

**Unofficial English translation – Consolidated
version¹**

Translated by Johan Vandendriessche²

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Directive 2000/31/EC was transposed in Belgian law by the Act of 11 March 2003 on certain legal aspects of information society services and the Act of 11 March 2003 on certain legal aspects of information society services as referred to in Article 77 of the Constitution. Both acts were consolidated in the Belgian Code of Economic Law. For the time being, they form the main body of Book XII of the Code of Economic Law.

This document provides a consolidated translation of the relevant extracts of the Code of Economic Law (general definitions, specific definitions applicable to Book XII and Book XII).

Arrangement of chapters

Code of Economic Law

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Book I – Definitions

Title 1 – General Definitions

Article I.1

Title 2 – Definitions specific to certain Books

Chapter 10 – Definitions specific to Book XII.

Article I.18

¹ This version is consolidated to 1 June 2016. Bibliographical information can be found at the end of this document.

² Johan Vandendriessche is a lawyer at the Bar of Brussels (Crosslaw – www.crosslaw.be) a Visiting Professor in ICT Law at the University of Ghent (UGent) and a member of the editorial board. The author will appreciate receiving comments or remarks in view of improving this translation at the following address: j.vandendriessche@crosslaw.be.

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Book XII – The law of the electronic economy

Title 1 – Certain legal aspects of information society services

Chapter 1 – General provisions

Article XII.1

Chapter 2 – General principles

Section 1. The principle of freedom of establishment

Article XII.2

Section 2. The principle of free movement of services

Article XII.3

Section 3. Derogations from the principle of free movement of services

Articles XII.4-5

Chapter III – Information and transparency

Articles XII.6-11

Chapter IV – Advertising

Articles XII.12-14

Chapter V – Contracts concluded by electronic means

Article XII.15-16

Chapter VI – Liability of intermediary service providers

Section 1. “Mere conduit”

Article XII.17

Section 2. Caching

Article XII.18

Section 3. Hosting (hosting services)

Article XII.19

Section 4. Obligations to monitor

Article XII.20

Chapter VII. The legal protection of information society services based on or consisting of conditional access

Article XII.21

Chapter VIII. The registration of domain names

Articles XII.22-23

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Book I – Definitions

Title 1 – General Definitions

Article I.1.

Except otherwise provided in title 2, for the purposes of this Code the following terms shall bear the following meanings:

1° company: any natural or legal person pursuing an economic goal in a durable manner, as well as its associations;

2° consumer: any natural person who acts for purposes that are outside his trade, business, craft or profession;

3° Minister: the Minister competent for Economy;

4° products: goods and services, real estate, rights and obligations;

5° service: any performance realised by a company in the context of its professional activity or in the performance of its corporate purpose;

6° goods: tangible movable items;

7° code of conduct: an agreement or a set of provisions that are not prescribed by law, regulation or administrative provisions, establishing how companies that adhere to the code should behave in relation to one or more trade practices or economic sectors;

8° member state: a member state of the European Union or, insofar as provided in the treaty on the European Economic Area, a state who has signed this treaty;

9° business days: all calendar days, except Sundays and public holidays. If a deadline, that is expressed in business days, expires on a Saturday, it shall be prolonged until the next business day;

10° address: a geographical address and, as the case may be, the electronic address;

11° electronic address: a set of electronic data enabling a person to be contacted by electronic means;

12° geographical address: a set of geographical data including, as the case may be, the house number, the street name, the postal code and the municipality where a person has an establishment or where he may be contacted;

13° FPS Economy: the Federal Public Service Economy, SMEs, Self-employed and Energy.

The first subparagraph, 1°, 4°, 5° and 8°, do not apply to Book XI.

Title 2 – Definitions specific to certain Books

Chapter 10 – Definitions specific to Book XII

Article I.18.

For the purpose of Book XII, the following terms shall bear the following meanings:

1° information society service: any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services;

2° electronic mail: any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient;

3° service provider: any natural or legal person providing an information society service;

4° established service provider: a 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;

5° recipient of the service: 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;

6° advertising: 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.

