

23 April 1999 A4-0248/99



REPORT

on the proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (COM(98)0586 - C4-0020/99 - 98/0325(COD))

Committee on Legal Affairs and Citizens' Rights

Rapporteur: Christine Margaret Oddy

Draftsman:

Kartsten Friederich Hoppenstedt, Committee on Economic and Monetary Affairs and Industrial Policy(*)

Phillip Whitehead, Committee on the Environment, Public Health and Consumer Protection (*)

(*Hughes procedure)

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(* Hughes procedure)

PROCEDURAL PAGE

By letter of 23 December 1998 the Commission submitted to Parliament, pursuant to Articles 189b(2), 57(2), 66 and 100a of the EC Treaty, the proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market.

At the sitting of 15 January 1999 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Culture, Youth, Education and the Media for their opinions. At the sitting of 24 February 1999 the President of Parliament announced that he had referred the proposal to the Committee on the Environment, Public Health and Consumer Protection for its opinion.

At its meeting of 8 December 1998 the Committee on Legal Affairs and Citizens' Rights (had) appointed Ms Oddy rapporteur.

At the sitting of 12 March 1999 the President of Parliament announced that the report would be drawn up under the Hughes procedure by the Committee on Legal Affairs and Citizens' Rights in conjunction with the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on the Environment, Public Health and Consumer Protection.

The Committee on Legal Affairs and Citizens' Rights considered the Commission proposal and the draft report at its meetings of 23 and 24 February, 15, 16 and 17 March, 29, 30 and 31 March and 21 and 22 April 1999.

At the last of these meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: De Clercq, chairman; Palacio Vallelersundi, first vice-chairman; Rothley, second vice-chairman; Malangré, third vice-chairman; Oddy, rapporteur; Añoveros Trias de Bes (for C. Casini), Barzanti, Berger, Cassidy, Falconer (for Newman), Gebhardt, McIntosh (for Lehne), Medina Ortega, Sierra González, Thors, Verde I Aldea, Whitehead (for D. Martin, pursuant to Rule 138(2)) and Wijssenbeek (substitute).

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media are attached.

The report was tabled on 23 April 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (COM(98)0586 - C4-0020/99 - 98/0325(COD))

This proposal is approved with the following amendments:

Text proposed by the Commission ⁽¹⁾	Amendments by Parliament
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(Amendment 1)
Recital 2

Whereas the development of electronic commerce within the Information Society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and will stimulate economic growth and investment in innovation by European companies;

Whereas the development of electronic commerce within the Information Society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, will stimulate economic growth and investment in innovation by European companies, and can also enhance the competitiveness of European industry, provided that everyone has access to the Internet;

Amendment 2
Recital 2a (new)

Whereas Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities afforded by electronic commerce; whereas this Directive therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for information society services;

(Amendment 3)

Recital 4a (new)

Whereas, in order to ensure legal certainty and consumer confidence, this Directive must lay down a clear and uniform general framework to cover all the legal aspects of electronic commerce in the internal market;

(Amendment 4)

Recital 5a (new)

Whereas it is important to ensure that electronic commerce could fully benefit from the internal market and therefore that, as with the Television Without Frontiers Directive, a high level of Community integration should be achieved;

(Amendment 5)

Recital 5b (new)

Whereas, despite the global nature of electronic communications, coordination of national regulatory measures at European Union level is necessary in order to avoid fragmentation of the internal market, and for the establishment of an appropriate European regulatory framework as well as a common and strong negotiating position in international fora;

(Amendment 6)

Recital 5c (new)

Whereas, in order to allow the unhampered development of electronic commerce, the legal framework must be clear and simple, predictable and consistent with the rules applicable at international level so that it does not adversely affect the competitiveness of

European industry or impede innovation in that sector;

(Amendment 7)
Recital 6

Whereas, in accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; whereas, where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular consumer protection and the protection of public health; whereas according to Article 129 of the Treaty, the protection of public health is an essential component of other Community policies; whereas this Directive does not impact on the legal requirements applicable to the delivery of goods as such, nor those applicable to services which are not Information Society services;

Whereas, in accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; whereas, where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity, consumer protection and the protection of public health; whereas according to Article 129 of the Treaty, the protection of public health is an essential component of other Community policies; whereas this Directive does not impact on the legal requirements applicable to the delivery of goods as such, nor those applicable to services which are not Information Society services;

(Amendment 8)

Recital 6a (new)

Whereas technological development has multiplied and diversified the vehicles for creation, production and operation; whereas the legal framework for Information Society services should not differ overly from the current rules on other ways of exploiting works so as not to create distortions of competition;

(Amendment 9)

Recital 7

Whereas this Directive does not aim to establish specific rules on international private law relating to conflicts of law or jurisdiction and is therefore without prejudice to the relevant international conventions;

Whereas this Directive does not aim to establish specific rules on international private law relating to conflicts of law or jurisdiction;

(Amendment 10)

Recital 9a (new)

Whereas Member States must, in accordance with Community law - with particular regard to Directives 95/46/EC and 97/66/EC of the European Parliament and the Council -, lay down in their legislation that information society service-providers shall be able to provide all information of use in tracing and identifying providers of illegal content;

(Amendment 11)

Recital 11

Whereas Article 10(2) of Directive 97/7/EC and Article 12(2) of European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector address the issue of consent by receivers to certain forms of unsolicited commercial communication and are fully applicable to Information Society services;

Whereas the sending of unsolicited commercial communications by e-mail may be inconvenient for consumers and Internet service providers and may disrupt the smooth functioning of the Internet; whereas the question of consent by recipients of certain forms of unsolicited commercial communications is addressed in Directives 97/7/EC and 97/66/EC; whereas these directives establish a minimum standard of protection against the sending of unsolicited commercial communications by e-mail and are fully applicable to Information Society services; whereas these directives require as a minimum that unsolicited commercial communications by e-mail cannot be sent if the recipient objects to such a practice; whereas the setting up of industry filtering initiatives, such as “Robinson lists”, should be encouraged and facilitated; whereas in addition it is necessary that in any event unsolicited commercial communications are clearly identifiable as such in order to improve transparency and to facilitate the functioning of such industry initiatives; whereas unsolicited commercial communications by e-mail should not result in additional costs for the recipient;

(Amendment 12)
Recital 14

Whereas, amongst others, Council Directive 93/13/EEC⁽⁴¹⁾ regarding unfair contract terms and Directive 97/7/EC, form a vital element for protecting consumers in contractual matters; whereas those directives also apply in their entirety to Information Society services; whereas that same Community *acquis* also embraces Council Directive 84/450/EEC⁽⁴²⁾ on misleading advertising, as amended by European Parliament and Council Directive 97/55/EC⁽⁴³⁾, Council Directive 87/102/EEC⁽⁴⁴⁾ on consumer credit; as last amended by European Parliament and Council Directive 98/7/EC⁽⁴⁵⁾, Council Directive 90/314/EEC⁽⁴⁶⁾ on package travel, package holidays and package tours, and European Parliament and Council Directive 98/6/EC⁽⁴⁷⁾ on the indication of prices of products offered to consumers; whereas this Directive should be without prejudice to Directive 98/43/EC, adopted within the framework of the internal market, or to other directives on the protection of public health;

Whereas, amongst others, Council Directive 93/13/EEC⁽⁴¹⁾ regarding unfair contract terms and Directive 97/7/EC, form a vital element for protecting consumers in contractual matters; whereas those directives also apply in their entirety to Information Society services; whereas that same Community *acquis* also embraces Council Directive 84/450/EEC⁽⁴²⁾ on misleading advertising, as amended by European Parliament and Council Directive 97/55/EC⁽⁴³⁾, Council Directive 87/102/EEC⁽⁴⁴⁾ on consumer credit; as last amended by European Parliament and Council Directive 98/7/EC⁽⁴⁵⁾, Council Directive 90/314/EEC⁽⁴⁶⁾ on package travel, package holidays and package tours, and European Parliament and Council Directive 98/6/EC⁽⁴⁷⁾ on the indication of prices of products offered to consumers; whereas this Directive should be without prejudice to Directive 98/43/EC, adopted within the framework of the internal market, or to other directives on the protection of public health, especially Council Directive 92/28/EEC^(47a) on the advertising of medicinal products for human use;

^(47a) OJ L 113, 30.4.1992, p. 13.

(Amendment 13)

Recital 15

Whereas the confidentiality of electronic messages is guaranteed by Article 5 of Directive 97/66/EC; whereas in accordance with that Directive Member States must prohibit any kind of interception or surveillance of such electronic messages by others than the senders and receivers;

Whereas the confidentiality of electronic messages is guaranteed by Article 5 of Directive 97/66/EC; whereas in accordance with that Directive Member States must prohibit any kind of interception or surveillance of such electronic messages by others than the senders and receivers and abstain from prohibiting or restricting the use of cryptographic methods or tools for protecting confidentiality or ensuring authenticity of the information transmitted or stored;

(Amendment 14)

Recital 16

Whereas existing and emerging disparities in Member States' legislation and case law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the Internal Market, in particular by impairing the development of cross-border services and producing distortions of competition; whereas service providers have a duty to act, under certain circumstances, with a view to preventing or ceasing illegal activities; whereas the provisions of this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; whereas such mechanisms could be developed on the basis of voluntary agreements between all parties concerned ; whereas it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures; whereas the provisions of this Directive relating to liability should not preclude the development and effective operation, by the different interested parties, of technical systems of protection and identification;

Whereas existing and emerging disparities in Member States' legislation and case law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the Internal Market, in particular by impairing the development of cross-border services and producing distortions of competition; whereas service providers have a duty to act , with a view to preventing or stopping illegal activities; whereas the provisions of this Directive constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; whereas such mechanisms could be developed on the basis of voluntary agreements between all parties concerned, and encouraged by the Member States; whereas it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures; whereas the provisions of this Directive relating to liability should not preclude the development and operation, by Information Society service providers, of appropriate technical surveillance instruments made possible by digital technology or the development and effective operation, by the different interested parties, of technical

systems of protection and identification;

(Amendment 15)

Recital 16a (new)

Whereas the directive on copyright in the Information Society should come into force within a time scale similar to that of this directive so as to ensure that the issue of liability of intermediaries for copyright infringements is addressed at Community level in a satisfactory manner;

(Amendment 16)

Recital 16b (new)

Whereas the effective exercise of the freedoms of the internal market makes it necessary to guarantee victims effective access to means of settling disputes; whereas damage which may arise in connection with Information Society services is characterised both by rapidity and by geographical extent; whereas in view of this specific character and the need to ensure that national authorities do not endanger the mutual confidence which they should have in one another, the Directive lays down the legal conditions to enable complaints to be lodged, both at law and otherwise, across borders and by electronic means;

(Amendment 17)

Recital 16c (new)

Whereas the definition of recipient of a service covers all types of usage of information society services, both by persons who provide information on the Internet and by persons who seek information on the Internet for private or professional reasons;

(Amendment 18)

Recital 16d (new)

Whereas the Directive strikes a balance between the different interests at stake and establishes principles upon which industry agreements and standards can be based;

(Amendment 19)

Recital 16e (new)

Whereas, if the market is actually to operate by electronic means in the context of globalisation, the European Union and the major non-European areas must cooperate with a view to making laws and procedures compatible;

(Amendment 20)

Recital 16f (new)

Whereas electronic commerce offers the Member States an excellent means of providing public services in the cultural, educational and linguistic fields;

(Amendment 21)

Recital 19

Whereas as regards the derogation contained in this Directive regarding contractual obligations concerning contracts concluded by consumers, those obligations should be interpreted as including information on the essential elements of the content of the contract, including consumer rights, which have a determining influence on the decision to contract;

Whereas as regards the derogation contained in this Directive regarding contractual obligations concerning contracts concluded by consumers, those obligations should be interpreted as including information on the essential elements of the content of the contract, including consumer rights, which have a determining influence on the decision to contract; whereas that derogation may cover only contractual obligations concerning contracts concluded by consumers which have not been harmonised at Community level;

(Amendment 22)

Recital 20a (new)

Whereas cooperation with third countries should be strengthened in the area of electronic commerce, in particular with applicant countries and the European Union's transatlantic partners;

(Amendment 23)

Recital 22

Whereas the adoption of this Directive will not prevent Member states from taking into account the various social, societal and cultural implications which are inherent in the advent of the Information Society; nor hinder cultural, and notably audiovisual, policy measures, which the Member States might adopt, in conformity with Community law, and taking into account their linguistic diversity, national and regional specificities and their cultural heritage; whereas, in any case, the development of the Information Society must ensure that Community citizens can have access to the cultural European heritage provided in the digital environment;

Whereas the adoption of this Directive will not prevent the Member States from taking into account the various social, societal and cultural implications which are inherent in the advent of the Information Society; whereas, in particular, it should not hinder public policy measures which Member States might adopt in conformity with Community law to achieve social, cultural and democratic goals taking into account their linguistic diversity, national and regional specificities as well as their cultural heritage, and to ensure and maintain public access to the widest possible range of Information Society services; whereas, in any case, the development of the Information Society must ensure that Community citizens can have access to the cultural European heritage provided in the digital environment;

(Amendment 24)

Recital 22a (new)

Whereas the free movement of Information Society services can in many cases be a specific reflection in Community law of a more general principle, namely freedom of expression as enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which has been ratified by all the Member States; whereas, for this reason, directives covering the supply of Information Society services must ensure that this activity may be engaged in freely in the light of that article, subject only to the restrictions laid down in paragraph 2 of that article and in Article 56(1) of the Treaty;

(Amendment 25)

Recital 22b (new)

Whereas, notwithstanding the rule on the control at source of Information Society services, it would appear legitimate under certain circumstances for Member States to take measures to restrict the free movement of Information Society services; whereas, however, such measures must be taken in accordance with Community law and must therefore be necessary to achieve at least one of the following public interest objectives pursued: public policy, in particular the protection of minors, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality; the protection of public health or public security; and consumer protection;

(Amendment 26)
Recital 22c (new)

Whereas the protection of copyright and neighbouring rights is essential to the development of electronic transactions; whereas, in order to take account of the specific nature of such rights, Annex II to this Directive provides for a derogation from the 'country of origin' clause;

(Amendment 27)
Recital 24a (new)

Whereas this Directive is without prejudice to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽¹⁾, as amended by Directive 97/36/EC⁽²⁾ of the European Parliament and of the Council, or any future amendments;

⁽¹⁾ OJ L 298, 17.10.1989, p. 23

⁽²⁾ OJ L 202, 30.7.1997, p. 1

(Amendment 28)
Article 1(3)

This Directive complements Community law applicable to Information Society services without prejudice to the existing level of protection for public health and consumer interests, as established by Community acts, including those adopted for the functioning of the Internal Market.

