

**E U R O P E A N   E C O N O M I C   A R E A**

M/20/R/027-PE 295.688

30 November 2000

Brussels

**JOINT PARLIAMENTARY COMMITTEE**

**REPORT**  
**on**  
**E-Commerce and EEA legislation**

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## **I INTRODUCTION**

1. The legislation adopted by the European Union on electronic commerce has established common rules to address the problems raised by this difficult and fast-growing sector of the "new economy". As such its main aim was to avoid divergent national solutions which might have hampered free movement of goods and services within the single market.

2. EFTA countries that are also members of the European Economic Area (Iceland, Liechtenstein and Norway), being technologically advanced societies, faced essentially the same problems as EU countries regarding electronic commerce. They had, in fact, no legislation of their own on the matter. They have adopted some EU legislation within the framework of the EEA.

## **II EUROPEAN UNION LEGISLATION ON ELECTRONIC COMMERCE**

### **A. The 1997 communication of the Commission**

3. The EU legislative effort on electronic commerce is broadly inspired by the European Commission's communication of 18 April 1997: "A European Initiative in Electronic commerce". This document first of all tries to determine the scope of the matter. It defines electronic commerce in general as trading of goods and services through the electronic processing and transmission of data. This encompasses diverse activities such as delivery of digital content, funds transfer, public procurement, as well as provision of more standard goods and services. These activities, in fact, are divided into two categories:

- indirect electronic commerce consisting in the electronic ordering of tangible goods that must still be physically delivered;
- direct electronic commerce in which the entire process, i.e. not only ordering but also payment and delivery, is on-line.

4. Foreseeing possibilities of wider development of electronic commerce, thanks to full telecommunication liberalisation in the Union (1 January 1998) and world wide reduction of barriers to trade of information technology products, the communication is concerned that Europe should take full advantage of these possibilities. To achieve this, two things seem necessary.

#### *A1. To establish a consistent regulatory framework at European level*

5. To ensure full working of the single market in this matter, it is necessary to prevent Members States from adopting divergent legislations and to set up a common set of rules, except when free movement can be achieved by mutual recognition of national rules and appropriate self-regulatory codes.

6. The common framework should:

- be based on all single market freedoms;
- take business realities into account;
- meet general interest objectives: privacy, consumer protection, wide accessibility to the networks.

7. More precisely, the legislation must:

- provide for legal recognition of electronic contacts;
- determine the national law applicable in case of cross-border disputes;
- ensure data security and privacy through the use of encryption;
- establish appropriate protection for intellectual property rights and conditional access services;
- ensure a clear and neutral tax environment.

A2. *To promote a favourable business environment*

8. This would consist in:

- creating awareness and confidence among consumers by encouraging the use of quality labels and codes of conduct and by increasing the transparency of transactions;
- creating awareness among businesses and encouraging them to make use of electronic commerce themselves;
- encouraging public administrations to take a more pro-active line, particularly in the areas of customs and taxes, employment services and public procurement, in order to introduce electronic commerce in business-public administration relationships;
- putting electronic commerce at the service of the citizen, in particular by teaching new skills, to avoid the risk of creating a split society of users and non-users.

9. It was on these bases that the Commission worked out the proposals that were submitted to the EU legislative authorities during the years since 1997. Most of these proposals have now been adopted.

## **B. Legislation already adopted**

B1. *Legislation indirectly connected with electronic commerce, although independent from the 1997 Communication*

10. **Directive 93/13/EEC of 5 April 1993** on unfair terms in consumer contracts. Its main provision is that unfair terms, i.e. those establishing a significant imbalance to the consumer's detriment between the rights and obligations of the contracting parties, shall not bind consumers.

11. **Directive 95/46/EC of 24 October 1995** on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It aims at protecting the rights and freedoms of persons by laying down guidelines determining when the processing of personal data is lawful.

12. **Directive 97/66/EC of 15 December 1997** concerning the processing of personal data and the protection of privacy in the telecommunications sector. It clarifies and supplements the provisions of the 95/46 Directive in providing for an adequate level of protection of personal data and privacy throughout the Community in publicly available telecommunications services. Providers of these services must take measures to safeguard security. Member States must adopt regulations ensuring the confidentiality of telecommunications. In particular, traffic data relating to subscribers and users, which is processed to establish calls and stored by the provider of networks or services, must be erased or made anonymous upon termination of the call. Subscribers are also to have the right to receive non-itemised bills.

13. **Directive 97/7/EC of 17 February 1997** on the protection of consumers in respect of distance contracts. It obliges the supplier to provide the consumer, prior to the conclusion of any distance contract, with clear and comprehensive information on basic aspects of the transaction and on his rights. It gives the consumer a right to cancel the contract without penalty within at least seven working days (right of withdrawal).

14. **Directive 97/5/EC of 27 January 1997** on cross-border credit transfers. Aiming at ensuring that funds can be transferred from one part of the Community to another rapidly, reliably and inexpensively, it establishes the obligations of the financial institutions towards both organisations and beneficiaries of the transfers, in terms of information, deadlines and compensations.

15. **Directive 99/44/EC of 25 May 1999** on certain aspects of the sale of consumer goods and associated guarantees. It provides for consumer protection in cross-border shopping by laying down a set of minimum common rules. In particular, consumers are given rights when the product does not meet the requirements of the contract (these rights include repair, replacement, reduction of the price or rescinding of the contract).