For the purpose of Book XII, 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;

7° regulated profession: any professional activity providing access to the exercise of or one of the manners of exercise of the profession that are directly or indirectly dependent on the possession of a diploma, certificate of professional education or certificate of aptitude as a result of legal, regulatory or administrative provisions.

8° protected service: one of the information society services, where they are provided against remuneration and on the basis of conditional access, or the provision of conditional access to these services considered as a service in its own right;

9° conditional access: any technical measure and/or arrangement whereby access to the protected service in an intelligible form is made conditional upon prior individual authorisation;

10° conditional access device: any equipment or software designed or adapted to give access to a protected service in an intelligible form;

11° illicit device: any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorisation of the service provider;

12° domain name: an alphanumeric representation of a numeric IP (Internet Protocol) address that is capable of identifying a computer connected with the Internet; a domain name is registered under a domain of the top level, either corresponding with one of the generic domains (gTLD) established by the Internet Corporation for Assigned Names and Numbers (ICANN) or with one of the country codes (ccTLD), pursuant to the ISO-3166-1 standard;

13° domain name registered under the BE-domain: a domain name registered under a domain of the top level corresponding with the country code “.be”, that has been assigned to the Kingdom of Belgium pursuant to the ISO-3166-1 standard.

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Book XII – The law of the electronic economy

Title 1 – Certain legal aspects of information society services

Chapter 1 – General provisions

Article XII.1.

§ 1. Chapters 1 to 6 of this title implement the provisions of 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.

Chapter 4 partially implements Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

Chapter 7 implements the provisions of Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access.

§ 2. This title governs certain legal aspects of information society services.

It shall not apply to:

1° the field of taxation;

2° questions relating to information society services covered by legal or regulatory provisions in relation to the protection of privacy and the processing of personal data;

3° questions relating to agreements or practices governed by cartel law;

4° the following information society services:

a) the activities of notaries, to the extent that they involve a direct and specific connection with the exercise of public authority,

b) the representation of a client and defence of his interests before the courts,

c) gambling activities which involve wagering a stake with monetary value, including lotteries and betting transactions.

Chapter 2 – General principles

Section 1. The principle of freedom of establishment

Article XII.2.

The taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect.

The first paragraph shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services or which fall under the authorisation scheme of title III of the Act of 21 March on the reform of some economic public companies.

Section 2. The principle of free movement of services

Article XII.3.

The provision of information society services by a service provider established on the Belgian territory must comply with the provisions applicable in Belgium.

The free movement of information society services on the Belgian territory, provided by a service provider established in another member state, shall not be restricted by requirements applicable in Belgium or in other states.

The first and second paragraph refer to the specific or general requirements concerning information society services and the providers of these services. They shall not apply to the requirements concerning goods as such, the physical delivery thereof or services that are not provided by electronic means.

Section 3. Derogations from the principle of free movement of services

Article XII.4.

By manner of derogation to article XII.3, Book II, Title V, Chapters 2 until 4, and Book III, Title I of the act of 13 March 2016 concerning the statute and the supervision of insurance companies remain applicable.

By manner of derogation to article XII.3, the advertising for the trade in shares of collective investment companies, as referred to in article 105 of the Act of 4 December 1990 on financial transactions

and the financial markets, covered by legislation of the state of trade.

Article XII.3 shall not apply to:

- 1° the freedom of the parties to determine the law applicable to their contract;
- 2° contractual obligations concerning consumer contracts;
- 3° on copyrights and neighbouring rights, rights in relation to topographies of semiconductor products, sui generis rights on databases, industrial property rights;
- 4° the formal validity of contracts creating or transferring rights in real estate, if those contracts are subject to formal requirements as a result of the laws of the member state in which the real estate is located;
- 5° the consent for unsolicited advertising by electronic mail.

Article XII.5.

§1. As a manner of derogation to the provisions of article XII.3 and under the conditions set out in §§ 2 to 5, the King shall lay down the criteria under which the authorities he designates may take measures to restrict the free movement of an information society service delivered by a service provider established in another member state.