This Directive complements Community law applicable to Information Society services without prejudice to the existing level of protection for public health and consumer interests, as established by Community acts, including those adopted for the functioning of the Internal Market. This Directive shall also be applied with due regard for the specific rules governing regulated activities.

(Amendment 29)

Article 2(a)

(a) "Information Society services": any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services; For the purpose of this definition:

- "at a distance" means that the service is provided without the parties being simultaneously present;

- "by electronic means" means that a service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

- "at the individual request of a recipient of services" means a service provided through the transmission of data on individual request.

(a) "Information Society services:" Information Society services within the meaning of Article 1(2) of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾.

⁽¹⁾ OJ 109, 26.4.1983, p. 8. Directive last modified by Directive 98/48/EC of 20.7.1998, OJ L 217, 5.8.1998, p. 18.

(Amendment 30)

Article 2(c)

(c) "established service provider": a service provider who effectively pursues an economic activity using a fixed establishment for an indeterminate duration. The presence and use of the technical means and technologies required to provide the service do not constitute an establishment of the provider;

(c) "established service provider": a service provider who effectively pursues his or her activity using a fixed establishment for an indeterminate duration. The presence and use of the technical means and technologies required to provide the service do not constitute an establishment of the provider;

(Amendment 31)
Article 2(e), opening clause

(e) "commercial communications": 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 liberal profession. The following do not as such constitute commercial communications:

(e) "commercial communications": any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person. The following do not as such constitute commercial communications:

(Amendment 32)
Article 2(f)a (new)

'consumer': any natural person acting for purposes not related to his or her professional activity.

(Amendment 33)
Article 5(1), opening clause

1. Member States shall lay down in their legislation that Information Society services shall render easily accessible, in a direct and permanent manner to their recipients and competent authorities, the following information:

1. Without prejudice to the obligations deriving from Directive 97/7/EC⁽¹⁾ Member States shall lay down in their legislation that Information Society services shall render easily accessible, in a direct and permanent manner to their recipients and competent authorities, the following information:

⁽¹⁾ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 114, 4.6.1997, p. 19.

(Amendment 34)
Article 5(2)

Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately and unequivocally.

Member States shall lay down in their legislation that, where Information Society services refer to prices and other essential terms and conditions, these are to be indicated accurately and unequivocally.

(Amendment 35)
Article 5(2)

Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately and unequivocally.

Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately, unequivocally and must include all additional costs.

(Amendment 36)
Article 5(2a) (new)

Member States shall, in accordance with Community law - with particular regard to Directives 95/46/EC and 97/66/EC of the European Parliament and the Council - lay down in their legislation that Information Society service providers must keep all information necessary for the purpose of tracing and identifying providers of illegal content.

(Amendment 37)
Article 6

Member States shall lay down in their legislation that commercial communication shall comply with the following conditions:

Without prejudice to the obligations deriving from Directive 97/7/EC⁽¹⁾ Member States shall lay down in their legislation that commercial communication shall comply with the following conditions:

- (a) the commercial communication shall be clearly identifiable as such;
- (b) the natural or legal person on whose

- (a) the commercial communication shall be clearly identifiable as such;
- (b) the natural or legal person on whose behalf

behalf the commercial communication is made shall be clearly identifiable;

- (c) promotional offers, such as discounts, premiums and gifts, where authorised, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented accurately and unequivocally;
- (d) promotional competitions or games, where authorised, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented accurately and unequivocally.

the commercial communication is made shall be clearly identifiable;

- (c) promotional offers, such as discounts, premiums and gifts, where authorised by the Member State in which the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented accurately and unequivocally;
- (d) promotional competitions or games, where authorised by the Member State in which the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented accurately and unequivocally.

⁽¹⁾ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 114, 4.6.1997, p. 19.

(Amendment 38)
Article 7

Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient.

1. Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must be identifiable as such.

2. Member States shall take measures to ensure that consumers can have themselves entered in an opt-out register, which service providers must check regularly.

3. In their legislation, Member States shall require service providers to inform their customers about data protection in accordance with Directives 95/46/EEC and 97/66/EEC.

(Amendment 39)

Article 8(1)

1. Member States shall lay down in their legislation relating to commercial communication by regulated professions that the provision of information society services is authorised provided that the professional rules regarding the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession are met.

1. Member States shall lay down in their legislation relating to commercial communication by regulated professions that the provision of information society services is authorised provided that the professional rules regarding the independence, dignity and honour of the profession, professional secrecy/legal professional privilege and fairness towards clients and other members of the profession are met.

(Amendment 40)
Article 9(3)

3. The list of categories of contracts provided for in paragraph 2 may be amended by the Commission in accordance with the procedure laid down in Article 23.

Deleted

(Amendment 40)
Article 10(1)

1. Member States shall lay down in their legislation that, except when otherwise agreed by professional persons, the manner of the formation of a contract by electronic means shall be explained by the service provider clearly and unequivocally, and prior to the conclusion of the contract. The information to be provided shall include, in particular:

- (a) the different stages to follow to conclude the contract;
- (b) whether or not the concluded contract will be filed and whether it will be accessible;
- (c) the expedients for correcting handling errors.

1. Member States shall lay down in their legislation that, except when otherwise agreed by professional parties, the manner of the formation of a contract by electronic means shall be explained by the service provider clearly and unequivocally, and prior to the conclusion of the contract. The information to be provided shall include, in particular:

- (a) the different stages to follow to conclude the contract;
- (b) whether or not the concluded contract will be filed and whether it will be accessible;
- (c) the expedients for correcting handling errors.

(Amendment 42)
Article 11

1. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, in cases where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon, the following principles apply:

(a) the contract is concluded when the recipient of the service;
- has received from the service provider, electronically, an acknowledgment of receipt of the recipient's acceptance, and - has confirmed receipt of the acknowledgment of receipt;

(b) acknowledgment of receipt is deemed to be received and confirmation is deemed to have been given when the parties to whom they are addressed are able to access them;

(c) acknowledgment of receipt by the service provider and confirmation of the service recipient shall be sent as quickly as possible.

2. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, the service provider shall make available to the recipient of the service appropriate means allowing him to identify and correct handling errors.

1. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, in cases where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon, the following principles apply:

(a) the contract is concluded when the recipient of the service has received from the service provider, electronically, an acknowledgment of receipt of the recipient's acceptance;

(b) acceptance of the offer and acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access them;

(c) acknowledgment of receipt by the service provider shall be sent as quickly as possible.

2. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, the service provider shall make available to the recipient of the service appropriate means allowing him to identify and correct handling errors before the moment at which the contract is concluded.

(Amendment 43)
Section 4, title

Liability of intermediaries

Liability of intermediary service providers

(Amendment 44)

Article 12 (1)

1. Where an Information Society service is provided that consists of the transmission in a communication network of information provided by the recipient of the service, or the provision of access to a communication network, Member States shall provide in their legislation that the provider of such a service shall not be liable, otherwise than under a prohibitory injunction, 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.

1. Where an Information Society service is provided that consists of the transmission in a communication network of information provided by the recipient of the service, or the provision of access to a communication network, Member States shall provide in their legislation that the provider of such a service shall not be prosecuted and shall not be liable either strictly or for negligence, without prejudice to a prohibitory injunction, 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.

(Amendment 45)

Article 12(1)(c)a (new)

allows means of surveillance, which are to be rendered operational on the basis of legislation or codes of conduct.

(Amendment 46)
Article 12(2)

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.

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 and that all necessary steps are taken to ensure that the information is not, during storage, accessible for persons other than the intended recipient.

(Amendment 47)
Article 13(d)

(d) the provider does not interfere with the technology, consistent with industrial standards, used to obtain data on the use of the information; and

(d) the provider does not interfere with the technology, consistent with industrial standards, used to obtain data on the use of the information or to protect against infringements; and

(Amendment 48)
Article 14(1)

Hosting

1. Where an Information Society service is provided that consists in the storage of information provided by a recipient of the service, Member States shall provide in their legislation that the provider shall not be liable, otherwise than under a prohibitory injunction, for the information stored at the request of a recipient of the service, on condition that:
 - (a) the provider does not have actual knowledge that the activity is illegal and, as regards claims for damages, is not aware of facts or circumstances from which illegal activity is apparent; or
 - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Access and hosting

1. Where an Information Society service is provided that consists in the provision of access to the communication network or in the storage of information provided by a recipient of the service, Member States shall provide in their legislation that the provider shall not be liable, otherwise than under proceedings pursuant to Article 18, for the information rendered accessible or stored at the request of a recipient of the service, on condition that:
 - (a) the provider does not know, or was not in a position to know, that the activity is illegal;
 - (b) the provider, upon learning that an activity is illegal, acts immediately to remove or to disable access to the information;
 - (c) the provider does not initiate the transmission and does not select or modify the information transmitted;
 - (d) the provider shows that he has complied with the obligations imposed on him with regard to informing the party whose information is hosted about the requirement for him to comply with legislation, particularly on illegal content, non-pecuniary personal rights, copyright and other intellectual property rights.

(Amendment 49)

Article 14(2)

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

The provisions of this article shall not apply when the recipient of the service is acting under the authority or the control of the provider.

(Amendment 50)

Article 14a (new)

The limitations on liability established by Articles 12, 13, and 14 are exhaustive and apply to Information Society services only on condition that the provider adopts strategies designed to terminate all contractual relations with recipients who commit an infringement, providing adequate information on the subject, and complies with - and does not interfere with - industry standards for identification.

(Amendment 51)

Article 15(1)

1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

1. Member States shall not impose a general obligation on providers, when providing the services covered by Article 12, without prejudice to subparagraph (d) of the same Article, and covered by Articles 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

(Amendment 52)

Article 15(2)

2. Paragraph 1 shall not affect any targeted, temporary surveillance activities required by national judicial authorities in accordance with national legislation to safeguard national security, defence, public security and for the prevention,

2. Articles 12 to 14 shall not affect (a) any targeted, temporary surveillance activities required by national judicial authorities in accordance with national legislation to safeguard national security, defence, public security and for the

investigation, detection and prosecution
of criminal offences.

prevention, investigation, detection and
prosecution of criminal offences.

Amendment 53)
Article 15(2)(a)a (new)

(a)a any technically feasible and reasonable measures designed to prevent the use of illegally provided content.

(Amendment 54)
Article 15(2a) (new)

2a. Paragraph 1 applies under the condition that, in accordance with Community law - with particular regard to Directives 95/46/EC and 97/66/EC of the European Parliament and the Council -, the relevant operator takes all reasonably necessary steps to accommodate and not interfere with accepted industry standards used for the identification and protection of transmitted material.

(Amendment 55)
Article 16(1)(a)

(a) the drawing-up of codes of conduct at Community level, by trade and professional associations or organisations designed to contribute to the proper implementation of Articles 5 to 15;

(a) the drawing-up of codes of conduct at Community level, by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15;

(Amendment 56)
Article 16(1)(d)

(d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

(d) the communication to the Member States and the Commission, by professional and consumer associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

(Amendment 57)
Article 16(1)(d)a (new)
Codes of conduct

(d)a the drawing up of codes of conduct regarding the protection of minors and human dignity.

(Amendment 58)
Article 16(2)

2. In so far as they may be concerned, consumer associations shall be involved in the drafting and implementation of codes of conduct drawn up according to point (a) of paragraph 1.

2. In so far as they may be concerned, consumer associations and organisations representing holders of literary and artistic property rights shall be involved in the drafting and implementation of codes of conduct drawn up according to point (a) of paragraph 1.

(Amendment 59)
Article 16(2a) (new)

2a. Member States shall, in their legislation, allow the effective use of notification and deletion procedures, including by means of appropriate electronic instruments.

(Amendment 60)
Article 18a (new)

Member States shall ensure that appropriate remedies are effectively available by adapting their procedures to contend with unlawful conduct and handle disputes on the Internet, and by providing access to such procedures on electronic networks.

(Amendment 61)
Article 18(2)

2. Acts in breach of the national provisions incorporating Articles 5 to 15 of this Directive which affect consumers' interests shall constitute infringements within the meaning of Article 1(2) of Directive 98/27/EC of the European Parliament and Council.

2. Member States shall ensure that court actions as referred to in paragraph 1 are not inadmissible on the grounds that the act complained of:

-is transmitted by appropriate electronic means, or

-is performed in a Community language other than that of the Member State where the court is located.

(Amendment 62)
Article 22(1)(b)

(b) the field covered by Directive 95/46/EC of the European Parliament and of the Council (1);

(b) the field covered by Directives 95/46/EC (1) and 97/66/EC (2) of the European Parliament and of the Council;

¹ OJ L 281, 23.11.1995, p. 31.

¹ OJ L 281, 23.11.1995, p. 31

² OJ L 24, 30.1.1998, p. 1.

