which principally serves to enhance the efficiency of information transmission originated by other recipient of the services (caching);

lc) stores information supplied by the recipient of the service (hosting);

ld) provides tools to the recipient of the services facilitating the search for information (search functions);

m)⁶ *Private communication*: means any communication given by a person for a purpose other than commerce, business, professional or public responsibilities, via electronic mail or an equivalent means of communication suitable for private communication by using information society services, including letters of contract made this way;

n)⁷ *Established service provider*: means an information society service provider who effectively pursues an economic activity using a fixed establishment for an indefinite period. The presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute an establishment of the provider;

¹ *Established: Article 2(1) of Act XCVII of 2003. Effective: from 1 January, 2004*

² *Enacted: Article 2(2) of Act XCVII of 2003. Effective: pursuant to Article 16(3) amended by Article 10(1) of the same Act, from the day of the entry into force of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.*

³ *Repealed: Article 15(1) of Act CLXXI of 2005. Invalid: from 1 January, 2006*

⁴ *Numbering modified: Article 2(2) of Act XCVII of 2003.*

⁵ *Enacted: Article 2(3) of Act XCVII of 2003. Effective: from 1 January, 2004*

⁶ *Established: Article 3(1) of Act CLXXI of 2005. Effective: from 1 January, 2006*

⁷ *Enacted: Article 3(2) of Act CLXXI of 2005. Effective: from 1 January, 2006*

*o)*¹ *Electronic advertisement*: means any form of communication made by using information society services and designed to promote, directly or indirectly, the goods, services or activities of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession, and further, any communication containing information related to the achievement of a social objective. The following do not in themselves constitute electronic advertisement::

oa) information allowing direct access to the activity of the company, organisation or person, thus, in particular, a domain name or an electronic mail address,

ob) communications regarding the goods, services or image of the company, organisation or person, communicated in an independent manner, particularly when this is done without financial consideration.

The provisions set forth in sub-paragraphs *oa)* and *ob)* shall be without prejudice to the obligations specified in Article 14 (2) to (6) and (8);

*p)*² *Electronic advertiser*: means the party whose interest is served by, or who orders the publication of the electronic advertisement;

*q)*³ *Electronic advertisement service provider*: means the party producing, creating the electronic advertisement in its own scope of activity and/or provides other services related thereto;

*r)*⁴ *Publisher of electronic advertisement*: means a party having tools suitable for the publication of electronic advertisement and makes electronic advertisements available to the general public therewith. An intermediary service provider, who is merely involved in making the electronic advertisement public by providing information society services specified in Article 2 *la)*-*lb)* and *ld)* shall not be regarded as a publisher of electronic advertisement;

*s)*⁵ *Coordinated field*: general or special statutory requirements applicable to the commencement or performance of business activities on the territory of the Republic of Hungary and pertaining to information society services and service providers.

Principle excluding prior authorisation

Article 3⁶

(1) The commencement and performance of the provision of information society service is not subject to any prior authorisation or official decision having an equivalent legal effect.

(2) Paragraph (1) shall be without prejudice to

a) any certification, qualification, licensing or notification obligation imposed by other legal regulation generally applicable to the activities performed by way of information society services excluding those that apply by virtue of the provision of these services using electronic means; and

b) any licensing or notification obligation stipulated in Act C of 2003 on Electronic Communications or a legal regulation enacted under the authorisation granted therein.

Article 3/A¹

¹ Enacted: Article 2(3) of Act CLXXI of 2005. Effective: from 1 January, 2006

² Enacted: Article 3(4) of Act CLXXI of 2005. Effective: from 1 January, 2006

³ Enacted: Article 3(5) of Act CLXXI of 2005. Effective: from 1 January, 2006

⁴ Enacted: Article 3(6) of Act CLXXI of 2005. Effective: from 1 January, 2006

⁵ Enacted: Article 3(7) of Act CLXXI of 2005. Effective: from 1 January, 2006

⁶ Established: Article 4 of Act CLXXI of 2005. Effective: from 1 January, 2006

(1)² The service provided by a service provider established in the territory of other States Parties to the Agreement on the European Economic Area targeting the territory of the Republic of Hungary may not be restricted, unless the relevant authority or court needs to take measure

a) for protecting any of the following interests:

aa) the public order, thus, in particular, the prevention, investigation and prosecution of criminal offences, including the protection of minors and actions against incitement based on race, sex, religion or nationality and the violation of the human dignity of individuals,

ab) public health,

ac) public safety, including the interests of national safety and national defence,

ad) consumer interests, including the interests of investors; and

b) against a specific information society service that injures or seriously threatens the interests mentioned in subparagraph a) above; and

c) which is proportionate to the injury of the interest or the threat.

