

ACT

on certain information society services and on the amendment to certain other acts (Certain Information Society Services Act)

Parliament has resolved upon the following Act of the Czech Republic:

PART ONE

CERTAIN INFORMATION SOCIETY SERVICES

Section 1

Subject

The present act shall govern, in accordance with the law of the European Communities¹⁾, the liability and rights and obligations of persons providing information society services and disseminating commercial communications.

Section 2

For the purposes of the present act

- a) information society service shall mean any service provided by electronic means at the individual request of a user submitted by electronic means, normally provided for remuneration; a service shall be provided by electronic means if it is sent via an electronic communication network and collected by the user from electronic equipment for the storage of data;
- b) electronic mail shall mean a text, voice, sound or image message sent over a public electronic communication network which may be stored in the network or in the user's terminal equipment until it is collected by the user;
- c) electronic means shall mean in particular an electronic communication network, telecommunications terminal equipment and electronic mail;
- d) service provider shall mean any natural or legal person providing an information society service;
- e) user shall mean any natural or legal person who uses an information society service, in particular for the purposes of seeking information or making it accessible;
- f) commercial communication shall mean any form of communication designed to promote, directly or indirectly, the goods, services or image of an enterprise, a natural or legal person who pursues a regulated activity²⁾ or is an entrepreneur pursuing an activity³⁾ that

¹⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain aspects of information society services, in particular electronic commerce, in the Internal Market.

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

²⁾ Section 3 (f) and (g) of the Act No. 18/2004 Coll., on the recognition of professional qualifications and other competencies of nationals of member states of the European Union and on the amendment to certain other acts (Professional Qualifications Recognition Act).

³⁾ Section 2 paragraph 2 of the Commercial Code.

is not a regulated activity; also advertising under a special legal regulation⁴⁾ shall be deemed to be commercial communication. Data allowing direct access to the activity of a legal or natural person, in particular a domain name or an electronic-mail address shall not be deemed to be commercial communication; further, data relating to the goods, services or image of a natural or legal person or an enterprise acquired in an independent manner by the user shall not be deemed to be commercial communication;

- g) automatic, intermediate and transient storage shall mean storage of information provided by the user that takes place for the sole purpose of carrying out the transmission in an electronic communication network, and the information is not stored for any period longer than is usual in order to carry out the transmission;
- h) automatic, intermediate and temporary storage shall mean storage of information provided by the user that is performed for the sole purpose of making more efficient the information's onward transmission upon request of other users.

Liability of intermediary service providers

Section 3

Liability of the service provider for the contents of the information transmitted

(1) A provider of a service that consists of the transmission in an electronic communication network of information provided by a user, or the provision of access to electronic communication networks for the purpose of information transmission, shall be liable for the contents of the information transmitted only if he

- a) initiates the transmission;
- b) selects the user of the information transmitted; or
- c) selects or modifies the contents of the information transmitted.

(2) The acts of transmission and provision of access under paragraph 1 shall also include automatic, intermediate and transient storage of the information transmitted.

Section 4

Liability of the service provider for the contents of automatically, intermediately and temporarily stored information

A provider of a service that consists of the transmission of information provided by a user shall be liable for the contents of automatically, intermediately and temporarily stored information only if he

- a) modifies the contents of the information;
- b) fails to comply with conditions on access to the information;
- c) fails to comply with rules regarding the updating of the information that are generally recognised and used by the industry;
- d) interferes with the lawful use of technology, generally recognised and used by industry, to obtain data on the use of the information; or

⁴⁾ Act No. 40/1995 Coll., on the regulation of advertising and the amendment to the Act No. 468/1991 Coll., on the operation of radio and television broadcasting, as subsequently amended.

- e) fails to take immediate measures resulting in a removal of or disablement of access to the information he has stored upon obtaining 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 has ordered removal of or disablement of access to such information.

Section 5

Liability of the service provider for the storage of information provided by a user

(1) A provider of a service that consists of the storage of information provided by a user, shall be responsible for the contents of the information stored at the request of a user only if he

- a) could, with regard to the subject of his activity and the circumstances and nature of the case, know that the contents of the information stored or action of the user are illegal; or
- b) having, in a provable manner, obtained knowledge of illegal nature of the information stored or illegal action of the user, failed to take, without delay, all measures, that could be required, to remove or disable access to such information.