(Amendment 63)
Article 22(1)(c)a (new)

(c)a. Television services as referred to in Directive 89/552/EC, as last amended by Directive 97/36/EC, radio services, services comparable to radio and content provided electronically by broadcasters as an accompaniment to programmes.

(Amendment 64)
Article 22(3)(a)

(a) the measures shall be:

(i) necessary for one of the following reasons:
- public policy, in particular the protection of minors, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality,

- the protection of public health,

- public security,

- consumer protection;

(ii) taken against an Information Society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives,

(iii) proportionate to those objectives;

(a) the measures shall be:

(i) necessary for one of the following reasons:
- public policy, in particular the protection of minors, and human dignity, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality,

- the protection of public health,

- public security,

- consumer protection;

(ii) taken against an Information Society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives,

(iii) proportionate to those objectives;

(Amendment 65)
Article 24

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive accompanied, where necessary, by proposals for adapting it to developments in the field of Information Society services.

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive accompanied, where necessary, by proposals for adapting it to developments in the field of digital technologies and Information Society services.

(Amendment 66)
Article 24
Re-examination

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to developments in the field of Information Society services.

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, containing statistical results and accompanied, where necessary, by proposals for adapting it to developments in the field of Information Society services.

(Amendment 67)
Article 24(2)a (new)

This report should examine the need for adaptation in the light of technical and economic developments and emerging jurisprudence in the Member States. It should in particular analyse the need for proposals concerning the liability of providers of hyperlinks and location tool services, notification requirements and the attribution of liability following the taking down of content;

(Amendment 68)
Annex II

As referred to in Article 22(2) in which Article 3 does not apply:

- copyright, neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC as well as industrial property rights;

- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive .../.../EC,

As referred to in Article 22(2) in which Article 3 does not apply:

- copyright, neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC as well as industrial property rights;

- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive .../.../EC,

- Article 44 paragraph 2 of Directive 85/611/EEC;

- Article 30 and Title IV of Directive 92/49/EEC, Title IV of Directive 92/96/EEC, Articles 7 and 8 of Directive 88/357/EEC and Article 4 of Directive 90/619/EEC;

- contractual obligations concerning consumer contracts;

- unsolicited commercial communications by electronic mail or by an equivalent individual communication;

- Article 44 paragraph 2 of Directive 85/611/EEC;

- Article 30 and Title IV of Directive 92/49/EEC, Title IV of Directive 92/96/EEC, Articles 7 and 8 of Directive 88/357/EEC and Article 4 of Directive 90/619/EEC;

- contractual obligations concerning consumer contracts which have not been harmonised at Community level.

- unsolicited commercial communications by electronic mail or by an equivalent individual communication;

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (COM(98)0586 - C4-0020/99 - 98/0325 (COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(98)0586 - 98/0325(COD))⁽¹⁾,
 - having regard to Articles 189b(2), 57, 66 and 100a of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0020/99),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Culture, Youth, Education and the Media (A4-0248/99),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;
 4. Points out that the Commission is required to submit to Parliament any modification it may intend to make to its proposal as amended by Parliament;
 5. Instructs its President to forward this opinion to the Council and Commission.

B

EXPLANATORY STATEMENT

1. Introduction

On 16 April 1997 the Commission submitted a communication entitled 'A European Initiative on Electronic Commerce'¹, which drew attention to the need to adopt a coherent approach to electronic commerce and put forward a number of practical proposals towards this end, several of which have been implemented.

In its resolution of 14 May 1998² on the above communication, Parliament called for 'coordination at European Union level in order to avoid fragmentation of the internal market and for the establishment of an appropriate European regulatory framework'. It stressed 'the importance of a simple, minimalist and predictable legal framework for electronic commerce' and called on the Commission 'to make proposals without delay to ensure the proper functioning of the internal market in the field of electronic commerce and complete freedom for European enterprises to provide services, and in particular to ensure that enterprises which meet the legal requirements in the country of origin can transact business freely throughout Europe'. It therefore urged the Commission 'to speed up the process of presenting a proposal for a directive on Information Society services, including electronic commerce, in order to clarify the regulatory framework and to safeguard the rights of the users of electronic commerce'.

Several of the Commission proposals announced in that communication have already been put before Parliament, namely: a proposal for a common framework for digital signatures³; a communication entitled 'Boosting customers' confidence in electronic means of payment in the single market'⁴; a proposal for a directive concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC⁵; and a communication on electronic commerce and indirect taxation⁶.

Directive 98/48/EC of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations⁷, brought Information Society Services within the scope of the transparency mechanism introduced under Directive 98/34/EC. The Commission also submitted a Green Paper on 'the convergence of the telecommunications, media and information technology sectors, and the implications for regulation - Towards an Information Society Approach'⁸.

Reference should also be made to the Commission Green Paper on 'Commercial communications in the internal market'⁹, Parliament's resolution thereon of 15 July 1997¹⁰, the Commission communication on 'The follow-up to the Green Paper on commercial communications in the internal market'¹¹ and Parliament's resolution thereon of 14 January 1999¹², in which Parliament emphasised that cross-border commercial communications had to be based on mutual recognition and that non-application of the country of origin principle could only be justified if the restriction in question was proportional and non-discriminatory.

Lastly, this proposal for a directive should be linked to Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts¹³.

Electronic commerce is extremely important in both human and commercial terms and is a fast-expanding sector which is an important source of new jobs. A large number of studies have forecast rapid growth in the electronic commerce market¹⁴. There is therefore an urgent need to establish a horizontal legislative framework in this area, to apply concurrently with vertical laws and regulations covering electronic commerce.

The proposal for a directive is part of a general move around the world to legislate for the electronic commerce sector following the adoption on 16 December 1996 by the UN General Assembly of a UNCITRAL model law on electronic commerce¹⁵ and Singapore's adoption on 29 June 1998 of an Electronic Transactions Bill. A Uniform Electronic Transactions Act is currently in the pipeline in the United States. Australia is drawing up its own legislation in this area. The Commission proposal has been published ahead of action which several EU Member States will be taking to establish a legal framework for electronic commerce¹⁶. A number of international organisations have published studies on the subject, thus providing further confirmation of the fact that electronic commerce is currently a red-hot issue¹⁷.

The legal bases for the proposal are Articles 57(2), 66 and 100a of the EC Treaty.

2. Analysis of the proposal for a directive

A. Objective

The aim of the directive is to establish a homogeneous horizontal legal framework and to ensure the free movement of Information Society services between Member States.

B. Scope

The proposed directive establishes a legal framework for Information Society services, which are defined as being 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'. As is the case with Directive 98/48/EC, from which the above definition is taken, the proposal for a directive is intended to cover both fee-paying and free services, given that the term 'normally provided for remuneration' to be found in Article 60 of the Treaty does not require 'the service to be paid for by those for whom it is performed'¹⁸.

Nonetheless, under Article 22 of the proposal, the following are excluded from the directive's scope: taxation; the protection of natural persons in respect of the processing of personal data (Directive 95/46/EC); the activities of notaries; the representation of a client and defence of his or her interests before the courts; and gambling activities, excluding those carried out for commercial communication purposes.

However, the definition of 'Information Society services' has not been properly taken over from Directive 98/48/EC, since it does not state that radio and television broadcasting services are excluded, despite the fact that the explanatory memorandum claims that they are.

The definition should therefore be replaced by a simple reference to the definition given in Article 1(2) of Directive 83/189/EC, as amended by Directive 98/48/EC. So as to guard against any ambiguity, a recital containing the same wording as recital 20 of Directive 98/48/EC should be added to the proposal.

Some of the other definitions given in the proposal need to be amended in order to clarify them:

- 'established service provider': the term *economic* activity is inappropriate and leads to confusion;
- 'commercial communications': this definition should be amended to ensure that it does not exclude communications from non-profit-making organisations or associations aimed at sales promotion or proselytism. Given that the list of activities which appears in the definition is inappropriately restrictive, it is proposed that it be deleted;
- lastly, a definition of the term 'consumer' should be taken over from existing directives and added to the proposal.

C. Principle of control by the State of origin and mutual recognition

1. Control by the State of origin

The central feature of the proposal is the establishment of the principle that Information Society service providers must comply with the national provisions applicable in the Member State in which they are established (Article 3(1)). This covers both the provisions of current Community law and those applicable to non-harmonised sectors.

This principle - together with that of mutual recognition dealt with below - is in keeping with Parliament's resolutions of 14 May 1998 (A4-0173/98) and 14 January 1999 (A4-0503/98).

As indicated in the seventh recital to the proposal, the rules of international private law - particularly those applying to conflicts of law - continue to apply in full¹⁹. Article 3(1) must therefore not be interpreted as designating the law of the service provider's country of establishment as the law applicable to the relationship between the provider and the recipient of a service. The Rome Convention of 19 June 1980 on the law applicable to contractual obligations continues to apply²⁰.

2. Mutual recognition

The corollary of this principle is that the free movement of Information Society services within the other EU Member States is ensured. In accordance with Article 59 of the Treaty, Member States may not use their national legislation as a pretext for hampering free movement (Article 3(2)).

3. Restrictive measures taken by the state of destination

The recipient's state of residence may, however, take various measures to restrict the freedom to provide Information Society services for reasons relating to public policy, the protection of public health, public security, and consumer protection (Article 22(3)). Such measures must be consistent with Community law, i.e., in the case of measures connected with the protection of public health and public security, with Article 56 of the Treaty: and in the case of measures connected with consumer protection, as exceptions to Article 59 of the Treaty, subject to the strict limits laid down by the Court of Justice²¹. Such measures must therefore be indispensable to achieve the public interest objective pursued and must not, in principle, already have been the object of Community harmonisation²². Such measures may only be discriminatory where justified by the reasons set out in Article 56 of the Treaty. Given that this area is harmonised by directives which establish a minimum level of Community public interest, measures which most restrict the freedom to provide services must meet the criteria of effectiveness, proportionality and public interest²³.

Nonetheless, the state of destination must meet transparency requirements obliging it to notify the State of origin of the service and the Commission of any restrictive measures²⁴.

4. Contractual obligations concerning consumer contracts

The issue of consumer protection arises again in Article 22(2), which excludes contractual obligations concerning consumer contracts from the scope of Article 3 of the proposal. This exception applies to such contracts only, unlike that provided for in Article 22(3) which applies to all situations in which consumer protection is at issue. Again subject to compliance with Community law, a Member State could take measures restricting the free movement of Information Society services on the grounds that consumers must be protected vis-à-vis the contractual obligations entered into under contracts concluded by them, without - in this case - having to comply with the transparency requirements laid down in Article 22(3). This is despite the fact that Article 22(3) enables the same consumer protection objectives to be achieved.

Furthermore, this exception does not affect Article 3(1), given that that article does not deal with the law applicable to contractual obligations, which continues to be governed by the rules of international private law²⁵. Article 3(1) does not prevent consumers from availing themselves of the provisions of Article 5 of the Rome Convention which provides that, under certain circumstances specific to the conclusion of the contract, the choice of the law applicable by the parties to the contract 'shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence'.

Nonetheless, in accordance with the principle of the precedence of Community law, the provisions of substantive law applicable to an Information Society service pursuant to the choice-of-law rules laid down in the Rome Convention (it being possible for freedom of choice to be overwritten by mandatory rules, mandatory requirements and national public policy) may, if they constitute a restriction, be examined in the light of the general good and may therefore be subjected to the scrutiny of the Court of Justice. This was pointed out by the Commission in its interpretative communication on 'Freedom to provide services and the interest of the general good in the second banking directive'²⁶ and was endorsed by Parliament in its resolution of 12 May 1998 on that interpretative communication²⁷.

Furthermore, consumer protection provisions have been extensively harmonised by means of a large number of Community directives, most of which have introduced a minimum degree of harmonisation²⁸.

In the interests of consistency therefore, the derogation provided for in Article 3 should be deleted. Nonetheless, since this is a sensitive issue, the Committee on Legal Affairs and Citizens' Rights proposes that it be retained, but restricted to contractual obligations concerning consumer contracts which have not been harmonised.

5. Other derogations from Article 3

Further derogations from Article 3 are provided for in Article 22(2), covering copyright, neighbouring rights²⁹, industrial property rights, the emission of electronic money, undertakings for collective investment in transferable securities and certain provisions of insurance law. These exceptions are justified by the fact that all the areas concerned are subjected to partial or total control in the country of destination under the provisions by which they are governed.

6. Unsolicited commercial communication

Unsolicited commercial communication is a last exception to the application of Article 3. In parallel, Article 7 of the proposal for a directive establishes an obligation for Member States to lay down in their legislation that unsolicited commercial communication must be identified as such as soon as it is received by the recipient.

7. Reservation regarding the rules of international private law

Article 3(2) of the proposal for a directive provides that, in respect of contracts (Articles 9, 10 and 11 of the proposal), the principle of control by the State of origin does not apply if the implementation of international private law (rules on conflicts of law) leads to the application of the law of that State.

D. Principle excluding prior authorisation (Article 4)

This principle provides for free access to the activity of Information Society service provider without the need for prior authorisation, subject to the authorisation and licencing schemes laid down for the telecommunications sector (Directive 97/13/EC).

E. Duty to provide information (Articles 5 and 6)

Service providers are obliged to provide access to general information on themselves (Article 5).

Additional requirements are laid down for commercial communications, namely that the commercial communication must be clearly identifiable as such, that the advertiser or his sponsor must also be clearly identifiable, as must the conditions governing the validity of the offer, to include promotional offers, competitions or games (in respect of which the proposal includes the stipulation 'where authorised', given that promotional offers and competitions are banned in some Member States). This proviso is in no way intended to establish a derogation from the principle of control by the country of origin laid down in Article 3(1). As a result, the only way in which a Member State 'of destination' could oppose the transmission of such promotional offers on its territory would be to make use of the mechanism provided for in Article 22(3). Your rapporteur proposes to clarify Article 6(c) accordingly.