(2)³ Prior to taking the action, the relevant authority shall notify the European Commission, and requests the competent authority of the relevant Member State to the Agreement on the European Economic Area to take action against the service provider established in the given state. If the European Commission raises no objection and the authority of the Member State does not take a timely action or takes inadequate action, the authority shall implement the measure.

(3)⁴ In urgent cases, the authority may disregard the obligations stipulated in paragraph (2) above. In this case, both the European Commission and the competent authority of the Member State of the European Economic Area shall be forthwith notified of the implemented measure, indicating the conditions substantiating the urgency.

(4)⁵ The provisions set forth in paragraphs (2) and (3) may not be applied in court procedures, including procedures that may be instituted prior to filing a document for the initiation of a suit, as well as actions performed in the course of investigations in criminal proceedings or actions performed by the public prosecutor after the conclusion of the investigation prior to the indictment.

¹ Enacted: Article 3 of Act XCVII of 2003. Effective: pursuant to Article 16(3) amended by Article 10(1) of the same Act, from the day of the entry into force of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.

² Established: Article 5(1) of Act CLXXI of 2005. Effective: from 1 January, 2006

³ Established: Article 5(2) of Act CLXXI of 2005. Effective: from 1 January, 2006

⁴ Established: Article 15(3) of Act LXIX of 2004. Effective: from 10 July, 2004.

⁵ Established: Article 5(3) of Act CLXXI of 2005. Effective: from 1 January, 2006

Data supply obligations in connection with information society services

Article 4

(1)¹ The service provider shall publish by electronic means, directly and on an ongoing basis, in an easily accessible manner, in Hungarian language at least the following data and information:

a) the service provider's name; when the service provider is not a natural person also the name of its representative;

b) the address of the service provider's residence, or head office and premises;

c) contact details of the service provider, in particular its e-mail address regularly used for maintaining contact with recipient of the services;

d) when the establishment of the service provider or the commencement of the service provider's activity is subject to statutory public registration, the name of the court or authority that registered the action plan and the service provider's registration number;

e) when the service provider's activity is subject to statutory licensing, certification or accreditation, a statement on this fact along with the name and contact details of the licensing authority (certifying, or accreditation body), and the number of the licence (certificate, accreditation decision);

f) if the service provider is subject to VAT payment, the VAT registration number of the service provider;

g) if the services provider is engaged in a regulated profession:

ga) the name of the trade advocacy organisation (chamber) which the service provider joined, either under statutory regulation or voluntarily, as a member;

gb) the qualification, professional or academic rank of the natural person service provider and the Member State where this qualification or rank was obtained;

gc) reference to professional codes applicable to the regulated profession in the state of establishment of the service provider and their accessibility;

h) information regarding the given service, according to Article 8 of the Act CLV of 1997 on Consumer Protection (hereinafter: Consumer Protection Act).

(2) The fact that the information society service is subject to a charge, the amount of the charge and the method of payment shall be published by the service provider by electronic means, directly and on an ongoing basis, with clear and understandable wording. In particular, recipient of the services shall be informed whether the charge includes the public dues payable on the service and all costs of delivery to the recipient of the service.

(3) The service provider shall give general information about the level of security of the systems applied for information processing, the risk factors to the recipient of the service and the protection measures to be taken by the recipient of the service.

Rules applicable to contracts concluded by electronic means

Article 5

(1) Prior to sending an offer for a contract to be concluded by electronic means, the service provider shall make available the general contracting terms and conditions in a way that allows the recipient of the service to store and retrieve them.