(2) A service provider referred to in paragraph 1 shall always be responsible for the contents of the information stored if he exerts, directly or indirectly, decisive influence on the user's activity.

Section 6

Extent of the provider's obligations

Service providers referred to in Sections 3 to 5 shall not be obliged to

- a) monitor the contents of the information which they transmit or store;
- b) actively seek facts or circumstances indicating to illegal contents of information.

Dissemination of commercial communications

Section 7

(1) Where a natural or legal person obtains from its customer his electronic contact details for electronic mail under a special legal regulation⁵⁾, the same natural or legal person may use these electronic contact details to disseminate commercial communications only if the customer gave prior consent with such use of his electronic contact details, and clearly and distinctly is given the opportunity to refuse, free of charge or at the expense of the same natural or legal person, and in an easy manner, such use of his electronic contact details even on the occasion of being sent each individual message.

(2) Where it is not the case as under Section 1, it shall be prohibited to use electronic means to disseminate unsolicited commercial communications; unsolicited dissemination of commercial communications shall not be allowed without provable consent of the addressee.

⁵⁾ Act No. 101/2000 Coll., on personal data protection and on the amendment to certain other acts, as subsequently amended.

(3) Sending of electronic mail for the purpose of dissemination of commercial communications shall be prohibited as long as

- a) such electronic mail is not, clearly and distinctly, identified as commercial communication,
- b) disguises or conceals the identity of the sender on whose behalf the communication is taking place, or
- c) is sent without a valid address to which the addressee may, in a direct and effective manner, send information that he does not wish commercial information to be sent to him by the sender any longer.

Regulated professions

Section 8

(1) Persons exercising a regulated profession may, using electronic means, within activities that are subject to the regulated profession, disseminate commercial communications, in compliance with Section 7 and in compliance with the relevant rules issued by commercial, professional and consumer associations, governing in particular the independence, dignity, honour of the profession, and fairness towards customers.

(2) When disseminating commercial communications, using electronic means, within activities that are subject to a regulated profession, persons exercising a regulated profession who are not members of professional self-governing chambers established by statute shall proceed in accordance with Section 7.

(3) Commercial communications from persons exercising a regulated profession must contain the name of the professional self-governing chamber established by statute with which the person exercising a regulated profession is registered, a reference to the professional rules applied in the member state of the European Union in which the person exercising a regulated profession is established, and the manner of permanent access to information about the relevant professional self-governing chamber established by statute which the person exercising a regulated profession is a member of.

Internal market

Section 9

(1) Provisions of the present act and of special legal regulations governing the conditions for starting and conduct of an activity which is subject to the service provided, in particular of legal regulations governing the origination of a business licence, requirements for professional competence, requirements for contents and quality of the service provided, and liability of the service provider for breach of those obligations shall apply to a service provider who provides services through a business or branch located on the territory of the Czech Republic.

(2) Unless provided otherwise in the present act or a special legal regulation, the legal regulations referred to in paragraph 1 shall not apply to a service provider established in

another member state of the European Union and providing the service on the territory of the Czech Republic.

(3) The provisions of paragraph 2 shall be without prejudice to the obligations of a service provider arising out of special legal regulations concerning the protection of public order, public health, state security and consumer protection.

(4) Before a court or another authority with the jurisdiction to provide for fulfilment or enforcement of obligations of a service provider arising out of special legal regulations concerning the protection of public order, public health, state security and consumer protection takes the necessary measures, it shall inform the Commission of the European Communities (hereinafter referred to as “Commission”) thereof and request the member state of the European Union in which the service provider is established to take measures resulting in the court no longer having to take measures under the present paragraph.

(5) If the court deviates from paragraph 4 in urgent cases, it shall, without unnecessary delay, give the Commission and the member state of the European Union, in which the service provider is established, information and justification thereof.

