

1ePoint Project Erasmus+ Program

E-COMMERCE LEGISLATIVE FRAMEWORK



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Internet services to its users

- ◉ Information (see search engines - e.g. Google)
- ◉ Communication (e-mail, forum, social media)
- ◉ Shopping (e-shop)
- ◉ Services (e.g. banking)
- ◉ Distribution of personal creations (e.g. articles, music, photos)
- ◉ Global presence and selection
- ◉ Improving the level playing field
- ◉ Reduction of business costs → price decrease

Right - obligation

- A right is the power conferred by law on a natural or legal person to satisfy his or her legitimate interests.
- To a person's right corresponds an obligation i.e. a commitment of another person or other persons to observe a certain conduct in order to satisfy the corresponding right. The content of the obligation is the undertaking, omission or tolerance of one or more acts.
- — the rights of the consumer (in particular the right of withdrawal)
- — the obligations of the trader/supplier (in particular the information obligation)
- — the rights of competitors

E-shop

- ◉ Point of promotion and sale of goods/services via the internet
- ◉ Internet marketing of a business

- ◉ Basic functions
- ◉ Registration in the online store
- ◉ User navigation
- ◉ On-line catalogue
- ◉ Shopping cart
- ◉ Online payment
- ◉ Communication with the customer
- ◉ Place an order
- ◉ Certification
- ◉ Contact Environment

Advantages of online shopstore

Advantages for the company:

Reduction of sales promotion costs

Increase in demand

Low-cost global presence in the online marketplace

Benefits for the consumer:

Lower prices

Wider choice

Lower prices Lower price, lower price range

Avoid moving to the physical store

E-commerce law

- ◉ EU law -> Directive 2000/31
- ◉ Objective of the Directive: legislative harmonisation of Member States and free movement of information society services
- ◉ Subsidiarity principle (EU intervenes in a subsidiary way): only certain issues are regulated, for the rest the existing national laws apply to e-commerce transactions

Definition of e-commerce

- ◉ Trade carried out by electronic means, i.e. based on the electronic transmission of data. It is a complete transaction that takes place over the Internet WITHOUT the physical presence of the parties (seller/buyer).
- ◉ Also:
- ◉ Transactions by fax, telephone, e-mail, etc..

Definitions

"Information Society services" means any information society service, i.e. any service normally provided for remuneration, by electronic means at a distance and at the personal choice of a recipient of services.

(television broadcasting and radio broadcasting → only on individual request)

'Service provider': any PP or NPO providing an information society service.

'Recipient of the service': any FI or NPO which uses, professionally or otherwise, an information society service, in particular to seek information or to provide access to information.

Which type of consumer is protected?

- Is the surface observer also protected? (indifferent trader)
- Is only the experienced and informed person protected? (hard to find)
- Consumer model:
- The intermediate type of consumer, who has an average perception when forming his/her legal will and is sufficiently informed, depending on the type of goods/services offered
- The DCE criterion: the 'reasonably observant' consumer.
- Account must be taken of the presumed expectations of an average consumer who is reasonably well informed and attentive.
- ► Conclusion: the average consumer is protected

Freedom to provide e-commerce services

1. Each Member State shall ensure that information society services provided by an operator established in its territory comply with its applicable national provisions falling within the coordinated field.
2. Member States may not, on grounds relating to the coordinated field, restrict the free movement of information society services originating in another Member State.

Measures which Member States may take by way of derogation

:

necessary for public policy (in particular the prevention, investigation, detection and prosecution of crime), the protection of public health, public security and consumer protection

target an information society service which harms the objectives of the Directive; and

respect the principle of proportionality

Conclusion of an electronic contract

- Training via e-mail or training directly via the Internet through the supplier's website
- matching of electronic declarations of intent of the parties is required
- No physical presence of the parties at the same time is required

Declaration of will - legal transaction

- ◉ A declaration of will (d.v.) is the embodiment and realisation of the private will through certain conduct, which is directed towards the creation of a certain legal result.
- ◉ The declaration of intention must be intentionally aimed at bringing about a certain legal consequence.
- ◉ A legal act is an act which is intended to produce a legal result, but which occurs only because the declarant has willed it.
- ◉ A legal transaction may contain one or more d.b. if they are necessary for the legal effect to occur.

Convention

- ◉ Legal transaction with at least two parties
- ◉ d.b. : proposal/acceptance
- ◉ Proposal + acceptance = contract

- ◉ The contract is concluded as soon as the proposer has received a declaration of acceptance of his proposal.
- ◉ Acceptance of the proposal for the conclusion of a contract must be received by the proposer within the time limit set. If he did not specify a time limit, the acceptance must reach him by the time he was obliged in the circumstances to wait for it.