¹ Established: Article 6 of Act CLXXI of 2005. Effective: from 1 January, 2006

(2) In addition to the information supply obligation stipulated in paragraph (1) above, Article 4 and other legal regulations, prior to the sending of an offer by the recipient of the service, the service provider shall provide to that recipient of the service in an unambiguous manner the following information:

- a) the technical steps to follow to conclude the contract by electronic means;
- b) whether the contract to be concluded is classified as a written contract, and whether the contract will be registered by the service provider, and be accessible subsequently;
- c) the means for identifying and correcting input errors prior to sending a letter of agreement;
- d) the languages offered for the conclusion of the contract and the language of the contract;
- e) the code of conduct – governing the service – he adheres to in respect of the given service and how this code can be consulted electronically.

(3) In the course of concluding the contract, the service provider and recipients of the services who are not consumers may mutually agree on derogation from the provisions of paragraph (2).

Article 6

(1) The service provider shall make available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors prior to the sending of the offer by electronic means. In the absence of such means, the statement of the recipient of the service shall not qualify as an offer.

(2) The service provider shall acknowledge receipt of the offer to the recipient of the service without undue delay and by electronic means. If such acknowledgement is not received by the recipient of the service within 48 hours of sending the offer, the recipient of the service shall not be bound by the offer.

(3) The offer and the acknowledgement of receipt will be deemed to be received when the parties to whom they are addressed are able to access them.

(4) In the course of concluding the contract, the service provider and the recipients of the services who are not consumers may agree on derogation from the provisions set forth in paragraphs (1) and (2) above.

(5) The requirements of Article 5 (1) and (2) and paragraphs (1) and (2) above shall not apply to contracts concluded exclusively by the exchange of electronic mails or by equivalent individual communications.

Liability of the service provider and the intermediary service provider¹

Article 7²

(1) The service provider shall be liable for any infringement and damage caused by making available unlawful information.

(2) The intermediary service provider shall not be liable for infringement and damage caused to a third party by information originating from an external source and transmitted, stored or made accessible in the course of provision of an information society service, provided that the intermediary service provider fulfils the requirements set forth in Articles 8 to 11 and acts with due diligence.

(3) Besides the cases mentioned in paragraph (2) above, with regard to the violation of law under Article 13(1), the intermediary service provider specified in Article 2 *lb) to ld)*, shall not

¹ Established: Article 4 of Act XCVII of 2003. Effective: from 1 January, 2004

² Established: Article 4 of Act XCVII of 2003. Effective: from 1 January, 2004

be liable for the violation of law and damage caused to a third party by unlawful information originating from an external source and transmitted, stored or made accessible in the course of the provision of an information society service, if it follows the procedure stipulated in Article 13 and acts with due diligence.

(4) The exemption from liability of the intermediary service provider under paragraphs (2) and (3) above shall not prejudice the right of the party aggrieved by the receipt of unlawful information, to apply to a court or authority for the enforcement of his claim – having arisen due to the violation of law – regarding the prevention or cessation of the illegal conduct not only against the party having violated the law but also against the intermediary service provider. Should the intermediary service provider lose the suit, it may not be obliged to bear the court costs of the prevailing party, while the court costs of the defeated intermediary service provider shall be borne by the defeated party having violated the law.

(5) The intermediary service provider shall not be obliged to verify the content of the information that it only transmits, stores and makes available and, further, it is not obliged to seek facts or circumstances implying the conduct of unlawful activity..

(6) The intermediary service provider shall not be held liable for damage caused by the removal of information or disabling access to information, provided that it has acted in compliance with Articles 7 to 11 and 13.

Article 8

(1)¹ The intermediary service provider defined in Article 2 *la*) shall not be liable for the damage caused by the content of the transmitted information, if it was not the service provider

- a*) to initiate the transmission of the information;
- b*) to select the receiver of the transmission, and
- c*) to select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where this takes place for the sole purpose of carrying out the transmission, and the information is not stored for any period longer than is reasonably necessary for the transmission.

Article 9²

The intermediary service provider defined in Article 2 *la*) shall not be liable for damage caused by the intermediate and temporary storage of information, where:

- a*) the service provider does not modify the information;
- b*) the service provider complies with conditions of access to the information;
- c*) the service provider complies with any rules regarding the updating of the information in its temporary storage, specified in a manner widely recognised and used by industry;
- d*) the intermediate storage does not interfere with the lawful use of technology, widely recognised and used by the industry, to obtain data on the use of the information; and
- e*) the service provider acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement of access.