As stated in Article 1(3) of the proposal for a directive, the Directive 'complements Community law applicable to Information Society services without prejudice to the existing level of protection for public health and consumer interests, as established by Community acts'. The information requirements deriving from Articles 5 and 6 are therefore without prejudice to the information requirements laid down in Directive 97/7/EC of 21 May 1997 on the protection of consumers in respect of distance contracts³⁰, which apply to the specific sphere of contracts only, while Articles 5 and 6 of the proposal for a directive apply, respectively, to all Information Society services and all commercial communications, whether a contract has been concluded or not. Although such an addition to the proposal might appear redundant, reference could be made to this relationship with Directive 97/7/EC at the beginning of Articles 5 and 6.

F. Unsolicited commercial communication

Article 7 provides that all unsolicited commercial communication by electronic mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient. This provision makes it necessary for commercial communications to be 'tagged' so as to inform recipients of their nature, thus allowing them to choose whether to open them or not.

One issue which is not dealt with in the proposal for a directive is that of how the recipient is to indicate that he refuses (opts out) or accepts (opts in) to continue to receive such unsolicited commercial communications. The Committee on Legal Affairs and Citizens' Rights proposes that the 'opt out' option be used and has thus amended Article 7, which deals with this subject, accordingly.

G. Electronic contracts (Articles 9 to 11)

The proposal obliges Member States to remove barriers - particularly formal barriers - to the conclusion of electronic contracts, so as to enhance the legal certainty of on-line transactions.

The proposal specifies the moment at which contracts are to be deemed to have been concluded (although professional persons may decide otherwise), namely, the moment at which the recipient of the service has received from the service provider, electronically, an acknowledgement of receipt of the recipient's acceptance and has confirmed receipt of that acknowledgement. The two acknowledgements must be sent as quickly as possible.

On the surface, this procedure appears rather cumbersome. The Committee on Legal Affairs and Citizens' Rights considers that, while it is quite normal for the recipient to receive confirmation from the service provider so as to be certain that his or her order has been recorded, it is asking too much of recipients to require them to restate their desire to conclude the contract.

This aspect of the directive should be linked to the proposal on a common framework for electronic signatures³¹.

Under the provisions of Article 9(2) Member States may exempt four types of contract (including contracts requiring the involvement of a notary) from being concluded in this manner.

If, pursuant to the law applicable to a given contract, that contract cannot be concluded electronically because the Member State whose law is applicable has made use of the provisions of Article 9(2), the contract could be deemed null and void.

Clear, unequivocal information must be provided to consumers (professional parties may decide otherwise) on the contractual arrangements, and any existing codes of conduct must be mentioned.

Lastly, the consumer (professional persons may agree otherwise) must be allowed to correct any handling errors he or she has made.

One problematic issue regarding the conclusion of contracts is not dealt with in the directive, namely what happens when a consumer signs up for a service offered free of charge for a given period. On expiry of this trial period, how is silence on the part of the consumer to be interpreted? Although this is a matter to be determined by the law applicable to the contract, it would be useful to clarify this aspect of the conclusion of distance contracts at Community level, and the Commission should propose an amendment to Directive 97/7/EC to this end.

H. Liability of intermediaries (Articles 12 to 15)

The issue of the civil and criminal liability of electronic communication intermediaries (data carriers and providers of access to or space on a server) has already been dealt with in a variety of ways under the law³² or case law of several Member States, and such discrepancies are likely to create distortions in functioning of the single market.

The Commission therefore proposes to set various limits on the liability of intermediaries providing 'conduit' services, 'caching' services³³ or 'hosting' services.

Articles 12 to 14 would appear to require Member States to adopt special liability rules for Information Society service intermediaries.

Mutatis mutandis, the general principles of liability law are fundamentally the same in all the Member States. A distinction may be made between three different types of liability: liability based on negligence (common law liability), liability without negligence or 'strict' liability³⁴ and criminal liability based on an infringement, an offence or a crime. By providing for an exemption from even partial or conditional liability, Articles 12 to 14 become difficult to reconcile with the liability laws of most Member States. However, Community law has already established precedents of this kind³⁵ and some Member States have adopted provisions exempting certain persons from liability³⁶.

The Committee on Legal Affairs and Citizens' Rights nonetheless proposes that Articles 12 and 14 be amended.

I. Codes of conduct (Article 16)

Member States and the Commission must encourage the drawing up of codes of conduct. Consumers shall be involved, via consumer associations, in the drafting and implementation of such codes of conduct.

J. Out-of-court dispute settlement (Article 17) and court actions (Article 18)

Out-of-court settlements, including by electronic means, must be permitted in the law of Member States, who must also ensure that effective court actions may be brought rapidly.

K. Cooperation between authorities (Article 19)

The Member States must ensure that the national supervisory authorities responsible for ensuring that the directive is implemented effectively cooperate with one another.

Lastly, an extremely important provision of the proposal for a directive stipulates that contact persons - to whom access may be gained electronically - shall be appointed by the Member States, so as to enable Information Society recipients to obtain information on their contractual rights and obligations, the particulars of the supervisory authorities and assistance in the event of disputes.

*

* *

19 March 1999

OPINION

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (COM(98)0586 - C4-0020/99 - 98/0325(COD)) - report by Mrs Christine Oddy.

Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr Karsten Friedrich Hoppenstedt

PROCEDURE

At its meeting of 20 January 1999 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Karsten Friedrich Hoppenstedt draftsman.

It considered the draft opinion at its meetings of 23 February 1999 and 18 March 1999.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Garosci, vice-chairman (acting chairman) and Secchi, vice-chairman; Hoppenstedt, draftsman; Areitio Toledo, Blot (for Lukas), Boogerd-Quaak (for Cox), Carrozzo, Cassidy (for Carlsson), Caudron, Fayot, Fourçans, Friedrich, Glante, Goedbloed (for Gasoliba I Böhm), Harrison, Herman, Ilaskivi, Kestelijn-Sierens, Konrad, Kuckelkorn, Langen, Larive, Lulling, Malerba (for Mather), Mann E. (for Donnelly), Metten, Mutin (for Berès)(pursuant to Rule 138.2), Peijs, Pérez Royo, Quisthoudt-Rowohl (for de Rose), Randzio-Plath, Rapkay, Read, Rübzig, Svensson, Thyssen, Torres Marques, Watson, Wibe, Wolf (for Hautala).

INTRODUCTION

With the Internet becoming a commodity, electronic commerce as a new way to conduct business has the potential to impact immensely on economic activities and the social environment. Barriers to engaging in e-commerce have progressively fallen for both buyers and sellers, thanks to a combination of regulatory reform and technological innovation. Earlier forms of e-commerce were mostly custom-made over proprietary networks, complex and expensive. Today, anyone can become a merchant and reach millions of consumers world-wide, as proven by famous examples like "Yahoo" or the on-line bookseller "Amazon". So, in some way, the Internet has done for e-commerce what Henry Ford did for the automobile - converted a luxury for the few into a relatively simple and inexpensive device for the many.

In Europe, the potential opportunities offered by e-commerce for the economy, consumers and employment are indisputable. But so is the need for a favourable environment for this ongoing evolution. In order to build confidence among businesses and consumers, a coherent legal framework

needs to be firmly established. Un-coordinated developments in each Member State would however hinder new enterprises being created in Europe.

Therefore, it appears necessary to foster the emergence of a Single Market with harmonised rules here as in other fields. Actually, there is in most cases no need to regulate when general principles apply. The multiple initiatives⁽¹⁾ of the Commission in fields related to the Information society testify to this objective to encourage the vigorous growth of e-commerce in Europe by providing a proper regulatory framework, based on the Single Market freedoms, and complemented with only those clarifications that are needed as a consequence of the innovative concepts, paradigms and trades brought about by the new practices of the "Net economy".

This is why the draftsman welcomes the present Commission proposal for a directive "on certain legal aspects of electronic commerce in the internal market", announced already in the "Framework Communication: A European Initiative in Electronic Commerce". Some legal obstacles for on-line services are already dealt with by the Directives on Distance Selling, Personal Data and Copyright. The new Directive will complete these measures and provide maximum possibilities for the free provision of on-line services without frontiers. The Commission has identified a number of areas where harmonisation is necessary, based on the key principle of "country of origin" and "mutual recognition". By endorsing this principle, the Commission aims at "ensur[ing] that the Union reaps the full benefits of electronic commerce by boosting the consumer confidence and giving operators legal certainty, without excessive red tape". The Directive covers five major areas, which also corresponds to the requests formulated by the Parliament in its resolution of 13 May 1998 on the Commission's Communication "A European Initiative in Electronic Commerce":

1. Establishment of the provider
2. Commercial Communication
3. Moment and circumstances of conclusion of a contract on-line
4. Liability
5. Enforcement and dispute resolution

⁽¹⁾ Commission Communication on a common framework for electronic signatures COM (98) 297
Commission Communication on an action plan on promoting safe use of the Internet COM (97) 582
Commission Communication on electronic commerce and indirect taxation COM (98) 374
Commission Communication on globalisation and the Information Society - The need for strengthened international cooperation COM (98) 50
Commission Communication on a framework communication: a European initiative in electronic commerce COM (97) 157
Proposal for a Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society (COM(97) 628
Proposal for a Directive concerning the legal protection of services based on, or consisting of, conditional access COM (97) 356

General remarks

This proposal is characterised by a very well balanced approach to the needs of consumers and vendors and completes the regulatory framework of the Information Society together with the Directives on Copyright and Electronic Signatures. In this context, this directive presents a big step towards the establishment of a clear and predictable legal environment in the “online world”, and with this, a major contribution to the development of the internal market and the competitiveness of European industry.

Application of the country of origin principle

This is a key principle for ensuring the smooth functioning of the Single Market given that its application is the most efficient way to remove legal borders between Member States. This principle relies on mutual confidence between national authorities and therefore represents a key element of European integration and the Community legal order. It is crucial to preserve the integrity of the Single Market and the free provision of services across borders, in accordance with article 59 of the Treaty⁽¹⁾. The application of this principle is imperative for electronic commerce given that a Web site is automatically accessible in 15 Member States and in many cases it is impossible to demand that it complies with the legislation of the 15 Member States. To do so would amount to a denial of the benefits of the Single Market to e-commerce, in particular for the consumer willing to have access to new information, services and products. The absence of an internal market approach would be a deterrent for to development of electronic commerce in Europe by creating additional trade barriers. This principle will also improve the protection of consumers: it will reduce the risk of illegal activities via the Internet in Europe by establishing effective control by national authorities at the origin of the activity (in the Member State where the company in question is established).

The specific question of the liability of intermediaries

The need to address this issue at Community level has been stressed by the European Parliament on several occasions in the past. During the course of examination of the proposal for a “Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society”, the question was discussed and the Commission recognised that the issue of liability was a horizontal one affecting a number of areas other than copyright and related rights (e.g. trademarks, misleading advertising, defamation) and took the commitment to clarify this issue at Community level in the context of the electronic commerce directive.

The EP in its above-mentioned resolution on the Commission's Communication “A European Initiative on Electronic Commerce” also acknowledged such a horizontal nature and urged the Commission to address the issue in the context of the electronic commerce directive . The same position (urgency of dealing with the issue in a horizontal manner and in the context of the electronic commerce directive) has been reiterated again in the first reading of the EP on the proposed Copyright Directive. The draftsman welcomes therefore the inclusion of the liability section in the e-commerce proposal. It stresses the importance to clarify the potential liability of the intermediary activities that have been addressed in the Commission proposal and believes that a reasonable balance between the different interests at stake has been achieved.

⁽¹⁾ For the “off-line world”, this principle is already at heart of the Single Market principles for goods and services in general, and has in particular been implemented by the Television without frontiers directive
DOC_EN\RR\387\37\EC and 97/36/EC) - 47 - PE 229.868/fin.

The timing of this proposal is of the utmost importance. It is urgent to adopt a balanced harmonised solution at European level. For the time being, the application of existing and emerging legislation to Internet intermediaries is not clear and they are being subject to contradictory judgements at Member State level.

It is important to clarify this matter as discussions on the copyright proposal are at an advanced stage. The copyright proposal does not deal with the issue of liability and it simply defines the scope of the rights granted to right holders (including the limitations to such rights). In view of the fact that some of these rights, and in particular the reproduction right, are often involved in the activities of Internet intermediaries, it is absolutely crucial to ensure exemptions and limitations to the liability of such intermediaries.

The draftsman welcomes the Commission's proposal concerning the establishment of a mere conduit exemption (art. 12) and of limitations for the acts of caching (art.13) and storage of third party information (art.14). He also welcomes the fact that the Commission proposal acknowledges the fact that intermediaries should not be requested to police the network, while nevertheless having to behave in a responsible manner so as to act expeditiously whenever they are aware of an infringement (art.15).

The recent French jurisprudence granting extremely high damages against a hosting provider for hosting a cost-free personal homepage which happened to display pictures of Estelle Halliday nude, although these images had been immediately withdrawn, and without any attempt at suing the owner of the site in question⁽¹⁾ shows the need for a harmonised and unambiguous regulation at the European level, and exemplifies the very negative consequences that may arise from a confusion between these new, specific, businesses of the Information Society and their approximate traditional counterparts, like printer or publisher.

On the basis of the legal principles established in the proposal, interested parties will be in a position to development mechanisms of notification (notice and take down mechanisms) to facilitate the rapid removal of illegal material from the networks.

⁽¹⁾ Cour d'Appel de Paris, Arrêt du 10.2.1999, 14^e Chambre, section A RO NI – 1998116424 –
DOC_EN\RR\377\377189
<http://www.tern.org> - 48 - PE 229.868/fin.