Supervision of compliance

Section 10

(1) The authority competent to carry out supervision of compliance with the present act (hereinafter referred to as “supervisory authority”) shall be

- a) the Personal Data Protection Office, in relation to the dissemination of commercial communications under Section 7;
- b) the relevant professional self-governing chamber established by statute, in relation to obligations arising out of Section 8 paragraph 3.

(2) The supervisory authority shall act as a contact point for member states of the European Union and for the Commission.

(3) A contact point for member states of the European Union and for the Commission shall

- a) provide general information on contractual rights and obligations as well as on the complaint and redress procedures in the event of disputes, including practical aspects involved in the use of such procedures;
- b) provide the details of authorities, associations or entities from which further information or practical assistance may be obtained.

(4) The supervisory authority referred to in paragraph 1 (a) shall carry out the supervision under a special legal regulation⁶⁾.

(5) The supervisory authorities referred to in paragraph 1 (b) shall carry out the supervision under special legal regulations⁷⁾.

⁶⁾ Act No. 552/1991 Coll., on state audit, as subsequently amended.

Administrative delicts

Section 11

(1) A fine of up to CZK 10 000 000 shall be imposed on a legal person that

- a) uses electronic means to disseminate unsolicited commercial communications;
- b) used the electronic contact details for electronic mail under a special legal regulation⁵⁾ and did not give its customer the opportunity clearly and distinctly, free of charge or at its expense, and in an easy manner, to grant or refuse consent with the use of his electronic contact details for the purposes of disseminating commercial communications on the occasion of sending of each individual message;
- c) disseminated commercial communications without provable consent of the addressee;
- d) sent electronic mail for the purposes of disseminating commercial communications that was not clearly and distinctly identifiable as such;
- e) sent electronic mail for the purposes of disseminating commercial communications that disguised the identity of the sender on whose behalf the communication was made;
- f) sent electronic mail for the purposes of disseminating commercial communications that concealed the identity of the sender on whose behalf the communication was made; or
- g) sent electronic mail for the purposes of disseminating commercial communications that gave an invalid address to which the addressee might send a request for termination of such communication.

(2) A fine of up to CZK 1 000 000 shall be imposed on a legal person that

- a) exercises a regulated profession and its commercial communication does not contain the name of the professional self-governing chamber established by statute with which it is registered;
- b) exercises a regulated activity and its commercial communication does not contain a reference to the professional rules applied in the member state of the European Union in which it is established; or
- c) exercises a regulated activity and its commercial communication does not contain the manner of permanent public access to information on the relevant professional self-governing chamber established by statute of which it is a member.

Section 12

(1) A legal person shall not be responsible for an administrative delict if it proves that it made every effort that could be required to prevent the breach of a legal obligation.

(2) The seriousness of the administrative delict, in particular the manner of how it was committed and its consequences, and the circumstances under which it was committed, shall be considered when determining the extent of the fine for a legal person.

⁷⁾ For instance the Act No. 254/2000 Coll., on auditors, as subsequently amended, Act. No. 523/1992 Coll., on tax consultancy and the Chamber of Tax Advisors of the Czech Republic, as subsequently amended, Act No. 220/1991 Coll., on the Czech Medical Chamber, Czech Dental Chamber and Czech Pharmacists' Chamber, Act. No. 85/1996 Coll., on the legal profession, as subsequently amended.

(3) The liability of a legal person for an administrative delict shall terminate unless a supervisory authority commences proceedings concerning the delict within one year of obtaining knowledge of it, at the latest, however, within three years of the day it was committed.

(4) Provisions of the present act as to the liability of and penalties to a legal person shall apply to liability for action taken in the conduct of business by a natural person⁸⁾ or in direct relation thereto.

(5) Fines shall be imposed and collected by the supervisory authority and enforced by the territorial financial authority under a special legal regulation⁹⁾. Proceeds of fines, even of the enforced fines, shall be an income of the budget from which the operation of the supervisory authority which imposed the fine is funded.

General provisions

Section 13

(1) A procedure under a special legal regulation⁹⁾ shall be applied to collect and enforce the fines.