¹ Established: Article 5 of Act XCVII of 2003. Effective: from 1 January, 2004

² Established: Article 6 of Act XCVII of 2003. Effective: from 1 January, 2004

Article 10¹

The intermediary service provider defined in Article 2 *lc*) shall not be liable for the damage caused by the content of information originating from the recipient of the service, if

- a) it does not have actual knowledge of unlawful activity related to the information and is not aware of the fact that the information infringes the right or legitimate interest of any party; and
- b)² upon obtaining such knowledge or awareness of the facts specified in subparagraph a), it acts expeditiously to remove or to disable access to the information.

Article 11³

The intermediary service provider defined in Article 2 *ld*) shall not be liable for the damage caused by ensuring access to information, as specified in Article 2 *ld*), if

- a) it does not have actual knowledge of unlawful activity related to the information and is not aware of the fact that the information infringes the right or legitimate interest of any party; and;
- b)⁴ upon obtaining such knowledge or awareness of the facts specified in subparagraph a), it acts expeditiously to remove or to disable access to the information.

Article 12

Under the provisions of Articles 10 and 11, a service provider shall not be exempted from liability if the recipient of the service has been acting under the authority or the control of the service provider.

Notice on an unlawful information society service

Article 13

(1)⁵ Holders of a right protected by the Copyright Act, established on any copyrighted work, performance, recording, audiovisual work or database, or of an exclusive right arising from trademark protection under the Act on the Protection of Trademarks and Geographical Indications of Origin (hereinafter: “rightholders”) which has been infringed by the information made accessible by the service provider – excluding the standardised address of the access to the information – may request the removal of the information infringing his right by way of sending a notice in the form of a private document with full probative force or a notarised deed to the service provider defined in Articles 9 to 11.

(2) The notice shall contain the following:

- a) the subject of the infringement and the establishment of the facts that provide reasonable cause to believe that infringement has taken place;
- b) the data needed to identify the unlawful information;
- c) the name, address of residence or head office, phone number and electronic mail address of the rightholder.

(3) Should the rightholder act by proxy, the authorisation of the proxy for representation during the notification/removal procedure, given in private document with full probative force or a notarised deed shall also be attached to the notice specified in paragraphs (1) and (2).

¹ Established: Article 6 of Act XCVII of 2003. Effective: from 1 January, 2004

² The former sub-paragraph b) was repealed by Article 15(1) of Act CLXXI of 2005. Invalid: from 1 January, 2006
The numbering and wording was modified by Article 15(1) to (2) of the same Act.

³ Established: Article 6 of Act XCVII of 2003. Effective: from 1 January, 2004

⁴ The former subparagraph b) was repealed by Article 15(1) of Act CLXXI of 2005. Invalid: from 1 January, 2006
The numbering and wording was modified by Article 15(1) to (2) of the same Act.

⁵ Established: Article 7(1) of Act CLXXI of 2005. Effective: from 1 January, 2006

(4) The service provider shall arrange for disabling access to or removal of, the information identified in the notice, within 12 hours of receiving the notice specified in paragraphs (1) and (2) above, specifying the rightholder whose right was infringed based on the notice; and shall concurrently give written notice to the affected recipient of the service who had provided the information that infringes the right of the rightholder (hereinafter: “affected recipient of the service”) within three working days.

(5) The service provider shall refuse to disable access to, or remove the information pursuant to the notice specified in paragraphs (1) and (2) above, if the service provider has already previously taken the measures stipulated in paragraph (4) in relation to the same information based on the notice of the same rightholder or the proxy thereof, authorised in compliance with paragraph (3), unless the removal of, or disabling access to the information was ordered by a court or authority.

(6) Within 8 days of receiving the notice specified in paragraph (4) above, the affected recipient of the service may lodge an objection with the service provider, in the form of a private document with full probative force or a notarised deed, regarding the removal of the relevant information. The objection shall indicate the following:

a) identification of the information removed or made inaccessible, including the network address where formerly the information had been available, as well as the identification data of the affected recipient of the service as specified in Article 4(1) a) to e) and g) herein;

b) a statement with detailed explanation that the information provided by the recipient of the service does not infringe the right of the rightholder specified in the notice under paragraph (2).