CONCLUSIONS

The Committee on Economic and Monetary Affairs and Industrial Policy calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

(Amendment 1)

Recital 4a (new)

Whereas, in order to ensure legal certainty and consumer confidence, this Directive must lay down a clear and uniform general framework to cover all the legal aspects of electronic commerce in the internal market;

(Amendment 2)

Recital 5a (new)

Whereas it is important to ensure that electronic commerce could fully benefit from the Internal Market and therefore that, as with the Television Without Frontiers Directive, a high level of Community integration should be achieved;

(Amendment 3)

Recital 5b (new)

Whereas, despite the global nature of electronic communications, coordination of national regulatory measures at European Union level is necessary in order to avoid fragmentation of the Internal Market, and for the establishment of an appropriate European regulatory framework as well as a common and strong negotiating position in international fora;

(Amendment 4)

Recital 5c (new)

Whereas, in order to allow the unhampered development of electronic commerce, the legal framework must be clear and simple, predictable and consistent with the rules applicable at international level so that it does not adversely affect the competitiveness of European industry or impede innovation in that sector;

(Amendment 5)

Recital 5d (new)

Whereas such a legal framework should ensure the proper functioning of the Internal Market in the field of electronic commerce on the same conditions and following the same principles as in conventional areas, so as to guarantee complete freedom for European enterprises to provide services, and in particular to ensure that enterprises which meet the legal requirements in their country of origin can transact business freely throughout Europe;

(Amendment 6)

Recital 11

Whereas Article 10(2) of Directive 97/7/EC and Article 12(2) of European Parliament and Council Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector address the issue of consent by receivers to certain forms of unsolicited commercial communication and are fully applicable to Information Society services;

Whereas the sending of unsolicited commercial communications by e-mail may be inconvenient for consumers and Internet service providers and may disrupt the smooth functioning of the Internet; whereas the question of consent by receivers of certain forms of unsolicited commercial communications is addressed in the Directive 97/7/EC and Directive 97/66/EC;

whereas these directives establish a minimum standard of protection against the sending of unsolicited commercial communications by e-mail and are fully applicable to Information Society services; whereas these directives require as a minimum that unsolicited commercial communications by e-mail cannot be sent if the receiver objects to such a practice; whereas the setting up of industry filtering initiatives, such as “Robinson lists”, should be encouraged and facilitated; whereas in addition it is necessary that in any event unsolicited commercial communications are clearly identifiable as such in order to improve transparency and to facilitate the functioning of such industry initiatives, whereas unsolicited commercial communications by e-mail should not result in additional costs for the recipient;

(Amendment 7)

Recital 15

Whereas the confidentiality of electronic messages is guaranteed by Article 5 of Directive 97/66/EC; whereas in accordance with that Directive Member States must prohibit any kind of interception or surveillance of such electronic messages by others than the senders and receivers;

Whereas the confidentiality of electronic messages is guaranteed by Article 5 of Directive 97/66/EC; whereas in accordance with that Directive Member States must prohibit any kind of interception or surveillance of such electronic messages by others than the senders and receivers and abstain from prohibiting or restricting the use of cryptographic methods or tools for protecting confidentiality or ensuring authenticity of the information transmitted or stored;

(Amendment 8)

Recital 16a (new)

Whereas it is important to establish the liability of intermediaries by making reference to the concrete activities that they undertake and to their knowledge of the information they transmit or store, and whereas when making such a clarification it is not desirable to make reference to national legal concepts such as “objective liability” or the distinction between “criminal” and “civil” liability;

(Amendment 9)

Recital 16b (new)

Whereas this Directive clarifies the liability of service providers transmitting and storing third party information as regards all types of infringements, so that this includes infringements of copyright and related rights, and whereas it is important to provide for such a horizontal solution as otherwise the potential liabilities of Internet Intermediaries may be established on the basis of different set of rules to the detriment of legal certainty and security;

(Amendment 10)

Recital 16c (new)

Whereas the directive on copyright in the Information Society should come into force within a time scale similar to that of this directive so as to ensure that the issue of liability of intermediaries for copyright infringements is addressed at Community level in a satisfactory manner;

(Amendment 11)

Recital 16 d (new)

Whereas the definition of recipient of a service covers all types of usage of information society services, both by persons who provide information on the Internet and by persons who seek information on the Internet for private or professional reasons;

(Amendment 12)

Recital 16 e (new)

Whereas service providers may provide automatic or human-compiled electronic information location tools as a service or as part of a service; whereas these information location tools are highly beneficial to users in the information society as a means of finding information available over networks, and of lowering the barriers of access of citizens to information available on line; whereas according to the existing liability regimes at national level service providers of location tool services should normally not be held liable with respect to information to which they refer or link if they neither control or store the information under their authority nor have knowledge of the infringing nature of the information; whereas the liability of location tool service providers should be explicitly analysed in the implementation report to be submitted by the Commission;

(Amendment 13)

Recital 16 f (new)

Whereas the Directive strikes a balance between the different interests at stake and establishes principles upon which industry agreements and standards can be based;

(Amendment 14)

Article 2(a)

For the purpose of this Directive, the following terms shall bear the following meanings:

- (a) "*Information Society services*": any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services;

For the purpose of this definition:

- "at a distance" means that the service is provided without the parties being simultaneously present;
- "by electronic means" means that a service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- "at the individual request of a recipient of services" means a service provided through the transmission of data on individual request.

For the purpose of this Directive, the following terms shall bear the following meanings:

- (a) "*Information Society services*": those services defined in article 1(2), of Directive 98/34/EC of the Council of 21 July 1998

(Amendment 15)

Article 5(2)

Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately and unequivocally.

Member States shall lay down in their legislation that, where Information Society services refer to prices and other essential terms and conditions, these are to be indicated accurately and unequivocally.

(Amendment 16)

Article 7

Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient.

a) Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must contain at the beginning of its subject line the following text string:

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so as to be immediately and unequivocally identifiable as such as soon as it is received by the recipient, whatever the language or mail software used.

b) Member States shall provide for an opt-out system for consumers to have their electronic addresses removed from mailing lists.

(Amendment 17)

Article 10(3)

3. Member States shall lay down in their legislation that, except when otherwise agreed by professional parties, the service providers shall indicate any codes of conduct to which they subscribe and information on how those codes can be consulted electronically.

3. Member States shall lay down in their legislation that, except when otherwise agreed in advance by the parties, the service providers shall indicate any codes of conduct to which they subscribe and information on how those codes can be consulted electronically.

(Amendment 18)

Article 11

1. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, in cases where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon, the following principles apply:

a) the contract is concluded when the recipient of the service:

- has received from the service provider, electronically, an acknowledgment of receipt of the recipient's acceptance, and

- has confirmed receipt of the acknowledgment of receipt;

(b) acknowledgment of receipt is deemed to be received and confirmation is deemed to have been given when the parties to whom they are addressed are able to access them;

(c) acknowledgment of receipt by the service provider and confirmation of the service recipient shall be sent as quickly as possible.

2. Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, the service provider shall make available to the recipient of the service appropriate means allowing him to identify and correct handling errors.

1. Member States shall lay down in their legislation that, save where otherwise agreed in advance by the parties and in cases where a recipient, in accepting a service provider's offer, is required to give his consent through technological means, such as clicking on an icon, the following principles apply:

a) the contract is concluded when the recipient of the service:

- has received from the service provider, electronically, an acknowledgment of receipt of the recipient's acceptance

delete

(b) acceptance of the offer and acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access them;

(c) acknowledgment of receipt by the service provider shall be sent as quickly as possible.

2. Member States shall lay down in their legislation that, save where otherwise agreed in advance by the parties, the service provider shall make available to the recipient of the service appropriate means allowing him to identify and correct handling errors before the moment at which the contract is concluded.

(Amendment 19)

Article 14(1)(b)

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, unless removing it or disabling access to it by the provider is unreasonable or disproportionate.

(Amendment 20)

Article 14(1a) (new)

Member States shall provide in their legislation that the provider shall not be liable to any person for removing or disabling access to information or terminating service as the result of acting in conformity with the conditions provided for in paragraph 1, regardless of whether the information or activity ultimately is determined to be illegal;

(Amendment 21)

Article 14(2)

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

The provisions of this article shall not apply when the recipient of the service is acting under the authority or the control of the provider.

(Amendment 22)

Article 15(2a) (new)

Member States shall not introduce additional limitations on liability other than those established by Articles 12, 13, and 14.

(Amendment 23)

Article 18(1)

1. Member States shall ensure that effective court actions can be brought against Information Society services' activities, by allowing the rapid adoption of interim measures designed to remedy any alleged infringement and to prevent any further impairment of the interests involved.
1. Member States shall ensure that effective court actions can be brought against Information Society services' activities, by considering that requests be not deemed inadmissible because they are transmitted by appropriate electronic means, and in the case of consumers, the use of the Community language of their choice and by allowing the rapid adoption of interim measures designed to remedy any alleged infringement and to prevent any further impairment of the interests involved.

(Amendment 24)

Article 18(1a) (new)

Member States shall ensure that appropriate procedures are effectively available to contend with unlawful conduct and handle disputes on the Internet, and by providing access to such procedures on electronic networks.

(Amendment 25)

Article 22(1)(b)

(b) the field covered by Directive 95/46/EC of the European Parliament and of the Council⁽¹⁾;

(b) the field covered by Directives 95/46/EC and 97/66/EC⁽¹⁾ of the European Parliament and of the Council;

(Amendment 26)

Article 24(2) (new)

This report should examine the need for adaptation in the light of technical and economic developments and emerging jurisprudence in the Member States. It should in particular analyse the need for proposals concerning the liability of providers of hyperlinks and location tool services, notification requirements and the attribution of liability following the taking down of content;

(Amendment 27)

Annex II

As referred to in Article 22(2) in which Article 3 does not apply:

- copyright, neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC as well as industrial property rights;

- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive ..././EC;

- Article 44 paragraph 2 of Directive 85/611/EEC;

As referred to in Article 22(2) in which Article 3 does not apply:

- copyright, neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC;

- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive ..././EC;

- Article 44 paragraph 2 of Directive 85/611/EEC;

¹ OJ L 281, 23.11.1995, p. 31.

² Directive 97/66/EC of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, OJ L 24, 30.1.1998, p. 1.

-Article 30 and Title IV of Directive 92/49/EEC, Title IV of Directive 92/96/EEC, Articles 7 and 8 of Directive 88/357/EEC and Article 4 of Directive 90/619/EEC;

- contractual obligations concerning consumer contracts;

- unsolicited commercial communications by electronic mail, or by an equivalent individual communication.

-Article 30 and Title IV of Directive 92/49/EEC, Title IV of Directive 92/96/EEC, Articles 7 and 8 of Directive 88/357/EEC and Article 4 of Directive 90/619/EEC;

18 March 1999

OPINION

(Rule 147)

for the Committee on Legal Affairs and Citizen's Rights

on the proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (COM(98)0586 - C4-0020/99 - 98/0325(COD) (report by Mrs Oddy)

Committee on the Environment, Public Health and Consumer Protection

Draftsman: Mr Phillip Whitehead

PROCEDURE

At its meeting of 18 February 1999 the Committee on the Environment, Public Health and Consumer Protection appointed Mr Phillip Whitehead draftsman.

It considered the draft opinion at its meeting of 16 March 1999.

At the last meeting it adopted the following conclusions unanimously.

The following took part in the vote: Collins, chairman; Bowe (for draftsman); Blokland, Cabrol, Fitzsimons, Flemming, Graenitz, Grossetête, Kestelijn-Sierens (for Eisma), Olsson, Pollack, Roth-Behrendt, Schlechter (for Bru Purón), Schnellhardt and Virgin.

1. INTRODUCTION

As highlighted by the Resolution⁽¹⁾ to the 1997 Communication⁽¹⁾ on an European Initiative in Electronic Commerce, the European Parliament fully appreciates and supports the benefits that electronic commerce can bring to consumers in terms of easy and cheap access to goods and services and the overall enhancement of consumer choice. However, the Parliament also concluded that consumers will only be willing to use electronic commerce if they are convinced that it is as safe and reliable as conducting transactions on the traditional market'. The European Commission has referred, in its recent Consumer Policy Action Plan⁽¹⁾, to the indicative fact that business-to-consumer e-commerce (at about 20% of the total transactions) is only a fragment of the amount generated in business-to-business e-commerce. Consumers simply lack the confidence to participate.

2. CONTENT OF THE COMMISSION'S PROPOSAL

At present there is legal uncertainty in a number of areas concerning how existing legislation can be applied to e-commerce. Diverging national legislations are emerging which could potentially

⁽¹⁾ OJ C 167, 1.6.1998, p. 5.

⁽²⁾ COM(97)0157 - A European Initiative on Electronic Commerce.

hamper the free circulation of on-line services. In the Communication on electronic commerce, the Commission outlined an objective to create a common consistent legal framework for the sector by the year 2000. In its proposal the Commission pinpoints five key areas that have to be addressed in order to bring about the free circulation of e-commerce, namely:

- providing a definition of the **place of establishment** in line with the Treaty's principles and the rulings of the European Court of Justice,
- providing a definition of **commercial communication** as well as laying down certain transparency provisions, e.g that a commercial communication must be easily identifiable and that its sender must be known,
- clarifying the **moment of conclusion of an electronic contract** as well as requiring Member States to update their contractual law in order not to hamper the development of e-commerce,
- clarifying the **responsibility of on-line service providers** (intermediaries) for transmitting and storing third party information as well as laying down an exemption from liability when the service provider plays a passive role (mere conduit),
- **improving implementation** on both Community and national level through the use of efficient enforcement mechanisms, e.g codes of conduct, administrative cooperation between member states and by promoting cross-boarder redress and out-of-court settlements.

