

DIRECTIVE 2000/31/EC ON ELECTRONIC COMMERCE

screening with Croatia and Turkey

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Brussels

OBJECTIVES

- to enhance development of e-commerce
- removes barriers to the cross-border provision of information society services within the Internal Market
- provides legal security to providers of information society services
- flexible, technically neutral and balanced legal framework

UNDERLYING PRINCIPLES

- builds on the existing body of EU law
- complements the EU law by addressing specific legal questions
- deals only with what is strictly necessary for the Internal Market
- establishes a light and flexible framework coordinating the adjustment of MS legislation
- promotes the role of interested parties and self-regulation

SCOPE OF APPLICATION

“Information Society services (ISS)”

Article 2 (a): reference to Transparency Directive 98/48:

“any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”

EXEMPTIONS FROM THE SCOPE

The directive shall not apply to (Article 1 paragraph 5):

- the field of taxation,
- issues covered by data protection directives,
- cartel law,
- activities of notaries,
- representation of a client before the courts,
- gambling activities which involve wagering a stake with money value in games of chance

KEY PROVISION – COUNTRY OF ORIGIN PRINCIPLE

- Art. 3 paragraph 1: country of origin principle; control of the service provider in the MS where it is established
- Art. 3 paragraph 2: prevents MS from restricting the free movement of services provided from another MS
- Art. 2 (h) : „coordinated field“ requirements laid down in MS' legal systems applicable to ISS providers or ISS

DEROGATIONS FROM ARTICLE 3 - COP (Annex)

- copyright, neighbouring rights, industrial property rights;
- emission of electronic money by specific institutions;
- certain insurance directives;
- freedom of the parties to choose the law applicable to their contract;
- contractual obligations concerning consumer contracts;
- formal validity of contracts creating or transferring rights in real estate;
- permissibility of “spamming”

DEROGATIONS FROM COP (on a case by case basis- Article 3.4 ECD)

Specifically defined reasons:

- public policy including protection of minors
- protection of public health
- public security
- protection of consumers, including investors

if measures are proportionate and fulfil certain procedural rules

ESTABLISHMENT

- **principle excluding prior authorisation** (Article 4 ECD) – taking up and pursuit of the activity of ISS provider may not be made subject to prior authorisation or any other requirement having equivalent effect
- **information requirements** (Article 5 ECD) – among others: name, address, registration number, VAT number, price

COMMERCIAL COMMUNICATIONS

- **transparency** requirements (Article 6)
- **spam** + opt-out register (Article 7)
(now dealt under Art. 13 of Directive on privacy and electronic communications -12.07.2002)
- lifting of bans on the use of **commercial communications by the regulated professions** in the context of ISS subject to rules of professional ethics (codes of conduct) (Article 8)

ON-LINE CONTRACTS

- “Enabling approach” to ensure that contracts can be concluded on-line (Article 9)

Exemptions:

real estate, public authorities (registries), notaries, suretyship, family law, law of succession

- Information requirements concerning on-line contracting (Article 10)
- Confirmation obligation; technical means to correct input errors (Article 11)

LIABILITY

Chapter 4: **horizontal** rules for intermediaries

(ISPs transmitting or storing third party information)

- **mere conduit**: exemption of liability under certain conditions (Art. 12)
- **caching** (Art. 13) + **hosting** (Art. 14): limitation of liability under certain conditions
- Art. 15: no general obligation to monitor

IMPLEMENTATION

- codes of conduct (Article 16)
- out of court dispute settlement (Article 17)
- administrative cooperation (contact points under Article 19)
- Commission assistance during the implementation process

Thank you!

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