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The Law on Certain Aspects of Information Society Services, in particular Electronic Commerce, and Related Matters of 2004 is issued by publication in the Official Journal of the Republic of Cyprus in accordance with Article 52 of the Constitution.

No 156(I) of 2004

**FRAMEWORK LAW OF 2004 ON CERTAIN ASPECTS OF
INFORMATION SOCIETY SERVICES, IN PARTICULAR
ELECTRONIC COMMERCE, AND RELATED MATTERS**

For the purposes of harmonisation with the act of the European Union entitled

“Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market” (‘Directive on electronic commerce’) (OJ L 178, 17/07/2000, p. 0001–0016)

the House of Representatives enacts as follows:

Summary
title.

1. This Law will be referred to as the Law on Certain Aspects of Information Society Services, in particular Electronic Commerce, and Related Matters of 2004.

Interpretation.

2. In this Law, unless provision is made to the contrary:

‘recipient of the service’ means any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;

‘Competent Authority’ means the Minister for Commerce, Industry and Tourism;

‘established service provider’ means a service provider having the nationality of a Member State, or a company as defined in Article 48 of the Treaty, who or which effectively pursues an economic activity using a fixed establishment in a Member State for an indefinite period.

The presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute establishment vis-à-vis the provider.

Moreover, where the specific place of establishment from which the service is provided cannot be determined, the service is considered to be provided from the establishment at which the service provider has the center of its operations in respect of the activity in question;

‘at a distance’, in relation to a service, means that the service is provided without the parties being simultaneously present;

‘commercial communication’ means any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not in themselves constitute commercial communications:

- (a) information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic mail address;
- (b) communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration;

‘Commission’ means the Commission of the European Communities;

‘consumer’ means any natural person who is acting for purposes which are outside his or her trade, business or profession;

‘Member State’ means a Member State of the European Union, including any State which is party to the EEA Agreement;

‘regulated profession’ means any profession, either within the meaning of the term ‘regulated professional activity’ as interpreted in section 2 of the General System for the Recognition of Professional Qualifications Laws of 2002 and 2003 or within the meaning of the term ‘regulated professional activity’ as interpreted in section 2 of the Second General System for the Recognition of Professional Qualifications Law of 2003;

179(I) of 2002.
129(I) of 2003.

121(I) of 2003.

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended by the Protocol signed at Brussels on 17 March 1993;

‘Treaty’ means the Treaty Establishing the European Community;

‘coordinated field’ means requirements laid down in the legal systems of Member States, including the Republic, applicable to information society providers or information society services, regardless of whether they are of a general nature or specifically designed for them.

It being understood that:

- (a) the coordinated field concerns requirements with which the service provider has to comply in respect of:
 - (i) the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification,
 - (ii) the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirements concerning the liability of the service provider;
- (b) the coordinated field does not cover requirements such as:
 - (i) requirements applicable to goods as such,
 - (ii) requirements applicable to the delivery of goods,
 - (iii) requirements applicable to services not provided by electronic means;

72(I) of 2003.

‘information society services’ means services as defined in section 2 of the Information Procedure for Certain Technical Rules Law of 2003;

‘service provider’ means any natural or legal person providing an information society service.

PART I: INTRODUCTORY PROVISIONS

Scope.

3.–(1) This Law seeks to ensure the free movement of information society services between the Republic and the Member States, relating to the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of court dispute settlements, court actions and cooperation between Member States.

(2) The Law is without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts and in each item of legislation achieving harmonisation with them in so far as this does not restrict the freedom to provide information society services.

(3) This Law does not establish additional rules on private international law, nor does it affect the fundamental rules of the jurisdiction of the courts.

(4) This Law shall not apply to:

- (a) the field of taxation;
- (b) questions relating to information society services covered by the provisions of the Processing of Personal Data (Protection of the Individual) Law of 2001 and the Regulation of Telecommunications and Postal Services Law of 2002 as amended or superseded on each occasion;
- (c) questions relating to agreements on concerted practices which fragment the market or fix prices, or to other practices governed by the Protection of Competition Law of 1987 as amended or replaced on each occasion;
- (d) the following activities of information society services:
 - (i) the activities of professions directly and specifically connected with the exercise of public authority,
 - (ii) the representation of a client and defence of his interests before the courts,
 - (iii) gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

138(I) of 2001.
37(I) of 2003.
19(I) of 2002.
105(I) of 2002.

207(I) of 1987.
111(I) of 1999.
87(I) of 2000.
155(I) of 2000.

(5) This Law does not affect measures taken at national level, in respect of Community law, in order to promote cultural and linguistic diversity and to ensure the defence of pluralism.

Responsibilities
and powers
of the
Competent
Authority.

