

E-COMMERCE

The regulation on e-commerce activities under Danish law is still fairly new, but has gained significant relevance as the level of e-commerce activity has evolved rapidly during the past few years, both in Denmark and abroad. Thus, prior to initiating marketing and sale activities online, an e-trader should carefully examine whether such activities are in compliance with the relevant applicable national or foreign legislation.

How is e-commerce regulated under Danish law?

There are several acts and executive orders under Danish law which regulate the area of e-commerce. The most important acts are:

1. The Danish E-Commerce Act (in Danish: "*E-handelsloven*")
2. The Danish Act on Certain Consumer Contracts (in Danish: "*Forbrugeraftaleloven*")
3. The Danish Marketing Practices Act (in Danish: "*Markedsføringsloven*")
4. The Danish Data Protection Act (in Danish: "*Persondataloven*")

What are the key characteristics of the Danish E-Commerce Act?

The Act constitutes Denmark's primary legal framework governing e-commerce and applies to all services in the information society, defined as any service that has a commercial purpose and is delivered online at an individual's request of recipient of the service. The main principle of the Act is that businesses offering information society services, i.e. commercial services delivered online, are subject to domestic control. Accordingly, an information society service supplied by an e-trader established in Denmark must be operated in accordance with Danish law within the coordinated area. This applies even though the service is entirely directed towards another country within the European Union or European Economic Area. In the same way, an e-trader established in another country within the European Union or European Economic Area who supplies an information society service is exempt from compliance with Danish regulations within the coordinated area due to the principle of mutual recognition. This is true even if the service is directed towards Denmark.

Does the Danish E-Commerce Act impose any duties on e-traders?

The Danish E-Commerce Act complements the general rules and principles of Danish law relating to the sale of goods and services.

The Danish E-Commerce Act contains certain minimum requirements regarding an e-trader's conduct of e-business. For instance, the e-trader is obligated to inform users about a number of specific details relating to the e-trader's business, such as the e-trader's name, place of business, email address, Danish CVR no. (Central Business Registration number) etc. Furthermore, the e-trader must provide sufficient information relating to price, identification of commercial communication, technical help functions (e.g. accessibility to contract terms and general conditions), order confirmation receipt etc.

In addition to these rules, the Act comprises a number of provisions which exempt internet providers from liability regarding intellectual property right infringements relating to the mere conduit, caching and hosting of material, provided that certain specific conditions are met.

What are the main characteristics of the Danish Act on Certain Consumer Contracts?

The Danish Act on Certain Consumer Contracts governs Danish business-to-consumer contracts as it regulates specific terms of contracts in online transactions as well as distance selling in general. The Act implements the EC Directive on the Protection of Consumers in Respect of Distance Contracts (97/7/EC) and applies to consumer contracts and e-traders' communication with a view to concluding such contracts whilst providing a number of protection measures in favour of consumers.

What level of protection does the Danish Act on Certain Consumer Contracts provide for consumers?

The Danish Act on Certain Consumer Contracts contains rules governing distance sales, under which Danish consumers are afforded a number of protective measures ensuring inter alia that consumers are able to identify the e-trader and to cancel the contract when purchasing goods and services online. The Act divides goods and services into three categories: (i) goods; (ii) non-financial services; and (iii) financial services. These three categories are subject to different regulation under the Act.

Are there any special requirements regarding an e-trader's duty of disclosure vis-à-vis consumers?

Pursuant to the Danish Act on Certain Consumer Contracts, the e-trader has a duty to provide the consumer with certain information in connection with distance contracts prior to entering into a contract. The scope of the information obligation varies depending on which category of goods and/or services the purchase relates to, but may include information such as the e-trader's name, principal business activity and physical address; the nature and main characteristics of the product or service; the total price of the product or service, including fees, costs, any delivery costs, VAT and other taxes; the

terms of payment, delivery or other performance of the contract; whether a right of complaint or withdrawal exists; and any specific additional costs for the consumer in connection with the use of the means of communication in question if such additional costs are imposed.

When must the required information be provided to the consumer?

The information must be provided in reasonable time before a contract is concluded and the information must be clear and comprehensible. It must be clearly stated that the information is provided with a view to concluding a contract and the information must be provided in a manner that is suitable considering the means of communication used and must take minors into particular consideration as needed.

Do consumers have a right to withdraw from a contract which has been entered into online?

Pursuant to the Danish Act on Certain Consumer Contracts, consumers are in many cases granted a 14 day right of withdrawal or "cooling-off period", as long as the purchase has taken place online or as a distance selling. However, among other things, hotel reservations, airplane tickets and gambling are not covered by the 14-day right of withdrawal. For purchase of goods, the cooling-off period starts at delivery, provided that the consumer has been duly notified of the cooling-off period by the e-trader (e.g. through a letter or email).

For the purchase of non-financial services (e.g. repair services or service extensions), the cooling-off period starts with the conclusion of the contract, provided that the consumer has been duly notified of the cooling-off period by the e-trader (e.g. through a letter or email). If the e-trader has not provided the consumer with such notification, the cooling-off period starts at the time when the consumer has been duly notified of the cooling-off period. However, in all events, and irrespective of whether a notification has been provided by the e-trader, the cooling-off period will expire three months from the conclusion of the agreement. In addition, the cooling-off period may be shorter than 14 days if the e-trader and the consumer have agreed that the services must be initiated before expiry of the 14-day cooling-off period. In such an event, the cooling-off period will expire when the services are initiated by the e-trader, provided that the e-trader has duly notified the consumer of the cooling-off period and of the reduction hereof as a consequence of the initiation of services.

How does the Danish Marketing Practices Act apply to e-commerce?

The Danish Marketing Practices Act contains rules which business and e-traders conducting business in Denmark must observe when planning and executing their marketing activities. The Act applies to any promotion using electronic means of communication, e.g. emails or text messages, and contains rules, inter alia, on good marketing

practice, market conduct, comparative advertising, unsolicited communication with specific customers, consumer protection, price information, fee levying, discounts, sales promotions and special offers etc. In 2007, the Unfair Commercial Practices Directive (2005/29/EC) was implemented into Danish law through an amendment to the Act.

Which regulatory body monitors compliance with the Danish Marketing Practices Act?

Compliance with the Act is monitored by the Danish Consumer Ombudsman (in Danish: "Forbrugerombudsmanden"). In addition to the rules contained in the Act, the Danish Consumer Ombudsman has issued a number of guidelines. Non-compliance with the Act may be prohibited by injunctions and prohibitions. If a company violates a prohibition or injunction imposed by the Danish courts or the Danish Consumer Ombudsman, the company may be liable to fines or in certain events imprisonment under Danish criminal law. Pursuant to the current case law, companies have been ordered to pay considerable fines for violations of the Act.

How is the Danish Data Protection Act of relevance to e-commerce?

The Danish Act on Processing of Personal Data implements Directive (95/46/EC) on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The Act contains detailed provisions on the gathering and processing of personal and private information concerning individuals. Accordingly, the Act is of particular importance to companies and e-traders selling goods and services online, as such an activity will inherently involve processing of personal data for business customers and consumers.

The Act is administered by the Danish Data Protection Agency (in Danish: "Datatilsynet").

Do any other types of regulation apply to e-commerce?

Other relevant acts under Danish law relating to e-commerce include the Danish Act on Internet Domain Names (in Danish: "Domænenavnsloven"), the Danish Act on Certain Payment Instruments (in Danish: "Betalingsmiddeloven"), and the Danish Act on Actions for Injunctions for the Protection of Consumers' Interest (in Danish: "Forbrugerklageloven").

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