(7) Upon receiving the objection specified in paragraph (6) the service provider shall expeditiously make the relevant information accessible again and notify the rightholder thereof by sending the objection to the rightholder, unless the removal of, or disabling access to the information was ordered by a court or authority.

(8) Should the affected recipient of the service admit to the infringement of the rights of the rightholder or does not lodge an objection within the time frame specified in paragraph (6), or the objection does not contain the data and statement stipulated in paragraph (6), the service provider shall maintain the effect of disabling access to, or removal of the information.

(9)¹ Should the rightholder enforce his claim related to the infringement of right specified in the notice within 10 working days after receiving the notice detailed in paragraph (7) through a request of injunction for abandonment and prohibition or an order of payment or file a criminal report with the police, within 12 hours of receiving the court decision ordering interim measures to that effect, the service provider – applying the provisions of paragraph (4) as appropriate – shall once again disable access to, or remove the information identified in the notice under paragraph (2). The service provider shall notify the affected recipient of the service of the measure that it has taken within one working day by supplying a copy of the court decision.

(10)² The rightholder shall advise the service provider of the final material decisions delivered in the course of the procedure specified in paragraph (9) – including an order for interim measure or the dismissal of the claim – without delay. The service provider shall expediently obey such decisions.

(11) The rightholder and the service provider may conclude a contract on the application of the procedure specified in paragraphs (1) to (10). In the contract the parties may not derogate

¹ Established: Article 7(2) of Act CLXXI of 2005. Effective: from 1 January, 2006

² Established: Article 7(2) of Act CLXXI of 2005. Effective: from 1 January, 2006

from the law, but may agree on issues not regulated by law. The parties may consider in their contract as valid written communication a true copy of a written private document addressed to them or by them to any third party, as well as any electronic communication, subject to acknowledgement of receipt by the addressee by electronic means. In this case the parties shall acknowledge the receipt of electronic messages received from each other.

(12) The service provider shall not be liable for the successful removal of, or disabling access to the relevant information, when the service provider has acted in accordance with paragraphs (4) and (9) in good faith to ensure removal or disabling access thereto.

Data protection¹

Article 13/A²

(1) The service provider may process personal data of the recipient of the service, suitable and sufficient for the identification thereof, for the purpose of drawing up the contract for the information society service, determining and modifying the contents thereof, monitoring the performance thereof, billing the charges arising therefrom as well as enforcing the claims related thereto.

(2) For the purpose of billing the charges arising under the contract for the information society service, the service provider may process personal data related to the use of such service, provided that such data are indispensable for establishing and billing the charge, thus, especially, the data regarding the time, duration and place of using the service.

(3) In addition to the data specified in paragraph (2), the service provider may – for the purpose of providing the service – process personal data indispensable for providing the service for technical reasons. Should other conditions be identical, the service provider shall select and operate the means applied in the course of providing information society service at all times, so that personal data be processed only if it is absolutely indispensable for providing the service or achieving other objectives stipulated in this Act, and only to the required extent and duration.

(4)³ The service provider may process data related to the use of the service for purposes other than those specified in paragraph (3) – thus, in particular, for the purposes of enhancing the efficiency of the service, forwarding of electronic advertisements or other direct communications addressed to the recipient of the service, or market surveys – only with the prior specification of the objective thereof and subject to the consent of the recipient of the service.

(5) Recipient of the services shall be allowed, at all times, prior to and during the course of using the information society service to prohibit the data processing specified in paragraph (4).

(6) The data defined in paragraph (4) may not be linked to the identification data of the recipient of the service nor may it be released to third parties without the consent of the recipient of the service.

(7) Data processed for the purposes specified in paragraphs (1) to (3) shall be deleted if the contract is not concluded, is terminated and after the billing. Data processed for the purpose defined in paragraph (4) shall be deleted if the objective of data processing has ceased or upon the instruction of the recipient of the service to this effect. Unless provided otherwise by the

¹ Enacted: Article 7 of Act XCVII of 2003. Effective: from 1 January, 2004

² Enacted: Article 7 of Act XCVII of 2003. Effective: from 1 January, 2004

³ Established: Article 8 of Act CLXXI of 2005. Effective: from 1 January, 2006

Act on Accounting or other legal regulations, deletion of the data shall take place without delay.

