

Please notice that the English version of the Executive Order is translated for the Danish Telecommunication Authority (now the Danish Business Authority). The official version is published in “Lovtidende” (Official Journal) on 9 December 2011. Only the Danish version of the text has legal validity.

Executive Order on Information and Consent Required in Case of Storing or Accessing Information in End-User Terminal Equipment ⁽¹⁾

Executive Order No. 1148 of 9 December 2011

Pursuant to section 9 and section 81(2) of the Act on Electronic Communications Networks and Services, cf. Act No. 169 of 3 March 2011, the following provisions shall apply:

Scope and application

1. The purpose of this Executive Order is to protect end-users against unauthorised storing of information, or gaining of access to information already stored, in the end-user's terminal equipment.

Definitions

2.-(1) In this Executive Order, the following definitions shall apply:

1) *Terminal equipment:*

A device or a relevant component within a device enabling communication which is intended to be connected directly or indirectly to network termination points in public electronic communications networks.

2) *End-user:*

User of electronic communications networks or services who does not make such electronic communications networks or services available to other parties on a commercial basis. This includes a recipient of the service.

3) *Information and content service:*

Any form of electronic provision of information or content to which other end-users get access via electronic communications networks or services on the basis of an individual request.

4) *Services in the information society (information society services):*

Any service that has a commercial purpose and that is delivered online (electronically over a certain distance) at the individual request of a recipient of the service.

5) *Service provider:*

Any natural or legal person providing an information society service.

6) *Legal person:*

Public limited companies, private limited companies, cooperative societies, partnerships, associations, foundations, local authorities, regional authorities and government authorities etc.

7) *Third party:*

A natural or legal person arranging for storing of information, or gaining of access to

information already stored, in an end-user's terminal equipment via an information and content service not provided by the natural or legal person in question.

8) *Consent:*

Any freely given, specific and informed indication of the end-user's wishes by which the end-user signifies its agreement to information being stored, or access to stored information being gained, in the end-user's terminal equipment.

(2) The definitions in subsection (1), nos. 2 and 3, shall be interpreted in accordance with the applicable definitions of the Act on Electronic Communications Networks and Services, and rules laid down in pursuance thereof.

Storing or accessing information in terminal equipment

3.-(1) Natural or legal persons may not store information, or gain access to information already stored, in an end-user's terminal equipment, or let a third party store information or gain access to information, if the end-user has not consented thereto having been provided with comprehensive information about the storing of, or access to, the information.

(2) Information, cf. subsection (1), shall be comprehensive if it meets the following minimum requirements:

- 1) it appears in a clear, precise and easily understood language or similar picture writing,
- 2) it contains details of the purpose of the storing of, or access to information, in the end-user's terminal equipment,
- 3) it contains details that identify any natural or legal person arranging the storing of, or access to, the information,
- 4) it contains a readily accessible means by which the end-user to refuse consent or withdraw consent to storing of or access to information, as well as clear, precise and easily understood guidance on how the end-user should make use thereof, and
- 5) it is immediately available to the end-user by being communicated fully and clearly to the end-user. In addition, when storing of information or access to information takes place through an information and content service, information to end-users must be directly and clearly marked and accessible at all times for the end-user on the information and content service in question.

4.-(1) Notwithstanding section 3, natural or legal persons may store information, or gain access to information already stored, in an end-user's terminal equipment if:

- 1) storing of or access to information is for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or
- 2) storing of or access to information is necessary in order for the service provider of an information society service explicitly requested by the end-user to provide this service.

(2) Storing of or access to information in an end-user's terminal equipment is necessary, cf. subsection (1), no. 2, if such storing of or access to information is a technical precondition for being able to provide a service operating in accordance with the purpose of the service.

Penalty provisions

5.-(1) Any person who violates section 3 shall be liable to a fine.

(2) Criminal liability may be imposed on companies etc. (legal persons) under the rules of Part 5 of the Penal Code.

Coming into force

6. This Executive Order shall come into force on 14 December 2011.

Ministry of Business and Growth, 9 December 2011

Ole Sohn

/ Kresten Bay

¹ This Executive Order implements parts of 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, Official Journal 2002, no. L108, p.51, as amended by 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, Official Journal 2009, no. L337, p.11.