Electronic d.b. and its accurate transmission via the Internet

- ◉ legal transaction and its legal consequences electronic d.o.b. containing a contract proposal + electronic d.o.b. containing acceptance of the proposal = electronic contract
- ◉ (e.g. by e-mail, by filling in an order form on line)
- ◉ Difference from civil law d.b. -> mode of transmission, electronic, via computer
- ◉ Declarant: must be a person competent to act
- ◉ 3 conditions:
 - ◉ a) will to act
 - ◉ b) consciousness or will to make a declaration (legal will) and
 - ◉ c) will to be specific

Proposal and acceptance

- ◉ *The contract is concluded as soon as the proposer receives from the other party a declaration of acceptance of his proposal. (proposal and acceptance of the proposal)*
- ◉ *Presentation of products and prices on the homepage -> does it constitute a proposal?*
- ◉ *▶ If the offer is made to an indefinite number of persons (as is the case with advertisements) there is no binding proposal.*
- ◉ *▶ But if the page asks the customer to provide his details there is an offer to a specific person.*

- **Acceptance of the proposal:** Acceptance of the proposal to award a contract must be received by the proposer within the time limit specified. If he did not specify a time limit, acceptance must reach him by the time he was obliged to wait for it in the circumstances.
- **The time when the addressee of the communication becomes aware of it is the time when the addressee, in the normal course of events, could objectively have become aware of the communication.**
- **The communication is transmitted when it enters the sphere of the addressee's authority.**
- **Knowledge of the fax: when the fax reaches the addressee during working hours -> same applies to e-mail and web pages**
- **▶ Businessman: until the end of the day on which it was sent**
- **▶ PP: the day after the day on which it was sent**
- **ATTENTION: If the recipient becomes aware of the time earlier than the expected time, this is taken as the time of transmission of the d.b.**

- Loss of a message due to sender error or network failure → the message does not reach its destination and does not give rise to legal consequences
- If the message arrived but was erased by mistake before the recipient became aware of it → the message has been received correctly
- The burden of proof is on the sender: he must request confirmation of delivery and reading
- Unintentional sending of a message (e.g. pressing a key by mistake) → compensation with proportional application of provisions on mistake → if consumer, timely exercise of right of withdrawal

Υποχρέωση πληροφόρησης πριν τη σύναψη ηλεκτρονικής σύμβασης

The service provider shall provide the following information
in a clear and comprehensible manner before the order is placed:

the various technical stages leading up to the conclusion of the contract;

whether or not the service provider will archive the contract after its conclusion and
whether or not it is possible to access it; and

the technical means of detecting and correcting electronic handling errors before the
order is placed; and

the languages in which the contract may be concluded.

The above information obligations do not apply to contracts concluded exclusively by electronic messaging (e.g. fax, e-mail, telephone).

→ In other words, they only apply to contracts drawn up online.

→ This restriction is removed in the Directive concerning distance contracts.

the service provider must send
proof of receipt of the recipient's order
without undue delay and by electronic means

the order and the acknowledgement of receipt shall be deemed to have
been received
when the parties to whom they are addressed have access to them.

General information to be provided

The service provider shall provide easy, direct and continuous access to at least the following information:

(a) the name of the service provider

(b) the geographical address at which the provider is established

(c) information enabling the service provider to be contacted rapidly and communicated with in a direct and effective manner, including its electronic address

- (d) where the entity is registered in a commercial register or similar public register, the relevant register and its registration number;
- (e) where the activity is subject to an authorisation scheme, the details of the relevant supervisory authority;
- (f) in the case of regulated professions: professional association, professional title, reference to the professional rules

- (g) where the activity carried out by the entity is subject to VAT, the identification number

Where information society services refer to prices, these must be indicated clearly and precisely and, in particular, state whether they include tax and delivery charges.

(e.g. airline tickets booked via the Internet must include tax)

Commercial communications

Definition: all forms of communication designed to promote, directly or indirectly, goods, services or the image of a company, organisation or person engaged in a commercial, industrial or craft activity or a regulated profession.

They shall not constitute a commercial communication per se:
information permitting direct access to the activity of the undertaking, organisation or person concerned, in particular the domain name or e-mail address (i.e. the domain name and e-mail address)
communications relating to goods, services or the image of the undertaking, organisation or person concerned which are made independently of their intentions, in particular without any financial consideration;

Information provided

- (a) the commercial communication must be clearly identifiable;
- (b) the PP or NPO on whose behalf the commercial communication is made must be clearly identifiable;
(so that the recipient does not have to enter the message sent)
- (c) offers, such as discounts, bonuses and gifts, must be clearly identifiable, the conditions under which one can take advantage of the offers must be easily accessible and the conditions must be presented clearly and precisely;
- (d) promotional competitions or games must be clearly identifiable, the conditions of participation must be easily accessible and the terms and conditions must be presented clearly and precisely.

Μη ζητηθείσα εμπορική επικοινωνία

1. Commercial communication with a recipient who has not requested it,
2. if made by electronic mail and unless prohibited, must be clearly and precisely identified as soon as it reaches him.
3. 2. service providers who undertake unsolicited commercial communications by electronic mail must maintain and regularly consult "opt-in" registers, in which natural persons who choose not to receive such commercial communications may be registered.

CONCLUSIONS Advantages of e-commerce

Benefits for users

Unlimited product/service options

Price comparison

Transactions at any time/day

Time saving (no waiting, no paperwork)

Removal of geographical barriers to markets

Offers, lower prices

Benefits for businesses

Increased turnover in new markets and new buyers

Revenue growth potential

Reduction of costs and procedures

Improved image due to speed of processing

Increased reliability due to minimisation of human error

Disadvantages of e-commerce

- ◉ Lack of confidence in the security of transactions
- ◉ (lack of confidence in the identity of the e-seller)
- ◉ Neglect of privacy (?)
- ◉ Online privacy (visiting and browsing → digital traces)
- ◉ Transnational nature of transactions
 - ◉ → different legislation
 - ◉ → what is the applicable law and liability in each case?