(8) The provision of an information society service may not be made subject to the consent of the recipient of the service to data processing for a purpose not mentioned in paragraphs (1) to (3), if the given service is not available from other service provider.

(9) In addition to the information obligations specified in a separate act, the service provider shall ensure that the recipient of the service of the information society service may, at any time prior to and in the course of using the service, get acquainted with the types of data processed by the service provider and the objective of processing such data, including the processing of data directly not associated with the recipient of the service.

Rules pertaining to electronic advertisement¹

Article 14²

(1) Clear and unambiguous information shall be provided regarding the following:

a) that the message is an electronic advertisement, as soon as it becomes accessible by the recipient of the service;

b) the identity of the electronic advertiser, or in the case of the transmission of an electronic advertisement by electronic mail or an equivalent means of individual communication, the identity of the actual sender, as soon as the advertisement becomes accessible by the recipient of the service;

c) in the case of a special offer – in particular, a price discount, draws of prizes and presents – the nature of the offer, and further, the details of the offer shall also be made easily accessible;

d) in the case of a raffle or other game of chance, of this fact; the detailed conditions of participation shall also be made easily accessible.

(2) Advertisements may be delivered by electronic mail or an equivalent means of individual communication exclusively with the express prior consent of the recipient of the service. The consent may be declared in any form allowing the identification of the person granting the consent as well as expressing that the consent has been given voluntarily after the receipt of adequate information.

(3) The declaration referred to in paragraph (2) may be withdrawn free of charge, at any time without any restriction and justification. In such a case, the name of the person having sent the declaration shall be forthwith deleted from the register specified in paragraph (5), and no further electronic advertisement may be transmitted to such a person.

(4) Upon the transmission of an electronic advertisement under paragraph (2), the addressee shall be advised of the electronic mail address and other contact details where it may request the prohibition of the transmission of electronic advertisement by using information society service to his address.

(5) The electronic advertiser, the electronic advertisement service provider and the publisher of electronic advertisements shall keep a register on persons having granted their consent to receiving advertisements under paragraph (2). The data – pertaining to the recipient of the service – entered in the register may be disclosed to any third party solely upon the prior consent of the recipient of the service.

¹ Established: Article 9 of Act CLXXI of 2005. Effective: from 1 January, 2006

² Established: Article 9 of Act CLXXI of 2005. Effective: from 1 January, 2006

(6) Electronic advertisers, electronic advertisement service providers and publishers of electronic advertisements may only send an electronic advertisement by electronic mail or an equivalent means of individual communication to those who are entered in the register specified in paragraph (5). The prohibition of transmission to entities that have not been entered into this register shall apply to all electronic advertisements delivered by the electronic advertiser, electronic advertisement service provider and the publisher of electronic advertisement.

(7) Electronic advertisers, electronic advertisement service providers and publishers of electronic advertisement shall be held equally liable for the violation of the stipulations set forth in paragraph (1) *a*) to *b*). Electronic advertisers shall be liable for the violation of paragraph (1) *c*) to *d*).

(8) Electronic advertisers, electronic advertisement service providers and publishers of electronic advertisement shall be held equally liable for the violation of the stipulations set forth in paragraphs (2) to (6).

Regulated professions¹

Article 14/A²

(1)³ Electronic advertisement serving the interests of a person exercising a regulated profession – by way of providing information society service – and acting as an electronic advertiser may be communicated or published in compliance with the provisions of Article 14. The advertisement and the publication may also be prohibited or restricted, or their contents be regulated by the rules governing the exercise of the regulated profession, the codes of conduct and ethical rules developed by trade advocacy organisations – especially chambers – for their own members without prejudice to other legal regulations.

(2) , Additional rules specified in paragraph (1) governing the exercise of a regulated profession may be developed with special regard to protecting the independence, integrity, respect of the profession, or to protect professional secrecy, as well as to determine fair behaviour towards the recipients of the services of the professional service or other persons exercising the same profession.

Special consumer protection rules pertaining to information society services

Article 15

(1) Public utilities, pension funds as well as businesses engaged in financial and insurance activities which also provide electronic commerce services, shall make accessible their customer service also by electronic means in order to handle consumer reports, investigate and remedy complaints and provide information to consumers.