§2. The measures referred to in §§ 1 and 6 must be:

- 1° necessary for the achievement of one of the following purposes:
 - the public order, in particular the prevention of, the research into, the criminal investigation and the prosecution of criminal offences, including the protection of minors and the prosecution of incitement of hatred based on race, sex, religion or nationality and of violations of the human dignity of individuals,
 - the protection of public health,
 - public security, including safeguarding national security and defence,
 - the protection of consumers, including investors,
- 2° directed at a certain information society service that violates the purposes listed in 1° or that poses a serious threat thereto,
- 3° proportionate to those purposes.

§3. Without prejudice to legal proceedings, including the acts in the context of a criminal investigation or a judicial investigation and prior to taking measures, the authorities referred to in §1 shall request the member state where the concerned service provider is established to take the necessary measures to safeguard the purposes mentioned in §2, 1°.

§4. If the concerned member state does not comply with that request or if it does not take adequate measures, the authorities referred to in §1 shall inform the investigating judge of the judicial district of Brussel thereof.

First, they shall inform the concerned member state and the European Commission of their intent.

§5. In urgent cases and subject to the conditions referred to in §2, the authorities mentioned in §1 may inform the investigating judge immediately, provided they inform the European Commission and the concerned member state thereof without undue delay.

§6. When the investigating judge has received a communication from the authorities referred to in §1 in accordance with the provisions of §2 and of §§ 4 or 5, he may order the service providers who are capable to comply, with a duly reasoned order, to cease offering the communications service that is being used for the acts that jeopardise or that may jeopardise the purposes referred to in §2, °1, to the service provider established in another member state. The investigating judge shall determine the limitations of this court order and the duration thereof, without exceeding a duration of one month.

The investigating judge may prolong the effects of his court order one or more times; he must end the effects of his court order as soon as the circumstances that have justified them have ceased.

Chapter III – Information and transparency.

Articles XII.6.

§1. In addition to other legal and regulatory information requirements, every service provider shall ensure that the recipients of the service and competent authorities have easy, direct and permanent access to the following information at the very least:

1° the name or the trade name of the service provider;

2° the geographic address at which the service provider is established;

3° the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;

4° if applicable, the company number;

5° where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;

6° as concerns the regulated professions:

a) the professional association or the professional body with which the service provider is registered,

b) the professional title and the state where it has been granted,

c) a reference to the applicable professional rules and the means to access them;

7° where the service provider undertakes an activity that is subject to value added tax, the identification number referred to in article 50 of the Code on Value Added Tax.

8° the codes of conduct to which he has subscribed and the information on how those codes can be consulted electronically.

§2. In addition to other legal and regulatory information requirements in the field of price indication, the information society services that refer to prices shall indicate them clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs.

Article XII.7.

§1. In addition to other legal and regulatory information requirements, the service provider shall provide at least the following information clearly, comprehensibly and unambiguously and prior to the order being placed by the recipient of the service:

1° the languages offered for the conclusion of the contract;

2° the different technical steps to follow to conclude the contract;

3° the technical means for identifying and correcting input errors prior to the placing of the order;

4° whether or not the concluded contract will be filed by the service provider and whether it will be accessible.

§2. The contract terms and the general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them.

Article XII.8.

Prior to the order being placed by the recipient of the service, the service provider shall provide to the recipient of the service adequate technical means for identifying and correcting input errors.

Article XII.9.

Where the recipient of the service places his order through electronic means, the following principles shall be complied with:

1° the service provider shall acknowledge the receipt of the recipient of the service's order without undue delay and by electronic means;

2° the receipt mentions amongst others a summary of the order;

3° the order and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

Article XII.10.

Parties that do not act as a consumer may derogate by manner of an agreement from the provisions of article XII.6, §1, 8° and from the articles XII.7, §1, XII.8 and XII.9.

The provisions of article XII.6, §1, 8°, of article XII.7, §1, of article XII.8 and of article XII.9, 1° and 2°, do not apply to contracts that are concluded solely by means of electronic mail.