3. GENERAL REMARKS

Your draftsman welcomes this Directive's recognition that achieving a high level of consumer protection and thus giving consumers the confidence they need to participate in e-commerce, is a high priority. It is with this key aim in mind that your draftsman has decided to concentrate on the following areas of the Directive: country of origin principle (Article 3), information requirements (Article 5), commercial communications (Article 6 & 7), electronic contracts (Articles 9, 10, 11), codes of conduct (Article 16) and consumer's access to justice (Articles 17 & 18).

3.1 Country of origin principle

The country of origin principle has been criticised by consumer groups. They argue that it is inappropriate and inflexible as a catch-all regulation for the horizontal nature of e-commerce, since there are major differences among Member States over the protection of consumers in commercial commerce. They argue that the Directive might run counter to higher levels of protection already in operation in some EU countries where universal application of the weakest country of origin regulations would do a disservice to the best. Your draftsman accepts that there are difficulties particularly in the field of commercial communications, where in Nordic countries advertising targeted at children is judged according to established high standard principles of 'good marketing practices'. These difficulties argue for themselves. However there are pressing reasons why the Community's internal market should set its house in order swiftly as e-commerce expands. In this context the service provider has to be tackled at source so that all the Member States, in their respective roles as countries of establishment, take joint action to protect the consumer from malpractice. Not to do so would actually entrench worst practice in the Member States lacking a strong regulatory tradition.

3.2 Information Requirements

Clear recognition of the on-line retailer's origin is essential for the consumer to know that transactions will not be under the consumers home country law and could offer services that may actually be prohibited by the home country. The proposed Directive also obliges the service provider to make other information such as an e-mail address, validation of authorisation schemes etc. clearly accessible to the consumer. This is another positive step in ensuring that the consumer is fully informed. Yet to ensure that is as complete as possible, further information needs to be disseminated. For instance, terms and conditions of a contract should be concluded together with the total price, including taxes, transport or postage costs and all additional costs. Moreover in terms of price indication, service providers need to ensure that consumers have the possibility to convert quoted prices easily into their national currencies by electronic means (such as a hyperlink). Experience has shown that conditions and terms of the contract are often placed by service providers in arcane 'help' sections or in other places that could be overlooked by the consumer. Therefore such provisions need not only to be easily accessible but identifiable.

3.3 Commercial Communications

The bombardment of consumers by junk mail is familiarly known in the electronic commerce industry as 'spamming'. Not only is it important for consumers to be able to immediately recognise an unopened e-mail as containing an unsolicited commercial communication but consumers must also have at their disposal the means to opt-out from receiving future e-mails from the same source. This should ideally take the form of a properly indicated box on screen which the consumer can click if he no longer wishes to receive such information and which the service provider is able to verify on a regular basis. Moreover consumers need to be informed about the privacy policy of the service provider as well as the consumers rights as provided for in the Directive on the protection of personal data in a clear, detailed and accessible format. The providers of unsolicited services must also realise that exploitation of the open electronic window for the consumer will inevitably lead to demands for the greater protection of an opting-in procedure.

3.4 Electronic contracts

In this new medium, the traditional paper contract will eventually become redundant. Consumers therefore need to be confident that electronic contracts are reliable but also that they may have a copy of the contract in the traditional form. This will harmonize with the fallback confirmation procedures set out in other directives in the period in which the practices of e-commerce are still becoming slowly more familiar to a new generation of consumers. Moreover the consumer must be left in no doubt as to the terms of the contract, the exact moment when that contract is concluded and the applicable law. Transparency is also important in terms of language, handling errors and that the consumer's rights to withdrawal are in no way effected.

3.5 Codes of Conduct

The flexible approach advocated by this proposed Directive means that codes of conduct will have a large role to play in the regulation of electronic commerce in responding and adapting to the particular problems of e-commerce as and when they arise. Such codes are important for consumers in terms of greater transparency and information and redress but any form of regulation needs to be effective and backed up by real sanctions. The role of consumer organisations in drafting and implementing these codes is vital in ensuring that consumer concerns are taken on board.

3.6 Consumers Access to Justice

In an environment where the speed and scope of a transaction is far faster and wider than a consumer has until now experienced, redress systems (in particular for an out-of-court settlement) need to be able to adapt. With the adoption of the country of origin principle it is even more important for consumers to have effective and easy access to redress bodies at the source of the service and that any action decided upon is immediately enforceable. The establishment of contact points in each Member State (as provided for in Article 19, paragraph 4) is welcomed as an important step in this direction but the key test will be for such contact points to co-ordinate and network their expertise and information. With this in the mind, your draftsman asks the Commission to also take note of the 'Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes'. Its goal is for consumers to be able to refer to cross-border disputes to the competent out-of-court body in the foreign country via the corresponding out-of-court body in their own country. Due to the cross border nature of the system, the responsible bodies need to ensure that they have competent linguistic skills in the consumers native language and expertise in all Member States legal systems.

4. CONCLUDING REMARKS

A flexible approach is essential in ensuring that the EU is able to adapt and react to any unforeseen developments in this field which is still very much in its infancy. The development of business-to-consumer e-commerce will without doubt be the benchmark with which to judge this Directive and whether it really does allay consumers fears about transactions on the Internet. Your draftsman would therefore stress the need for the Commission to monitor all developments closely and to report to the Parliament no later than 3 years after the adoption of this Directive as stated in Article 24.

CONCLUSIONS

The Committee on the Environment, Public Health and Consumer Protection calls on the Committee on Legal Affairs and Citizen's Rights, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

(Amendment 1)

Article 1(3)

3. This Directive complements Community law applicable to Information Society services without prejudice to the existing level of protection for public health and consumer interests, as established by Community acts, including those adopted for the functioning of

3. This Directive complements Community law applicable to Information Society services without prejudice to the existing level of protection for public health and consumer interests, as established by Community acts, including those adopted for the functioning of the internal market. This Directive is without prejudice to international private law relating to conflicts of law or jurisdiction and to the relevant international Conventions.

(Amendment 2)

Article 2(da) (new)

(da) "consumer": any natural person acting for purposes which are not directly related to his trade, business or profession;

(Amendment 3)

Article 2(e)

(e) "*commercial communications*": 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 liberal profession. The following do not as such constitute commercial communications:

(e) "*electronic commercial communications*": 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 liberal profession. The following do not as such constitute electronic commercial communications:

(Amendment 4)

Article 5.2

Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately and unequivocally.

Member States shall lay down in their legislation that prices of Information Society services are to be indicated accurately, unequivocally and must include all additional costs.

(Amendment 5)

Article 7

Member States shall lay down in their legislation that unsolicited commercial communication by e-mail must be clearly and unequivocally identifiable as such as soon as it

Member States shall lay down in their legislation that unsolicited commercial communication by e-mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient. Member States shall lay down in their legislation that providers of electronic commercial communications shall provide the means for the recipient to discontinue receiving unsolicited electronic commercial communications.

Member States shall also lay down in their legislation that Information Society service provider render accessible to their recipients information about their privacy policy according to the Directives on the protection of

(Amendment 6)

Article 9da and db (new)

da. consumer credit contracts;

db. contract of suretyship.

(Amendment 7)

Article 10.1(a)

(a) the different stages to follow to conclude

(a) the different stages to follow to conclude the contract, particularly when the final placing

(Amendment 8)

Article 10.2

Member States shall provide in their legislation that the different steps to be followed for concluding a contract electronically shall be set out in such a way as to ensure that parties can

Member States shall provide in their legislation that the different steps to be followed for concluding a contract electronically shall be set out in such a way as to ensure that parties can give their full and informed consent.

Member States shall lay down in their legislation that service providers shall indicate

(Amendment 9)

Article 11(c)

(c) acknowledgment of receipt by the service provider and confirmation of the service

(c) acknowledgment of receipt by the service provider and confirmation of the service recipient shall be sent as quickly as possible. The acknowledgment shall contain a copy of the agreed contract.

(ca) The right of withdrawal of a contract is pursuant to the provisions laid down in

(Amendment 10)

Article 11.2

Member States shall lay down in their legislation that, save where otherwise agreed by professional persons, the service provider shall make available to the recipient of the service appropriate means allowing him to

Member States shall lay down in their legislation that, save where otherwise agreed in a business-to-business transaction, the service provider shall make available to the recipient of the service appropriate means in an effective and accessible way that allow him to identify and correct handling errors before the moment at which the contract is concluded. The contract, and all information related to it, must be printable by the consumer and rendered into permanent form.

(Amendment 11)

Article 16

1. Member States and the Commission shall

(a) the drawing-up of codes of conduct at Community level, by trade and professional association or organisations designed to contribute to the proper implementation of Articles 5 to 15;

(b) the transmission of draft codes of conduct at national or Community level to the Commission so that the latter may examine

(c) the accessibility of these codes of conduct in the Community languages by electronic

(d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

1. Member States and the Commission shall

(a) the drawing-up of codes of conduct at Community level, by trade and professional association or organisations designed to contribute to the proper implementation of Articles 5 to 15;

(b) the transmission of draft codes of conduct at national or Community level to the Commission so that the latter may examine

(c) the accessibility and publicity of these codes of conduct in the Community languages by

(d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce,

(da) the codes of conduct should provide for effective sanctions to ensure compliance.

2. In so far as they may be concerned, consumer associations shall be involved in the drafting and implementation of codes of conduct drawn up according to point (a) of paragraph 1.

2. The codes of conduct according to paragraph 1 shall be drafted and implemented in cooperation with consumer associations.

(Amendment 12)

Article 18.2(a)(new)

Member States shall ensure that existing Court proceedings and measures by competent national authorities can be triggered:

- by the appropriate electronic means;

- in any of the languages of the Community.

24 March 1999

OPINION

(Rule 147)

for the Committee on Legal Affairs and Citizens' Rights

on the proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market (COM(98)0568 - C4-0020/99 - 98/0325(COD))

(report by Ms Oddy)

Committee on Culture, Youth, Education and the Media

Draftsman: Mrs Renate Heinisch

PROCEDURE

At its meeting of 26 January 1999 the Committee on Culture, Youth, Education and the Media appointed Mrs Renate Heinisch draftsman.

It considered the draft opinion at its meetings of 17 March 1999 and 24 March 1999.

At the latter meeting it adopted the following conclusions unanimously.

The following took part in the vote: Hawlicek, acting chairman; Palm, vice-chairman; Heinisch, draftsman; Günther (for Pack), Kuhne, Monfils, Morgan, Mouskouri, Perry and Tongue.

INTRODUCTION

Culture and education are developed, advanced, and preserved through literature, music, film, and the arts generally. The rapid technological development of the Information Society offers great opportunities, and will boost employment in this sector. This development, however, cannot go further without a strong legal framework to protect the services within the framework of the Information Society. This cannot be dealt with at national level, strong European legislation is needed.

The Commission proposal for a Directive on certain legal aspects of electronic commerce⁽¹⁾ intends to remove legal obstacles to the on-line provision of services and thereby allow European citizens and industry to benefit in full from the development of electronic commerce in Europe. The proposal builds upon and completes a number of other initiatives. The proposal mentions the Commission initiatives on regulatory transparency mechanism, the protection of personal data, the protection of consumers in respect of contracts negotiated at a distance, conditional access, electronic signatures, copyright and electronic money.

The proposal follows a Commission Communication on Electronic Commerce from 1997⁽¹⁾. The European Parliament adopted a resolution on it in its session of 14 May 1998⁽¹⁾. According to this resolution, electronic commerce would encompass all Information Society services, take into account fundamental rights and liberties and ensure a high level of consumer protection.

The proposal attempts to achieve a horizontal approach on the different issues it addresses. These issues are (1) the establishment of service providers; (2) commercial communications; (3) electronic contracts; (4) liability of intermediaries; (5) settlement of disputes; and (6) the role of national authorities and the principle of country of origin.

Because the proposal on electronic commerce broadly regulates all electronic commerce, including commerce in cultural works, it clearly concerns cultural activities throughout Europe. Moreover, because the proposal affects the circumstances by which European cultural works are transmitted beyond the Member States and through which foreign works are imported into the Member States, it truly concerns cultural activities on a worldwide basis. The more open the networks remain, unhindered by over-regulation, the more cultural diversity we will enjoy.

In addition to facilitating worldwide commerce in cultural goods, such as books, CDs and CD-Rom, electronic networks also provide an increasingly important platform on which those works are actually created, performed, and otherwise brought to life. Because the draft directive also affects trade in services such as webcasting (Internet radio and video enterprises), it will increasingly be significant in regulating the very act of transmitting and preserving a nation's culture.

In this context, the basic thrust of the directive to liberalise trade in cultural goods embodied in electronic format broadly promotes the interests of culture and education. Electronic networks are particularly well-suited to the transmission of musical, audio-visual, and, of course, literary works. To the extent that the provisions of the directive promote certainty and uniformity in certain key respects necessary to commerce over electronic networks, it undeniably promotes European culture.

The development of electronic commerce therefore:

- enables the general public to gain access to a wider and more carefully-targeted range of cultural, artistic and creative services,
- enables the general public in outlying regions to gain access to cultural information which had previously been difficult to obtain,
- broadens the range of free services available to end-users (financed from other sources),
- makes it easier for SMEs operating in the cultural sphere to market their products and services, inter alia in other countries,
- makes it easier for companies operating in the cultural sphere in small countries to gain access to other countries,

- in general, helps to raise public awareness of Europe's cultural diversity.

Inside the Union, people will make use of electronic commerce services as long as they are user-friendly and are of obvious practical use in their everyday lives. While the essential training in the use

⁽¹⁾ COM (97)157
DOC_EN\RR\3771371889 1.6.1998, p.203 - 73 - PE 229.868/fin.

of new technologies which people will receive from an early age (in primary and secondary school) will substantially speed up the process of adjusting to the new environment obtaining in the 'electronic age', lifelong training programmes will, with a few exceptions, become the principal means of gaining knowledge in this area, given that the 'information society' is, by definition, a cognitive society. If people learn how to use these new technologies at an early age, there will be no danger of an 'underclass', denied access to the information society, emerging in Europe.