4. The Competent Authority shall have responsibility and powers in respect of:
- (a) the supervision and investigation necessary to implement this Law effectively;
 - (b) the establishment of contact points which can be accessed electronically by both recipients and service providers;
 - (c) the provision, by electronic means, of assistance and information when requested by the competent authorities of another Member State or by the Commission;
 - (d) the communication to the Commission of all significant administrative and judicial decisions regarding disputes relating to information society services, and of information on practices, usages and customs relating to electronic commerce in the Republic;
 - (e) the publication of the codes of practice referred to in sections 11 and 19.

(2) For the purposes of coordination and information the Competent Authority shall cooperate with the competent authorities of other Member States and, to that end, establish one or more contact points, whose details it shall communicate to the other Member States and the Commission.

(3) The contact points shall be accessible by electronic means to recipients and service providers to enable them to:

- (a) obtain general information on the law applicable to electronic commerce, in particular concerning their contractual rights and obligations, as well as on the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms;
- (b) obtain the details of authorities, organisations, associations and/or other bodies in the Republic from which they may obtain further information or practical assistance.

(3) The Competent Authority shall have adequate means of supervision and investigation, in particular the necessary technical equipment and trained personnel to implement this Law effectively.

Cross-border provision of services.

5.–(1) With due regard to subsection (3), every requirement which falls within the coordinated field shall apply during the provision of services by a service provider established in the Republic, irrespective of whether the specific information society service is provided in the Republic or another Member State.

(2) The provision of an information society service by a provider established in a Member State other than the Republic shall not be subject to any condition within the coordinated field which would restrict the freedom to provide information society services.

The conditions referred to above do not include conditions connected with requirements which determine the level of public health and the protection of consumers as laid down in Community law.

(3) Subsections (1) and (2) shall not apply to the activities referred to in the Annex.

Exceptions to the freedom to provide services.

6.–(1) By way of derogation from subsection (2) of section 5, and with due regard to the provisions of sections 20 and 21, restrictive measures may be taken, via an order, in respect of a given information society service being provided from another Member State if the following conditions are fulfilled:

- (a) the measures must be necessary for reasons of:
 - (i) public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, or
 - (ii) the protection of public health, or
 - (iii) public security, including the safeguarding of national security and defence, or
 - (iv) the protection of consumers, including investors;

- (b) the measures must be taken against a given information society service which prejudices the objectives referred to in point (a) or which presents a serious risk of prejudice to those objectives; and
- (c) the measures taken are proportionate to the objectives.

(2) The measures referred to in subsection (1) may be taken only after:

- (a) the Member State referred to in subsection (1) has already been asked to take measures and the latter did not take measures, or they were inadequate; and
- (b) the Commission and the Member State referred to in subsection (1) have been notified of the intention to take such measures.

The provisions of this section shall not affect any court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation.

(5) Under exceptional circumstances the Competent Authority may derogate from the conditions stipulated in subsection (2) and ask for restrictive measures to be taken without fulfilment of the relevant conditions. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State referred to in subsection (1), indicating the reasons for which the Competent Authority considers the situation to be exceptional.

PART II: BASIC PRINCIPLES

Establishment and information

Principle
excluding
prior
authorisation.

19(I) of 2002.
105(I) of 2002.

7.–(1) The taking up and pursuit of the activity of an information society service provider shall not be subject to prior authorisation or any other requirement having equivalent effect, without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services or which are covered by authorisation schemes in the telecommunications sector, specifically by provisions of the Regulation of Telecommunications and Postal Services Law of 2002, as amended or replaced on each occasion.

General
obligation
to provide
information.

8.–(1) In addition to other information requirements established by Community law and, accordingly, by the related legislation in force, the service provider shall render easily, directly and permanently accessible to the recipients of the service and the Competent Authority

at least the following information:

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, telephone number and fax number, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- (d) where the service provider is registered in a trade or similar public register, the trade register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
- (e) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
- (f) as concerns the regulated professions:
 - (i) the professional body or similar institution with which the service provider is registered,
 - (ii) the professional title and the Member State where it is granted;
 - (iii) a reference to the applicable professional rules in the Member State of establishment and the means to access them;
- (g) where the service provider undertakes an activity that is subject to VAT, the identification number referred to in the legislation in force on value added tax achieving harmonisation with Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ L 145, 13/06/1977, p 1).

(2) Where information society services refer to prices, these are to be indicated clearly and unambiguously and, in particular, whether they are inclusive of tax and delivery costs.