Article XII.11.

In relation to consumers, the service provider bears the burden of proof concerning compliance with articles XII.6 to XII.9.

Chapter IV – Advertising.

Article XII.12

In addition to other legal and regulatory information requirements, advertising which is part of, or constitutes, an information society service shall comply with the following conditions:

1° immediately upon receipt thereof, the advertising shall be clearly identifiable as such as a result of its

general impression, including its presentation. If this is not the case, it shall mention “advertising” in a legible, clearly visible and unambiguous manner;

2° the natural or legal person on whose behalf the advertising is made shall be clearly identifiable;

3° promotional offers, such as publications of price reductions and related offers, shall be easily accessible and be presented clearly and unambiguously;

4° promotional competitions or games shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.

Article XII.13.

§ 1. The use of electronic mail for advertising is prohibited without the prior, free, specific and informed consent from the recipient of the messages.

Upon the joint initiative of the Minister and of the Minister of Justice, the King may provide derogations to the prohibition established in the first paragraph.

§ 2. When sending advertising by electronic mail, the service provider shall comply with the following:

1° he shall provide clear and understandable information on the right to opt out of receiving further advertising in the future;

2° he shall indicate and provide appropriate means to exercise this right by electronic means.

Upon the joint initiative of the Minister and of the Minister of Justice, the King shall establish the modalities under which the service provider shall respect the choice of the recipient to opt out of receiving advertising by electronic mail.

§3. On sending advertising by electronic mail, the following is prohibited:

1° to use the electronic address or identity of a third party;

2° to falsify or hide the information that enables the recipient to recognise the origin of the message or the way it was communicated;

3° to encourage the recipient of the messages to visit websites that infringe upon article XII.12.

§ 4. The service provider is required to adduce the evidence that advertising by electronic mail was requested.

Article XII.14.

Advertising which is 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, in particular, the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession.

Chapter V – Contracts concluded by electronic means.**Article XII.15.**

§1. Any formal legal or regulatory requirements for the conclusion of contracts by electronic means shall be complied with when the functional qualities of these requirements are safeguarded.

§2. For the application of §1, it shall be considered that:

- the requirement of writing shall be complied with by a by a sequence of intelligible marks that are accessible to a later consultation, irrespective of the support or the methods of transmission thereof;

- the explicit or implicit requirement of a signature shall be complied with when the signature complies with the requirements of article 1322, second paragraph, of the Civil Code or article 4, §4 of the Act of 9 July 2001 determining some rules concerning the legal framework of electronic signatures and certification services;

- the requirement of handwritten wording by the party that binds itself may be complied with by any other means that warrants that the statement is effectively made by that party.

Article XII.16.

Article XII.15 shall not apply to the contracts that fall into one of the following categories:

1° contracts that create or transfer rights in real estate, except for rental rights;

2° contracts that involve the courts, public authorities or professions exercising public authority as required by law;

3° contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession;

4° contracts governed by family law or by the law of succession.

Chapter VI – Liability of intermediary service providers.**Section 1. “Mere conduit”****Article XII.17.**

Where an information society service is provided that consists of the transmission by means of a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider is not 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.

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 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.

Section 2. Caching**Article XII.18.**

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 is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making the information's onward transmission more efficient to other recipients of the service upon their request, on condition that:

1° the provider does not modify the information;

2° the provider complies with conditions on access to the information;

3° the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

4° the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information;

5° the provider acts expeditiously to remove or to disable access to the information it 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 and provided he acts in accordance with the procedure provided in article XII.19, §3.

Section 3. Hosting (hosting services)

Article XII.19.

§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 is not liable for the information stored at the request of a recipient of the service, on condition that:

1° 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

2° the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, provided he acts in accordance with the procedure provided in paragraph 3.

§2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

§3. When the service provider obtains actual knowledge of illegal activity or information, he shall expeditiously communicate this to the Public Prosecutor, who shall take measures in accordance with article 39*bis* of the Code of Criminal Proceedings.