While the draft directive on electronic commerce covers a broad range of issues, the following are of particular relevance to the concerns of the Committee on Culture, Youth, Education, and the Media.

The key provisions of this proposed directive are the endorsement of the "country of origin" rules and the principle of "mutual recognition." Much of the success of the EU single market has been due to the application of these fundamental principles. The Committee on Culture, Youth, Education and the Media welcome the confirmation of these principles in the Proposal. It gives legal certainty to service providers, consumers and right holders. In order to be established in one particular member state, and therefore solely under its rules, the service provider must "effectively pursue an economic activity using a fixed establishment for an indeterminate duration".

The objective, however, of creating a true single market for consumers is being severely tested in the current proposal by allowing EU countries to impose restrictions on electronic commerce originating from other member states for the reason of "consumer protection". (Article 22 & Annex II). It completely goes against the "country of origin" principle and some countries may be tempted to introduce protectionist trade barriers. This proposal, rather than enhancing EU on-line commerce, could even create a patchwork of contradictory rules and undermine the Single Market.

Exemptions from liability must be carefully limited. Intellectual property rights in particular are essential to the creation of cultural works and the progress of the arts. These legal disciplines create a favourable environment for the arts by granting exclusive rights to authors and artists and by ensuring that legal remedies against anyone who infringes those rights are in place. These legal structures also benefit consumers by providing incentives to the creation of a broad range of cultural goods as well as by providing guarantees of authenticity and reliability. Consumers are also concerned with protection from harmful and illegal content and a wide range of national laws are in place to promote this goal. For these reasons, the draft directive must be carefully studied to make certain that the proposed exemptions from liability (Articles 12 – 15) are not too broad and do not as a consequence prevent authors and artists from asserting their legitimate rights and do not weaken the structure of laws protecting consumers from harmful and illegal content. There has always been illegal and harmful content in the media, but the specific nature of computer networks is that they are unmoderated media that know no frontiers and can thus make states and governments attempts to control them difficult, if not impossible. The European Parliament has condemned in several resolutions the use of Internet to disseminate messages of a criminal character and in particular the production, processing, distribution and possession of child pornography through the network⁽¹⁾.

To the extent that service providers are liable under current Member State laws for the infringement of copyright and for other illegal activity, that liability should generally be retained in cases where the service provider acts knowingly or intentionally. A service provider engaged in a "mere conduit" activity in which the provider has no significant relationship to the infringing activity may, as the directive proposes, appropriately be treated in a different way. A financial benefit test is premised on

⁽¹⁾ OJ C 150, 19.5.1997, p.38
OJ C 167, 1.6.1998, p.128

the concept that it is justifiable to hold someone responsible for illegal activity where the person derives a financial benefit directly related to that illegal activity which it can control. A service provider should not be entitled to an exemption from liability where it receives *e.g.*, a special payment from a recipient of the service for the storage of information provided by that user on its network (for example a web site, BBS or chat room) and it has the right and ability to control that user's illegal activity.

_The liability provisions of the draft directive appear effectively to embody this delicate balance between the interests of rights holders and those who operate as network intermediaries. Owing to the global interdependence of the aspects addressed in this Directive, it must be ensured that the legal framework to be introduced by the EU is in harmony with the main points of the legislation of third countries which dominate the market in this field. However, it should be ensured that the proposed exemptions from liability do not jeopardise the legitimate rights of authors and other right holders. What is important is to prevent right holders and content creators from being put at a disadvantage in global competition.

The creation of a broad liability regime as proposed by the directive provides an appropriate opportunity to put in place a system of incentives for all parties concerned to contribute to the building of a crime-free digital environment. For example, the deployment of recognised and effective filtering devices and other technologies to limit the instances of illegal activity should be encouraged. This could be done through establishing incentives to develop such technologies and through establishing incentives for cooperate between service providers, consumers and others to ensure that such technical measures are effectively deployed. The implementation of a termination policy for subscribers who are repeat infringers, should also be encouraged.

Because of the unforeseeable technological developments and their consequences for Electronic Commerce it is particularly important to examine the application of the Directive after two years and subsequently at three yearly intervals. If the balance of interests between the leading players is not ensured the Commission will, after consultation with the parties involved, submit corresponding amendments to this Directive to the European Parliament, The Council and the Economic and Social Committee.

CONCLUSIONS

The Committee on Culture, Youth, Education and the Media calls on the Committee on Legal Affairs and Citizens' Rights, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

(Amendment 1)

Recital 1a (new)

Whereas freedom of expression in the new information services must be upheld in accordance with the European Convention on Human Rights, with particular reference to Article 10 thereof;

(Amendment 2)

Recital 2

Whereas the development of electronic commerce within the Information Society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and will stimulate economic growth and investment in innovation by European companies;

Whereas the development of electronic commerce within the Information Society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, will stimulate economic growth and investment in innovation by European companies, and can also enhance the competitiveness of European industry, provided that everyone has access to the Internet;

(Amendment 3)

Recital 6

Whereas, in accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; whereas, where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular consumer protection and the protection of public health; whereas according to Article 129 of the Treaty, the protection of public health is an essential component of other Community policies; whereas this Directive does not impact on the legal requirements applicable to the delivery of goods as such, nor those applicable to services which are not Information Society services;

Whereas, in accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; whereas, where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity, consumer protection and the protection of public health; whereas according to Article 129 of the Treaty, the protection of public health is an essential component of other Community policies; whereas this Directive does not impact on the legal requirements applicable to the delivery of goods as such, nor those applicable to services which are not Information Society services;

(Amendment 4)

Recital 6a (new)

Whereas, in many respects, consumers will also benefit from electronic commerce provided that they themselves acquire the information, expertise and experience required to make use of the benefits it provides;

(Amendment 5)

Recital 6b (new)

6b. Whereas there is a Community legal framework for intellectual property and a Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society is in the process of being adopted; whereas, by improving legal certainty, a harmonised legal framework for copyright and related rights of this kind encourages major investments in creative and innovative activities on the networks and stimulates the growth and competitiveness of European industry in the provision of content sector;

(Amendment 6)

Recital 6c (new)

6c. Whereas technological development has multiplied and diversified the vehicles for creation, production and operation; whereas the legal framework for Information Society services should not differ overly from the current rules on other ways of exploiting works so as not to create distortions of competition;

(Amendment 7)

Recital 14

14. Whereas, amongst others, Council Directive 93/13/EEC⁽⁴¹⁾ regarding unfair contract terms and Directive 97/7/EC, form a vital element for protecting consumers in contractual matters; whereas those directives also apply in their entirety to Information Society services; whereas that same Community *acquis* also embraces Council Directive 84/450/EEC⁽⁴²⁾ on misleading advertising, as amended by European Parliament and Council Directive 97/55/EC⁽⁴³⁾, Council Directive 87/102/EEC⁽⁴⁴⁾ on consumer credit; as last amended by European Parliament and Council Directive 98/7/EC⁽⁴⁵⁾, Council Directive 90/314/EEC⁽⁴⁶⁾ on package travel, package holidays and package tours, and European Parliament and Council Directive 98/6/EC⁽⁴⁷⁾ on the indication of prices of products offered to consumers; whereas this Directive should be without prejudice to Directive 98/43/EC, adopted within the framework of the internal market, or to other directives on the protection of public health;

⁽⁴¹⁾ OJ L 95, 21.4.1993, p. 29.

⁽⁴²⁾ OJ L 250, 19.9.1984, p. 17.

⁽⁴³⁾ OJ L 290, 23.10.1997, p. 18

⁽⁴⁴⁾ OJ L 42, 12.2.1987, p. 48.

⁽⁴⁵⁾ OJ L 101, 1.4.1998, p. 17.

⁽⁴⁶⁾ OJ L 158, 23.6.1990, p. 59.

⁽⁴⁷⁾ OJ L 80, 18.3.1998, p. 27.

14. Whereas, amongst others, Council Directive 93/13/EEC⁽⁴¹⁾ regarding unfair contract terms and Directive 97/7/EC, form a vital element for protecting consumers in contractual matters; whereas those directives also apply in their entirety to Information Society services; whereas that same Community *acquis* also embraces Council Directive 84/450/EEC⁽⁴²⁾ on misleading advertising, as amended by European Parliament and Council Directive 97/55/EC⁽⁴³⁾, Council Directive 87/102/EEC⁽⁴⁴⁾ on consumer credit; as last amended by European Parliament and Council Directive 98/7/EC⁽⁴⁵⁾, Council Directive 90/314/EEC⁽⁴⁶⁾ on package travel, package holidays and package tours, and European Parliament and Council Directive 98/6/EC⁽⁴⁷⁾ on the indication of prices of products offered to consumers; whereas this Directive should be without prejudice to Directive 98/43/EC, adopted within the framework of the internal market, or to other directives on the protection of public health, especially Council Directive 92/28/EEC^(47a) on the advertising of medicinal products for human use;

⁽⁴¹⁾ OJ L 95, 21.4.1993, p. 29.

⁽⁴²⁾ OJ L 250, 19.9.1984, p. 17.

⁽⁴³⁾ OJ L 290, 23.10.1997, p. 18

⁽⁴⁴⁾ OJ L 42, 12.2.1987, p. 48.

⁽⁴⁵⁾ OJ L 101, 1.4.1998, p. 17.

⁽⁴⁶⁾ OJ L 158, 23.6.1990, p. 59.

⁽⁴⁷⁾ OJ L 80, 18.3.1998, p. 27.

^(47a) OJ L 113, 30.4.1992, p. 13.

(Amendment 8)

Recital 16

Whereas existing and emerging disparities in Member States' legislation and case law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the Internal Market, in particular by impairing the development of cross-border services and producing distortions of competition; whereas service providers have a duty to act, under certain circumstances, with a view to preventing or ceasing illegal activities; whereas the provisions of this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; whereas such mechanisms could be developed on the basis of voluntary agreements between all parties concerned ; whereas it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures; whereas the provisions of this Directive relating to liability should not preclude the development and effective operation, by the different interested parties, of technical systems of protection and identification;

Whereas existing and emerging disparities in Member States' legislation and case law concerning civil and criminal liability of service providers acting as intermediaries prevent the smooth functioning of the Internal Market, in particular by impairing the development of cross-border services and producing distortions of competition; whereas service providers have a duty to act , with a view to preventing or stopping illegal activities; whereas the provisions of this Directive constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; whereas such mechanisms could be developed on the basis of voluntary agreements between all parties concerned, and encouraged by the Member States; whereas it is in the interest of all parties involved in the provision of Information Society services to adopt and implement such procedures; whereas the provisions of this Directive relating to liability are without prejudice to the development and effective enforcement, by the different interested parties, of technical systems of protection and identification;

(Amendment 9)

Recital 17a (new)

17a. Whereas, if the market is actually to operate by electronic means in the context of globalisation, the European Union and the major non-European areas must cooperate with a view to making laws and procedures compatible;

(Amendment 10)

Recital 17b (new)

17b. Whereas electronic commerce offers the Member States an excellent means of providing public services in the cultural, educational and linguistic fields;

(Amendment 11)

Recital 20a (new)

Whereas cooperation with third countries should be strengthened in the area of electronic commerce, in particular with applicant countries and the European Union's transatlantic partners;

(Amendment 12)

Recital 22

Whereas the adoption of this Directive will not prevent Member states from taking into account the various social, societal and cultural implications which are inherent in the advent of the Information Society; nor hinder cultural, and notably audiovisual, policy measures, which the Member States might adopt, in conformity with Community law, and taking into account their linguistic diversity, national and regional specificities and their cultural heritage; whereas, in any case, the development of the Information Society must ensure that Community citizens can have access to the cultural European heritage provided in the digital environment;

Whereas the adoption of this Directive will not prevent the Member States from taking into account the various social, societal and cultural implications which are inherent in the advent of the Information Society; whereas, in particular, it should not hinder public policy measures which Member States might adopt in conformity with Community law to achieve social, cultural and democratic goals taking into account their linguistic diversity, national and regional specificities as well as their cultural heritage, and to ensure and maintain public access to the widest possible range of Information Society services; whereas, in any case, the development of the Information Society must ensure that Community citizens can have access to the cultural European heritage provided in the digital environment;

(Amendment 13)

Recital 22a (new)

22a. Whereas the protection of copyright and neighbouring rights is essential to the development of electronic transactions; whereas, in order to take account of the specific nature of such rights, Annex II of this Directive provides for a derogation from the 'country of origin' clause;

(Amendment 14)

Article 7

Unsolicited commercial communication

Member States shall lay down in their legislation that unsolicited commercial communication by electronic mail must be clearly and unequivocally identifiable as such as soon as it is received by the recipient.

Member States shall lay down in their legislation that commercial communication by electronic mail must be solicited. Commercial communication by electronic mail shall be regarded as 'solicited' if the recipient divulges his address for this purpose or if it comes to his knowledge that it can be used in this way and if the commercial communication satisfies requirements with which the recipient has previously expressed his agreement.

(Amendment 15)

Article 12

Mere conduit

1. Where an Information Society service is provided that consists of the transmission in a communication network of information provided by the recipient of the service, or the provision of access to a communication network, Member States shall provide in their legislation that the provider of such a service shall not be liable, otherwise than under a prohibitory injunction, for the information transmitted, on condition that the provider:

(a) does not initiate the transmission;

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by the recipient of the service ; or the provision of access to a communication network, Member States shall provide in their legislation that the provider of such a service shall not be liable, other than for injunctive relief, 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.

2. 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.