(2) Unless provided otherwise in the present act, the Rules of Administrative Procedure shall apply to procedure concerning matters governed by the present act¹⁰⁾.

PART TWO

Amendment to the Civil Code

Section 14

The Act No. 40/1964 Coll., Civil Code, as amended by the Act No. 58/1969 Coll., Act No. 131/1982 Coll., Act No. 94/1988 Coll., Act No. 188/1988 Coll., Act No. 87/1990 Coll., Act No. 105/1990 Coll., Act No. 116/1990 Coll., Act No. 87/1991 Coll., Act No. 509/1991 Coll., Act No. 264/1992 Coll., Act No. 267/1994 Coll., Act No. 104/1995 Coll., Act No. 118/1995 Coll., Act No. 94/1996 Coll., Act No. 227/1997 Coll., Act No. 91/1998 Coll., Act No. 165/1998 Coll., Act No. 159/1999 Coll., Act No. 363/1999 Coll., Act No. 27/2000 Coll., Act No. 103/2000 Coll., Act No. 159/1999 Coll., 227/2000 Coll., Act No. 367/2000 Coll., Act No. 229/2001 Coll., Act No. 501/2001 Coll., Act No. 317/2001 Coll., Act No. 125/2002 Coll., Act No. 135/2002 Coll., 136/2002 Coll., 320/2002 Coll., Act No. 476/2002 Coll., Act No. 88/2003 Coll., Act No. 135/2002 Coll., Act No. 37/2004 Coll., Act No. 47/2004 Coll., and Judgment of the Constitutional Court published as No. 278/2004 Coll., shall be amended as follows:

⁸⁾ Section 2 paragraph 2 of the Act No. 513/1991 Coll., Commercial Code, as subsequently amended.

⁹⁾ Act No. 337/1992 Coll., on the administration of taxes and fees, as subsequently amended.

¹⁰⁾ Act No. 71/1967 Coll., on administrative procedure (Rules of Administrative Procedure), as subsequently amended.

1. Paragraph 4 of Section 53 shall read:

„(4) When dealing via a means of remote communication, the consumer has to be provided, in sufficient time before concluding the contract, particularly with the following information:

- a) trade name or names and surname and identification number of the supplier, registered office of a legal person and place of residence of a natural person, in case of a foreign person also address of the enterprise or branch on the territory of the Czech Republic, if they have been established, data on the registration in the Commercial Register or a similar register, including the file number, if assigned, and contact details, particularly postal delivery address, telephone number, possibly electronic mail delivery address;
- b) data on the relevant controlling authority, if the activity of the supplier is subject to authorisation;
- c) name and main characteristics of goods or services;
- d) price of goods or services unambiguously indicating whether it is given inclusive of all taxes and charges if they are to be added to it;
- e) delivery costs;
- f) method of payment, delivery or supply;
- g) advice of the right to withdraw, with the exception of cases under paragraph 8;
- h) costs of use of means of remote communication;
- i) period for which the offer or price remains valid.

The supplier shall provide permanent public access to information under a) and b), failure to meet the obligation shall be deemed to be failure to provide information under Section 53 paragraph 7.”.

2. A new paragraph 5 shall be inserted after paragraph 4 of Section 53, and it shall read:

“(5) If the consumer places his order through one of the means of remote communication, the supplier shall be obliged, through one of the means of remote communication, without delay, to acknowledge its receipt; that shall not apply where a contract is concluded exclusively by exchange of electronic mail or equivalent individual communication. The order and the acknowledgement of its receipt shall be deemed to be received when the parties to whom they are addressed are able to access them.”.

The paragraphs so far identified as 5 to 8 shall be identified as 6 to 9.

3. In Section 53 paragraph 7, the words “under provisions of paragraphs 4 and 5“ shall be replaced by the words “under provisions of paragraphs 4 and 6“.
4. In Section 53 paragraph 8, the words “under paragraph 6“ shall be replaced by the words “under paragraph 7”.
5. A new Section 53a shall be inserted after Section 53, and it shall read, including footnote 2c:

„Section 53a

(1) Where electronic means are used^{2c)}, the proposal must contain, apart from information under Section 53 paragraph 3, also information on whether the contract is going to be archived by the supplier after conclusion and whether it is accessible, information on the different technical steps leading to the conclusion of the contract, information on languages in which the contract may be concluded, information on the possibility to identify and correct input errors made before the order is placed, and information on codes of conduct which are binding on him or which he observes voluntarily; that shall not apply where a contract is concluded exclusively by exchange of electronic mail or equivalent individual communication.