Providing the Public Prosecutor has not taken a decision in relation to the copying, the disablement of access and removal of information stored in an information system, the service provider may only take measures to prevent access to the information.

Section 4. Obligations to monitor

Article XII.20.

§1. When providing services covered by articles XII.17, XII.18 and XII.19, the service providers shall not have a general obligation to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

The principle established in the first paragraph shall apply only to the general obligations. It does not exclude the right of the competent judicial authorities to impose a temporary monitoring obligation in a specific case, if an act enables this possibility.

§2. The information society service providers referred to in paragraph 1 shall be held to promptly inform the competent judicial or administrative authorities of alleged illegal activities undertaken or information provided by recipients of their service.

In addition to other legal or regulatory provisions, these service providers shall communicate to the competent authorities, at their request, all the information they possess and that is useful for the investigation and establishment of infringements made by their intervention.

Chapter VII. The legal protection of information society services based on or consisting of conditional access

Article XII.21.

It is prohibited to:

1° manufacture, import, distribute, sell, rent or possess illicit devices for commercial purposes;

2° install, maintain or replace illicit devices for commercial purposes;

3° use advertising to promote illicit devices for conditional access.

Chapter VIII. The registration of domain names.

Article XII.22.

It is prohibited to proceed with the registration, by an officially recognised instance, by means of an intermediary or not, of a domain name in which no right or legitimate interest can be invoked, with the intent to harm a third party or to obtain an unfair advantage, if that domain name is identical with or similar to such an extent that it may create confusion with, amongst others, a trademark, a geographical indication or a designation of origin, a trade name, an original work, a corporate name, a personal name or the name of a geographical entity, belonging to someone else.

Article XII.23.

Article XII.22 shall be applied without prejudice to other legal provisions, such as any legal provision protecting trademarks, geographical indications and designations of origin, trade names, original works

and all other subjects of intellectual property, registered names or company names, personal names, names of geographical entities, as well as any legal provision concerning unfair competition, market practices and the information and protection of the consumer.

The disputes resulting from the right to freedom of speech do not fall under the scope of this chapter.

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Bibliographical information³

Act of 11 March 2003 on certain legal aspects of information society services (Belgian State Gazette of 17 March 2003).

Act of 12 May 2003 on the legal protection of information society services based on, or consisting of, conditional access (Belgian State Gazette of 26 May 2003).

Act of 26 June 2003 concerning the unlawful registration of domain names (Belgian State Gazette of 9 September 2003).

Program Act of 9 July 2004 (Belgian State Gazette of 15 July 2004).

Act of 20 July 2005 containing various provisions (Belgian State Gazette of 29 July 2005).

Act of 10 July 2012 containing various provisions concerning electronic communication (Belgian State Gazette of 25 July 2012).

Act of 15 December 2013 inserting Book XII, “The law of the electronic economy”, in the Code of economic law, and inserting the definitions specific to Book XII and the enforcement provisions specific to Book XII, in the Books I and XV of the Code of economic law (Belgian State Gazette of 14 January 2014).

Act of 26 October 2015 modifying the Code of economic law and concerning various modifying provisions (Belgian State Gazette of 30 October 2015).

Act of 13 March 2016 on the statute and supervision of insurance and reinsurance companies (Belgian State Gazette of 23 March 2016).

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An official German translation of the Act of 28 February 2013 introducing the Code of Economic Law was published in the Belgian State Gazette of 19 June 2013. It contains, amongst others, a translation of Book XII of the Code of Economic Law.

This text can be also consulted on the website of the Central Service for German Translation – Commission for German legal terminology (Ministry of Internal Affairs)

(http://www.scta.be/MalmedyUebersetzungen/downloads/20130228_CodeDroitEconometique.docx). The published text is an unofficial version. It is important to check the consolidation date.

Johan Vandendriessche is a member of the editorial board

³ This chapter provides an overview of the acts that are incorporated in this consolidated version. Reference is made to the official title of the act and its publication date.