Commercial communications

- Information to be provided.
9. With regard to Community law governing the provision of information to a recipient of the service, commercial communications which are part of, or constitute, an information society service shall comply with the following conditions:
- (a) the commercial communication shall be clearly identifiable as such;
 - (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable in the title of the message;
 - (c) promotional offers, such as discounts, premiums and gifts, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and presented clearly and unambiguously;
 - (d) promotional competitions or games, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and presented clearly and unambiguously.
- Unsolicited commercial communications (spamming).
- 10.–(1) Unsolicited commercial communication with a recipient who has not requested it by a service provider established in the territory of the Republic shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient.
- 19(I) of 2002.
105(I) of 2002.
- (2) Without prejudice to provisions of the Regulation of Telecommunications and Postal Services Law of 2002, as amended or superseded on each occasion, the Competent Authority shall take measures to ensure that service providers undertaking unsolicited commercial communications by electronic mail consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves.
- Regulated professions.
- 11.–(1) The use of commercial communications which are part of, or constitute, an information society service provided by a member of a regulated profession is permitted subject to compliance with the professional rules regarding the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession.

(2) Without prejudice to the autonomy of professional bodies and associations, the Competent Authority shall encourage professional associations and bodies to establish codes of conduct at national and Community level in order to determine the types of information that can be given for the purposes of commercial communication in conformity with the rules referred to in section 19.

(3) Subsection (2) shall apply in addition to the items of legislation and the Community law in force concerning access to, and the exercise of, activities of the regulated professions.

PART III: Contracts concluded by electronic means

Electronic contracts.

12.–(1) With due regard to subsection (2), the conclusion of contracts by electronic means shall be permitted.

(2) Subsection (1) shall not apply to the following contracts:

- (a) contracts that create or transfer rights in real estate, except for rental rights;
- (b) contracts requiring by law adherence to a certain form;
- (c) contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade or profession;
- (d) contracts governed by family law or the law of succession.

Information to be provided at the pre-contract stage.

13.–(1) In addition to other information requirements established by this Law, and except when otherwise agreed by parties who are not consumers, the service provider shall give the following information clearly, comprehensibly and unambiguously prior to the order being placed by the recipient of the service:

- (a) the different technical steps to follow to conclude the contract;
- (b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
- (c) the technical means for identifying and correcting input errors prior to the placing of the order;
- (d) the languages offered for the conclusion of the contract;

- (e) the relevant codes of conduct to which the service provider subscribes and information on how they can be consulted electronically; and
- (f) the law applicable to the transaction.

(2) Contract terms and general conditions of the transaction provided to the recipient must be made available in a way that allows him to store and reproduce them.

(3) Subsections (1) and (2) shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Placing of
the order.

14.–(1) Except when otherwise agreed by parties who are not consumers, the following shall apply where the recipient of the service places his order through technological means:

- (a) the service provider shall acknowledge the receipt of the recipient's order without undue delay and by electronic means;
- (b) the order and the acknowledgement of receipt shall be deemed to be received when the parties to whom they are addressed are able to access them;
- (c) 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 placing of the order.

(3) Paragraphs (a) and (c) of subsection (1) shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

PART IV: Liability of intermediary service providers

Liability for
mere
transmission.
[mere conduit]

15.–(1) Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider shall not be liable for the information transmitted on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and

(c) does not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in subsection (1) shall include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

(3) This section shall not affect the possibility for a court or administrative authority of requiring the service provider to terminate or prevent an infringement.

Liability for
storage
in a secret
memory.
[Caching]

16.–(1) Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the service provider shall not be liable for the automatic, intermediate and temporary storage of information performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that the provider:

- (a) does not modify the information;
- (b) complies with conditions on access to the information;
- (c) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by the industry;
- (d) 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) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge 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 administrative authority has ordered such removal or disablement.

(2) This section shall not affect the possibility for a court or administrative authority of requiring the service provider to terminate or prevent an infringement.

(3) The provisions of sections 13, 14 and 15 shall not:

- (a) prevent a person agreeing to different conditions in the agreement;
- (b) affect the rights of any party to go to court to terminate or prevent the infringement of any of its rights.

Liability
for
hosting.
[hosting]

17.–(1) Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that:

- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent, or
- (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or disable access to the information, or
- (c) the provider stops using a link from the moment from the moment of becoming aware of the illegal content and of the fact that an infringement of the rights of third persons is being perpetrated through the page in question.

(2) Subsection (1) shall not apply when the recipient of the service is acting under the authority or the control of the provider.

(3) This section shall not affect the possibility for a court or administrative authority of requiring the service provider to terminate or prevent an infringement.

No general
obligation
to monitor.

18.–(1) Service providers have no general obligation to monitor information being moved, nor a general obligation actively to seek facts or circumstances indicating illegal activity, when providing the services covered by sections 12, 13 and 14.

(2) Service providers have an obligation promptly to inform the Competent Authority of alleged illegal activities undertaken or information provided by recipients of their service, and to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

PART V: IMPLEMENTATION

Codes of
conduct.