(b) does not select the receiver of the transmission; and

(c) does not select or modify the information contained in the transmission.

2. 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 to the extent that this takes place for the sole purpose of carrying out the transmission in the communication network and that the information is not stored for a period longer than is reasonably necessary for the transmission and is not stored in a manner accessible to anyone other than the intended recipient.

(Amendment 16)

Article 14a (new)

The limitations on liability established by Articles 12, 13 and 14 are exhaustive. Member States cannot introduce additional limitations on liability as such measures could hinder the free flow of Information Society services in the Internal Market.

(Amendment 17)

Article 16(1)(a)

(a) the drawing-up of codes of conduct at Community level, by trade and professional associations or organisations designed to contribute to the proper implementation of Articles 5 to 15;

(a) the drawing-up of codes of conduct at Community level, by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15;

(Amendment 18)

Article 16(1)(d)

(d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

(d) the communication to the Member States and the Commission, by professional and consumer associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

(Amendment 19)

Article 16(1)

Codes of conduct

1. Member States and the Commission shall encourage:

1. Member States and the Commission shall encourage:

(a) the drawing-up of codes of conduct at Community level, by trade and professional associations or organisations designed to contribute to the proper implementation of Articles 5 to 15:

(a) the drawing-up of codes of conduct at Community level, by trade and professional associations or organisations designed to contribute to the proper implementation of Articles 5 to 15:

(b) the transmission of draft codes of conduct at national or Community level to the Commission so that the latter may examine their compatibility with Community law;

(b) the transmission of draft codes of conduct at national or Community level to the Commission so that the latter may examine their compatibility with Community law;

(c) the accessibility of these codes of conduct in the Community languages by electronic means;

(c) the accessibility of these codes of conduct in the Community languages by electronic means;

(d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

(d) the communication to the Member States and the Commission, by professional associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce.

(e) the drawing up of codes of conduct regarding the protection of minors and human dignity.

(Amendment 20)

Article 16(2)

2. In so far as they may be concerned, consumer associations shall be involved in the drafting and implementation of codes of conduct drawn up according to point (a) of paragraph 1.

Deleted

(Amendment 21)

Article 18

Court actions

1. Member States shall ensure that effective court actions can be brought against Information Society services' activities, by allowing the rapid adoption of interim measures designed to remedy any alleged infringement and to prevent any further impairment of the interests involved.

1. Member States shall ensure that effective court actions can be brought against Information Society services' activities, by allowing the rapid adoption of interim measures designed to remedy any alleged infringement and to prevent any further impairment of the interests involved.

1a. Member States shall ensure that such remedies are effectively available by adapting their procedures to illicit conduct and disputes on the Internet, and by providing access to such procedures on the appropriate electronic networks.

2. Acts in breach of the national provisions incorporating Articles 5 to 15 of this Directive which affect consumers' interests shall constitute infringements within the meaning of Article 1(2) of Directive 98/27/EC of the European Parliament and Council ⁽⁵⁴⁾.

2. Acts in breach of the national provisions incorporating Articles 5 to 15 of this Directive which affect consumers' interests shall constitute infringements within the meaning of Article 1(2) of Directive 98/27/EC of the European Parliament and Council ⁽⁵⁴⁾.

(54) OJ L 166, 11.6.1998, p.51

(54) OJ L 166, 11.6.1998, p.51

Amendment 22

Article 22, paragraph 1

Exclusions and derogations

This Directive shall not apply to:

- (a) taxation;
- (b) the field covered by Directive 95/4/EC of the

European Parliament and of the Council (55);

- (c) the activities of Information Society services

referred to in Annex I. This list of activities may be amended by the Commission in accordance with the procedure laid down by Article 23

(55) OJ L 281, 23.11.1995, p. 31

This Directive shall not apply to:

- (a) taxation;
- (b) the field covered by Directive 95/4/EC

and by the Directive 97/66/EC (55 a) of the European Parliament and of the Council (55);

- (c) the activities of Information Society services

referred to in Annex I. This list of activities may be amended by the Commission in accordance with the procedure laid down by Article 23

(55) OJ L 281, 23.11.1995, p.31

(55a) OJ L 24, 30.01.1998, p.1

Amendment 23

Article 22(1)(ca)(new)

(ca) television services in scope of Directive 89/552/EC^(55b) as last amended by Directive 97/36/EC^(55c), sound radio services, other broadcasting-like services and programme-related offers disseminated by broadcasters by electronic means.

^(55a) OJ L 298, 17.10.1989, p. 23

^(55b) OJ L 202, 30.7.1997, p. 60

Amendment 24

Article 22(3)(a)

(a) the measures shall be:

(i) necessary for one of the following reasons:

- public policy, in particular the protection of minors, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality,
- the protection of public health,
- public security,
- consumer protection;

(ii) taken against an Information Society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives,

(iii) proportionate to those objectives;

(a) the measures shall be:

(i) necessary for one of the following reasons:

- public policy, in particular the protection of minors, and human dignity, or the fight against any incitement to hatred on grounds of race, sex, religion or nationality,
- the protection of public health,
- public security,
- consumer protection;

(ii) taken against an Information Society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives,

(iii) proportionate to those objectives;

(Amendment 25)

Article 24

Re-examination

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to developments in the field of Information Society services.

Not later than three years after the adoption of this Directive, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, containing statistical results and accompanied, where necessary, by proposals for adapting it to developments in the field of Information Society services.

(Amendment 26)

ANNEX II

Derogations from Article 3

As referred to in Article 22(2) in which Article 3 does not apply :

- copyright neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC as well as industrial property rights;
- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive.../..EC;
- Article 44 paragraph 2 of Directive 85/611/EEC;
- Article 30 and Title IV of Directive 92/49/EEC, Title IV of Directive 92/96/EEC, Articles 7 and 8 of Directive 88/357/EEC and Article 4 of Directive 90/619/EEC;
- contractual obligations concerning consumer contracts;
- unsolicited commercial communications by electronic mail, or by an equivalent individual communication.

As referred to in Article 22(2) in which Article 3 does not apply :

- copyright neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC as well as industrial property rights;
- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 7(1) of Directive.../..EC;
- Article 44 paragraph 2 of Directive 85/611/EEC;
- Article 30 and Title IV of Directive 92/49/EEC, Title IV of Directive 92/96/EEC, Articles 7 and 8 of Directive 88/357/EEC and Article 4 of Directive 90/619/EEC;
- Deleted
- Deleted

1. COM(97) 0157 final - C4-0297/97

2. A4-0173/98

3. COM(98)0297-C4-0376/98, Parliament Resolution of 13 January 1999 - A4-0507/98, preceded by the Communication from the Commission "Ensuring security and trust in electronic communication - Towards a European framework for digital signatures and encryption" (COM(97)0503-C4-0648/97) (Parliament Resolution of 17 July 1998 - A4-0189/98)

4. COM(97)0353-C4-0486/97, including Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the

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- relationship between issuer and holder, attached to the communication, OJ L 208, 2.8.1997, p. 52, Parliament Resolution of 20 February 1998 - A4-0028/98.
5. COM(98)468 - C4-0647/98.
 6. COM(98)0374
 7. OJ L 217, 5.8.1998, p. 18
 8. COM(97)0623 - C4-0664/97, Parliament Resolution of 22 October 1998 - A4-0328/98.
 9. COM(96)192-C4-0365/96
 10. A4-0219/97
 11. COM(98)121, C4-0252/98
 12. A4-0503/98
 13. OJ L 144, 4.6.1997, p. 19
 14. See for example "Information Technology Annual Report", "Doing Business in the Internet Age", Business Week, 22 June 1998, pp. 121-172.
 15. Resolution 51/162 of 16 December 1996, with additional Article 5bis as adopted by UNCITRAL in June 1998.
 16. An "Electronic Commerce Bill" was announced in the United Kingdom in the Queen's Speech of 24 November 1998.
 17. See for example: "The economic and social impact of electronic commerce. Preliminary findings and research agenda", OECD, 1999 ; "Electronic Commerce and the Role of the WTO", WTO, 20 March 1998.
 18. Case 352/85, 26.4.1988, Bond van Adverteerders, ECR 1988, p. 2085, point 16
 19. And also the conflicts of jurisdiction rules set out in the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.
 20. This proposal for a Directive is not intended to activate Article 20 of this Convention, which gives European law precedence over the provisions of the Convention when those provisions solve conflicts of law on contractual matters.
 21. Among others: Case C-76/90, 25.7.1991, Säger, ECR 1991, p. I-4221; Case 52/79, 18.3.1980, Debauve, ECR 1980, p. 833; Case 205/84, 4.12.1986, Commission v. Germany, ECR 1986, p. 3755; Case C-353/89, 25.7.1991, Mediawet, ECR 1991, p. I-4069; Case C-272/94, 28.3.1996, Guiot, ECR 1996, p. I-1905; Case C-17/92, 4.5.1993, Federación de Distribuidores Cinematográficos, ECR 1993, p. I-2239; Case 352/85, 26.4.1988, Bond van Adverteerders, ECR 1988, p. 2085; Case 30/77, 27.10.1977, Bouchereau, ECR 1977, p. 1999; Case C-362/88, 7.3.1990, GB-INNO-BM, ECR 1990, p. I-667; Case C-240/95, 27.6.1996, Schmit,

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- ECR 1996, p. I-3179; Case C-470/93, 6.7.1995, Mars, ECR 1995, p. I-1923; Case C-101/94, 6.6.1996, Commission v. Italy ("SIM"), ECR p. I-2691; Case C-288/89, 25.7.1991, Stichting Collectieve Antennevoorziening Gouda, ECR 1991, p. I-4007 ; Case C-129/91, 18.5.1993, Yves Rocher, ECR 1993, p. I-2361; Joined Cases C-34/95, C-35/95 and C-36/95, 09.07.1997, De Agostini & TV-Shop, ECR 1997, p. I-3843; Case C-410/96, 1.12.1998, André Ambry, not yet published. See also the interpretative Communication from the Commission "Freedom to provide services and the interest of the general good in the second banking Directive" (SEC(97)1193 final - C4-0465/97 - OJ C 167, 1.6.1998, p. 27) and the draft interpretative Communication from the Commission "Freedom to provide services and the general good in the insurance sector" (OJ C 365 du 3.12.1997, p. 7). See also D. Martin, "Discriminations', 'Entraves' et 'Raisons impérieuses' dans le Traité CE: trois concepts en quête d'identité", cahiers de droit européen, 1998 No 3-4, pp. 261 to 318 and 1998, No 5-6, pp. 561 to 637 ; and Rosa Greaves, "Advertising Restrictions and the Free Movement of Goods and Services, European Law Review, vol. 23, No 4, August 1998, pp. 305-319
22. Case 52/79, 18.3.1980, Debaue, ECR 1980, p. 833; Case 205/84, 4.12.1986, Commission v. Germany, ECR 1986, p. 3755; Case C-353/89, 25.7.1991, Mediawet, ECR 1991, p. I-4069.
23. Case C-410/96, 1.12.1998, André Ambry, not yet published.
24. The questions of minimal harmonisation and public policy, protection of public health and public security are also taken into account in Directive 89/552/CEE concerning the pursuit of television broadcasting activities ("Television without Frontiers") (respectively in Articles 3(§ 1) and 22). Pursuant to this Directive the Member State of origin has sole responsibility for such matters, without the destination Member State being allowed to take restrictive measures against an operator from another Member State which would prevent the retransmission, as such, in its territory of television broadcasts coming from that other Member State. See Joined Cases C-34/95, C-35/95 and C-36/95, 9.7.1997, De Agostini et TV-Shop, ECR 1997, p. I-3843.
25. In a Resolution of 3 November 1998 "on the aspects of the Information Society concerning the consumers", the Council invites the Commission to take the necessary action, pursuant to European law and the international obligations of the Community, to allow consumers to benefit from pertinent rights set out in the Brussels and Rome Conventions, including those regarding the application of the State of residence legislation, and to gain easy access to national courts.
26. SEC(97)1193 final - C4-0465/97 - OJ C 167, 1.6.1998, p. 27.
27. A4-0152/98, paragraph 10 of the resolution (OJ C 167, 1.6.1998, p. 27).
28. For example: Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 307, 12.11.1988, p. 54) ; Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29), Directive 97/7/EC of the Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19), Directive 98/6/CE of the European Parliament and the Council of 16 February 1998 on consumer protection in the indication of

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- the prices of products offered to consumers (OJ L 190, 4.7.1998, p. 86), Directive 98/27/CE of the European Parliament and the Council of 19 May 1998 on injunctions for the protection of consumers' interest, and Directive/CE of the Parliament and the Council of1999 on the sale of consumer goods and associated guarantees.
29. See on this point the proposal for a directive on the harmonisation of certain aspects of copyright in the Information Society (COM(97)0628 - C4-0079/98) and Mr R. Barzanti's report (A4-0026/99).
 30. OJ L 144, 4.6.1997, p. 19.
 31. COM(98)0297-C4-0376/98, Parliament resolution of 13 January 1999 - A4-0507/98, preceded by the Communication from the Commission "Ensuring security and trust in electronic communication - Towards a European framework for digital signatures and encryption" (COM(97)0503-C4-0648/97) (Parliament resolution of 17 July 1998 - A4-0189/98).
 32. See for example Article 5 of the German Telecommunications Act ("Telekommunikationsgesetz").
 33. i.e., the automatic and temporary storage on an intermediate server in order to increase the transmission speed of data.
 34. An example of strict liability of this kind is set out in Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, p. 29.
 35. See Council Directive 91/308/EC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, in particular Article 9, OJ L 166, 28.6.1991, p. 77.
 36. In Germany, Article 5(3) of the "Telekommunikationsgesetz"; in the United Kingdom, Defamation Act 1996, Chapter 31, Section 1.