(2) The organisations specified in paragraph (1) – provided that they render their services to the recipient of the services exclusively by electronic means – and organisations providing

¹ Enacted: Article 8 of Act XCVII of 2003. Effective: pursuant to Article 16(3) amended by Article 10(1) of the same Act, from the day of the entry into force of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.

² Enacted: Article 8 of Act XCVII of 2003. Effective: pursuant to Article 16(3) amended by Article 10(1) of the same Act, from the day of the entry into force of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.

³ Established: Article 10 of Act CLXXI of 2005. Effective: from 1 January, 2006

exclusively information society services shall be entitled to operate the customer service exclusively by electronic means. In the event of an outage, the above organisations shall operate their customer service via telephone.

(3) The customer service provided according to paragraph (2) shall put down in writing the rejection of a complaint, together with the explanation, and immediately send a copy of it to the customer by electronic means.

Codes of conduct¹

Article 15/A²

(1) The Government – with due respect to the independence of organisations performing information society related activities – encourages self-regulation, in particular

a) the development of codes of conduct,

b) the publication of codes of conduct by electronic means in the Hungarian language, and for recipients of the services and other stakeholders residing or having a head office in the States Parties to the Agreement on the European Economic Area in their relevant languages;

c) the operation of on-line alternative dispute settlement methods.

(2) Further, the Government encourages the co-operation of the organisations performing information society related activities with the Minister responsible for information technology – and if the service also targets any of the States Parties to the Agreement on the European Economic Area, with the European Commission as well – with a view to providing information to the stakeholders about their codes of conduct, their assessment of the application of their codes of conduct as well as of their impact on electronic commerce.

Miscellaneous and closing provisions

Article 16

(1) With the exception of the provisions set forth in paragraph (3), this Act shall enter into force on the 30th day following its publication.

(2) This Act shall be applied to the information society services provided after its entry into force, and the service providers shall ensure within 90 days of the entry into force of this Act that their information society services comply with the provisions of this Act.

(3)³ Article 1(2), Article 2 *i*), Article 3/A, Article 14/A, and Article 15/A(2) shall enter into force on the effective date of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.

(4) When the keeping of a document, an official document or the original copy is required by law, the obligation of preservation may be fulfilled also by electronic means subject to compliance with the requirements laid down in a separate piece of legislation on digital archiving.

(5)⁴ Violation of consumer protection requirements stipulated in Articles 4 to 6 and Article 15 shall fall within the competence of the authority responsible for consumer protection, which shall proceed in compliance with the rules stipulated in the Consumer Protection Act..

¹ Established: Article 11 of Act CLXXI of 2005. Effective: from 1 January, 2006

² Established: Article 11 of Act CLXXI of 2005. Effective: from 1 January, 2006

³ Established: Article 10(1) of Act XCVII of 2003. Effective: from 1 January, 2004

⁴ Established: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

(6)¹ Upon the violation of the provisions set forth in Articles 14 and 14/A, the case shall fall within the competence of the National Communications Authority (hereinafter: “the Authority”). The first instance body is the Office of the Authority. An appeal against the decision of first instance may be filed with the chairperson of the Board of the Authority.

(7)² Compliance with regulations pertaining to business advertising activities associated with electronic advertisements shall be overseen by the authority responsible for consumer protection, which shall proceed in compliance with Act LVIII of 1997 on Business Advertising.

(8)³ The procedure of the Authority shall be governed by Act CXL of 2004 on the General Rules of Official Administrative Procedures and Services. For the purposes of the procedure, all service providers taking part in providing the information society service affected by the procedure shall be regarded clients.

(9)⁴ Upon the violation of the provisions set forth in Articles 14 and 14/A, the Authority may order to cease the infringement or discontinue the unlawful conduct, and may impose an electronic commerce penalty ranging between fifty thousand forint and five hundred thousand forints. The electronic commerce penalty shall be paid to the account of the Authority.