19. Codes of conduct drawn up by professional and consumer associations shall be approved and published in the Official Journal by

the Competent Authority. The codes must, in particular, take account of the need for the protection of minors and of human dignity, and associations representing the visually impaired and disabled must be consulted so that the specific needs of those people can be taken into account.

Examination
of
infringements.

20.–(1) The Competent Authority has a duty to examine infringements of the provisions of this Law following a complaint, or on his own initiative, save for cases which are regulated specifically in an analogous manner by special legislation.

(2) When the Competent Authority considers that an infringement has occurred, following an examination conducted in accordance with subsection (1), it may, if it deems it appropriate, apply to the Court for an injunction, including also a temporary order, against any person who in his judgment is liable or responsible for the infringement.

(3) In the course of an examination the Competent Authority may, if it deems it appropriate, take account of any binding undertaking given to him by any person or on behalf of any person concerning the prospect of termination of the infringement which has occurred or of redress.

(4) In the exercise of the powers vested in it by this Law the Competent Authority shall have in mind:

- (a) all the interests involved, and, in particular, the public interest,
- (b) the desirability of encouraging voluntary monitoring of contracts which are governed by this Law by autonomous organisations, professional associations and bodies and other bodies which are active in the information society services sector.

Issuance of
orders.

21. With due regard to the provisions of the Civil Procedure Law, of the Courts Law and of the Civil Procedure Procedural Regulations, the court which hears any application pursuant to subsection (2) of section 20 shall have the power to issue an injunction, including a temporary order, requiring:

- (a) the immediate termination and/or the non-repetition of the infringement which has occurred; and/or
- (b) the taking, within a specified period of time, of measures that the court deems necessary to rectify the illegal situation created by the infringement adduced in the application; and/or

- (c) the publication of all or part of the judgment of the court, or the publication of a restitutory announcement for the purpose of eliminating any continuing effects of the infringement adduced in the application; and/or
- (d) any other action or measure which it considers necessary or reasonable in the circumstances of the specific case.

Cooperation.

22. With due regard to section 4 and without prejudice to the legislation on the protection of secrecy and of personal data, the Competent Authority shall have the right to seek any information it deems necessary from service providers.

Offences
and
sanctions.

Any violation of the provisions of sections 8, 9 and 10 shall be punishable in the event of a conviction by a fine not exceeding CY5 000. The fine may be doubled for a second or third conviction.

ANNEX
(section 4)

**SPECIAL INFORMATION SERVICES FIELDS WHICH
ARE EXEMPTED FROM THE CONDITIONS GOVERNING
THE FIELD OF APPLICATION OF THIS LAW**

The conditions laid down in section 5 of the Law concerning cross-border provision of services in the European Union do not apply to:

- (a) copyright, neighbouring rights, related rights and rights referred to in the legislation in force aimed at harmonisation with Council Directive 87/54/EEC of 16 December 1986 *on the legal protection of topographies of semi-conductor products* (OJ L 024, 27/01/1987, p 36), and in the legislation in force aimed at harmonisation with Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 *on the legal protection of databases* (OJ L 077, 27/03/1996, p 20), as well as industrial property rights;
- (b) the issue of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in the legislation in force aimed at harmonisation with Article 8(1) of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 *on the taking up, pursuit and prudential supervision of the business of electronic money institutions* (OJ L 275, 27/10/2000, p 3);
- (c) the legislation in force aimed at harmonisation with Article 44(2) of Council Directive 85/611/EEC of 20 December 1985 *on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)* (OJ L 375, 31/12/1985, p 3);
- (d) the legislation in force aimed at harmonisation with Article 30 and Title IV of Council Directive 92/49/EC of 18 June 1992 *on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)* (OJ L 311, 14/11/1997, p 35), the legislation in force aimed at harmonisation with the Article in Title 1 of Council Directive 92/96/EEC of 18 June 1992 *on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 79/267/EEC and 90/619/EEC (third non-life insurance*

Directive) (OJ L 311, 14/11/1997, p 35), or the legislation aimed at harmonisation with Articles 7 and 8 of Council Directive 88/357 of 22 June 1988 *on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EC* (OJ L 166, 16/06/1989, p 68), or any legislation aimed at harmonisation with Article 4 of Council Directive 90/619/EEC of 8 November 1990 *on the coordination of laws, regulations and administrative provisions relating to direct life insurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC* (OJ L 330, 29/11/1990, p 50);

- (e) the freedom of the parties to choose the law applicable to their contract;
- (f) contractual obligations concerning consumer contracts;
- (g) formal validity of contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the Member State where the real estate is situated;
- (h) the permissibility of unsolicited commercial communications by electronic mail.