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Serbia: The Law on Electronic Commerce

Technology, Media & Telecommunications

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The Law on Amendments of the Law on Electronic Commerce (*Zakon o izmenama i dopunama Zakona o elektronskoj trgovini „Official Gazette of the Republic of Montenegro“no. 80/04 and no. 41/10*) was enacted on 20 November 2013. The amendments mostly apply to unsolicited commercial messages, violations of the Law and increased fines for violation of the Law for the person responsible in the legal entity, natural persons and entrepreneurs. The fine for violations of the Law by legal entities has not changed, with a minimum charge of 500 euros and maximum charge of 17.000 euros.

The major amendment of the Law on Electronic Commerce may be found in Article 9, and refers to the sending of unsolicited commercial messages. Three paragraphs have been added to this Article, as follows:

- Paragraph 2 provides that unsolicited commercial messages must be clear and identifiable to the recipient,
- Paragraph 3 obliges the provider of such messages to maintain records of users who have stated that they do not wish to continue receiving such messages,
- Paragraph 4 states that the provider of unsolicited commercial messages must not send electronic messages of such content to users who have declared that they do not wish to receive them.

Changes have also been made to Article 13, which now further defines the type of signature required which is in accordance to standards, thus electronic messages must now be signed with an 'advanced' electronic signature. According to the Law on Electronic Signature (*Official Gazette of the Republic of Montenegro no. 55/03 and no. 21/05*) an advanced electronic signature is an electronic signature that reliably guarantees the identity of the signatory and the integrity of electronic documents, and is more specific than electronic signature, which includes a set of data in electronic form that are attached to or logically associated with the electronic document and serve to identify the signatory.

Also in Article 18, which refers to exclusion of liability, the responsible information society service provider is no longer the one who transmits electronic messages given to him by the consumer, but the one who offers the consumer only the service of transfer of electronic messages through the network or enables access to the communication network. The Article related to mandatory notifications is supplemented by a more detailed definition of the information society service providers, and it now refers to those service providers which store data.

Article 24, which relates to violations of the Law, has been amended so as to include a number of new or more precisely defined violations of the Law, of which we note the following:

- The legal entity which is the provider of services must make the requested information available, free of charge, and also the required information must be available in electronic form.
- A legal person which is a service provider may be fined if it does not maintain records of users who have stated that they do not wish to continue receiving unsolicited commercial messages.
- A legal person which is a service provider may be fined if it sends unsolicited commercial electronic messages to users who have declared that they do not wish to receive them.
- The provider must "immediately and without delay upon learning" about illicit activities or data notify the authorities, and this data is now also defined as data "on the basis of which prosecution or pursuit of offenders can be made, or the protection of the rights of third parties".