(10)⁵ The amount of the electronic commerce penalty associated with electronic advertisements shall be established after deliberating all conditions of the case, in particular the scope and weight of infringed consumer rights, the duration and re-occurrence of the infringement. Upon a repeated infringement, an electronic commerce penalty associated with electronic advertisements may be imposed repeatedly. Unpaid penalties imposed by a final decision shall be collected as taxes, and have the same priority as taxes. No electronic commerce penalty may be imposed on service providers defined in Article 2 *lc*) acting as the publisher of the electronic advertisement.

(11)⁶ The supervisory procedure related to electronic advertisements shall be instituted upon request, if the violation of the provisions stipulated in Article 14 and 14/A infringes upon a person’s right or legitimate interest. If the aggrieved consumer cannot be identified, or due to the high number of aggrieved consumers, the enforcement of individual claims would not be reasonable, the procedure may also be initiated by administrative bodies and social organisations representing consumer interests.

(12)⁷ Supervisory procedure related to electronic advertisements may only be launched within one year after the publication of the electronic advertisement violating the provisions herein. Should the interested party gain knowledge of the violation of his personal rights after one year, in respect of establishing the deadline for the commencement of the procedure Article 326(2) of Act IV of 1959 on the Civil Code of the Republic of Hungary shall be applied as appropriate.

(13)⁸ In justified cases – with consideration to the circumstances of the case and the lawful interests of the electronic advertiser and other stakeholders – the electronic advertiser may be ordered to prove compliance with the provisions of Article 14 and 14/A pertaining to electronic advertisements.

¹ Established: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

² Established: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

³ Established: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

⁴ Established: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

⁵ Enacted: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

⁶ Enacted: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

⁷ Enacted: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

⁸ Enacted: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

(14)¹ By way of an interim measure, the Authority may order in a decision to cease the infringement or discontinue the unlawful conduct, if this is urgently required due to the protection of the legal or economic rights of the stakeholders. The Authority shall adopt the decision pertaining to the interim measure without delay, in an extraordinary procedure.

Article 17²

(1)³ The Minister responsible for information technology shall

a) inform the European Commission of the information society service contracts – with special regard to those specified in Article 9(2) a) to d) of Directive 2000/31/EC of the European Parliament and of the Council of May 22, 2001 on certain legal aspects of information society services, in particular electronic commerce, that cannot be validly concluded by electronic means (hereinafter: “exceptions”),

b) submit a report to the European Commission once in every five years on the application of the exceptions, providing an explanation regarding the continued exception of contracts concluded with the statutory participation of judicial, official or other persons with executive power by the Republic of Hungary.

(2)⁴ The Minister responsible for information technology is hereby authorised to regulate in a decree, in consent with the relevant Ministers – in issues pertaining to e-government services, jointly with the Minister in charge of information technology used by public administrations – the following:

a)⁵

b)⁶ the rules of digital archiving,⁷

c)⁸

(3)⁹ The Minister responsible for information technology is hereby authorised to regulate in a decree, in consent with the relevant Ministers – in issues pertaining to e-government services, jointly with the Minister in charge of information technology used by public administrations and in respect to domestic trade, jointly with the Minister responsible for trade – the detailed conditions of providing electronic commerce service.

Article 18¹⁰

This Act is aimed at the conformity with Directive 2000/31/EC of the European Parliament and of the Council of May 22, 2001 on certain legal aspects of information society services, in particular electronic commerce.

¹ Enacted: Article 12 of Act CLXXI of 2005. Effective: from 1 January, 2006

² Established: Article 52 of Act XLVII of 2002. Article. Effective: from 2002. XII. 10-től.

³ Established: Article 13(1) of Act CLXXI of 2005. Effective: from 1 January, 2006

⁴ Numbering modified: Article 11 of Act XCVII of 2003.

⁵ Repealed: Article 15(1) of Act CLXXI of 2005. Invalid: 1 January, 2006

⁶ Established: Article 13(2) of Act CLXXI of 2005. Effective: from 1 January, 2006

⁷ Please refer to Decree of the Ministry of Informatics and Communications No. 7/2005. (VII. 18.) IHM.

⁸ Repealed: Article 15(1) of Act CLXXI of 2005. Invalid: 1 January, 2006

⁹ Numbering modified: Article 11 of Act XCVII of 2003.

¹⁰ Established: Article 14 of Act CLXXI of 2005. Effective: from 1 January, 2006