(2) When using electronic means, the consumer has to be allowed, prior to the placing of the order, to review and change input data contained therein that he had inserted in the order; that shall not apply to contacts made exclusively by exchange of electronic mail or equivalent individual communication.

(3) The contract and general terms and conditions must be made available to the consumer in a way that allows him to archive and reproduce them.

(4) Section 53 paragraph 7 shall similarly apply to withdrawal from contract.

2c) Section 2 (c) of the Act No. ../2004 Coll., on certain information society services and on the amendment to certain other acts (Certain Information Society Services Act).”.

6. In Section 54, the words „under Section 53 paragraphs 2 to 8“ shall be replaced by the words „under Section 53 paragraphs 2 to 9 and Section 53a“.

PART THREE

Amendment to the Advertising Regulation Act

Section 15

The Act No. 40/1995 Coll., on the regulation of advertising and on the amendment to the Act No. 468/1991 Coll., on the operation of radio and television broadcasting, as subsequently amended by the Act No. 258/2000 Coll., Act No. 231/2001 Coll., Act No. 256/2001 Coll., Act No. 138/2002 Coll., Act No. 320/2002 Coll., Act No. 132/2003 Coll., Act No. 217/2004 Coll., and Act No. 326/2004 Coll., shall be amended as follows:

1. In Section 2 paragraph 1, letter (e), including footnote 5a), shall read:

„e) dissemination of unsolicited advertising, if it causes a cost on the part of the addressee or if it harasses the addressee; dissemination of advertising by electronic means and its limitations shall be governed by a special legal regulation^{5a)}; such advertising shall be deemed harassing that is targeted at a specific addressee on condition that the addressee made it clear and comprehensible in advance that he did not wish any unsolicited advertising to be disseminated with respect to him.

5a) Section 7 of the Act No. .../2004 Coll., on certain information society services and on the amendment to certain other acts (Certain Information Society Services Act).”.

2. In Section 7 (d) the words “, with the exception of unsolicited advertising disseminated by electronic means^{32a)} under a special legal regulation^{5a)}” shall be inserted after the words “in other cases”.

Footnote No. 32a shall read:

„32a) Section 2 (c) of the Act No. .../2004 Coll., on certain information society services and on the amendment to certain other acts (Certain Information Society Services Act).”.

PART FOUR

Amendment to the act on personal data protection and on the amendment to certain other acts

Section 16

The words „and other competencies set out in a special legal regulation¹⁾“ shall be added to the end of the text of paragraph 2 of Section 2 of the Act No. 101/2000 Coll., on personal data protection and on the amendment to certain other acts.

Footnote No. 1 shall read:

„1) Section 10 paragraph 1 (a) of the Act. No. .../2004 Coll., on certain information society services and on the amendment to certain other acts (Certain Information Society Services Act).“.

PART FIVE

Section 17

Amendment to the act on health care in non-governmental health-care facilities

The following new Section 21b shall be inserted in the Act No. 160/1992 Coll., on health care in non-governmental health-care facilities, as amended by the Act No. 161/1993 Coll., Act No. 258/2000 Coll., Act No. 285/2002 Coll., Act No. 320/2002 Coll., Act No. 96/2004 Coll., and Act No. 121/2004 Coll.:

"Section 21b

Operators of non-governmental health-care facilities who are natural persons and kept their books by single entry by December 31, 2003, will comply with their statutory obligation under Section 5 (2) (e) of the Act No. 160/1992 Coll., as effective before the date of effect of the Act No. 121/2004 Coll., if they keep their tax records or books in accordance with a special legal regulation."

PART SIX

EFFECT

Section 18

The present act shall come into effect on the date of its publication.