*B2. Legislation directly dealing with electronic commerce and inspired by the 1997 Communication*

16. **Directive 98/84/EC of 20 November 1998** on the legal protection of services based on, or consisting of, conditional access. It aims at protecting services supplied on a conditional access such as pay-TV and pay-radio, video-on-demand, electronic publishing and a wide range of on-line services, offered to the public on a subscription or usage-related basis. It requires Member States to prohibit all commercial activities providing illicit devices from access to these services and to establish appropriate sanctions.

17. **Directive 99/93/EC of 13 December 1999** on a Community framework for electronic signatures. In electronic relations, particularly of a commercial type, authentication of the transmitted content is needed. The directive provides for EU-wide recognition of electronic signatures. For this, it determines the requirements for signature certificates and forbids discrimination against electronic signatures as opposed to hand-written ones.

18. **Directive 2000/31/EC of 8 June 2000** on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. It aims at establishing the basic common framework considered essential by the 1997 Communication and particularly needed in view of divergent regulatory approaches in Member States. It harmonises definitions, imposes a number of obligations on Member States (in particular they must ensure that basic information on the services and providers is available to the customers and competent authorities) and provides for the full legal validity of electronic contracts (with a few exceptions).

### **III INTEGRATION OF THE LEGISLATION WITHIN THE EEA FRAMEWORK**

#### **A. Current status**

19. The EEA agreement provides for the incorporation of Community legislation in the field of the Single Market. The bulk of EU legislation related to electronic commerce has been integrated into the EEA system although the process has been rather slow in some cases and is not fully completed.

20. The six **directives** listed above as **indirectly connected with electronic commerce** have all been incorporated in the EEA agreement by decision of the Joint Committee. This happened sometimes with some delay as shown by the length of time between the adoption of a text by the EU and the Joint Committee's decision. In some cases, transposition into national law is not completed yet for one or two of the three EFTA members.

<b>Directive</b>	<b>Date of decision by EU</b>	<b>Date of decision by EEA Joint Committee</b>	<b>Transposition</b>
93/13 (unfair terms in consumer contracts)	5.4.93	21.3.94	1.1.1995
95/46 (protection of individuals' personal data)	24.10.95	25.6.99	1.7.2000
97/66 (protection of privacy in telecommunications)	15.12.97	25.6.99	1.7.2000
97/7 (protection of consumers in distance contracts)	17.2.97	6.3.98	1.7.2000 (N and FL, letter of formal notice <sup>1</sup> )
97/5 (cross-border credit transfers)	27.1.97	30.1.98	1.2.2000
99/44 (consumer guarantees on goods)	25.5.99	28.1.00	Entry into force 1.9.2000 but transposition not yet applicable

21. The process is naturally less advanced for the three **directives dealing directly with electronic commerce**, which are much more recent:

<b>Directive</b>	<b>Date of EU decision</b>	<b>Date of EEA Joint Committee decision</b>	<b>Transposition</b>
98/84 (protection of conditional access services)	20.11.98	not taken yet (technical delay)	_____
99/93 (electronic signatures)	13.12.99	2.8.00	Notification awaited, transposition not yet applicable.

<sup>1</sup> Iceland – full implementation, Norway – partial implementation, FL – non-implementation

## **B. Draft EU legislation to be adopted in the near future**

22. In its efforts to deal with the new and sometimes difficult problems raised by electronic commerce, the EU still has substantial legislation to adopt that will have to be incorporated in due course in the EEA system. The main ones are:

### **23. Proposed Directive on distance marketing of financial services**

[COM(1999)385]. This aims to supplement Directive 97/7 on distance contracts in general, a Directive that excluded financial services. It gives the consumer a number of rights: the right to reflect (within a certain limit of time); the right to withdraw; prior consent for the use of automated distance communication systems. [After the European Parliament's first reading of a revised version, the proposal is now before the Council].

### **24. Proposed Directive on the harmonisation of certain aspects of copyright**

**and related rights in the information society** [COM(97)628]. It seeks to adopt legislation on copyright to technological developments, in particular the information society. (A common position was presented 28.9.2000 and is now awaiting the second reading in the EP).

## **C. Taxation**

25. Another element of EU concern about electronic commerce is **taxation**. It has not led to appropriate legislation yet. But Union institutions have started to think about it, notably on the basis of European Commission's communications. The general communication of 1997 ("A European initiative in electronic commerce") already stressed the need for a tax environment allowing electronic commerce to develop and called, therefore, for tax neutrality, i.e. the same pressures on electronic commerce as on "traditional commerce". In a specific communication ("on electronic commerce and indirect taxation", 17 June 1998), the Commission outlined a number of principles: no new tax; submission to VAT of electronic transmissions and intangible property supplied via the Internet; submission to national taxes of services used in the Union (whereas services supplied by Union operators to outside customers are not subject to taxes); need for verification mechanisms to guarantee effective taxation.

26. Although taxation is outside the scope of the EEA Agreement, the proposed directive on VAT on certain services supplied by electronic means to ensure compatibility of the EU VAT system with e-commerce, in particular to provide a level playing field for European content providers, could be seen to distort the good functioning of the homogeneous, single market in the whole EEA if it is not adopted by the EEA EFTA States. It is an overall aim of the EEA Agreement to create one single market across the 18 member countries and to avoid distortions.

## **D. e-Europe initiative**

27. The Commission launched the eEurope initiative in December 1999 with the adoption of the Communication *eEurope – An Information Society* for all. The initiative aims at accelerating the up-take of digital technologies across Europe and ensuring that

all Europeans have the necessary skills to use them. The Lisbon and Feira European Councils endorsed the initiative and an eEurope Action Plan was adopted. It set out for EU Member States and the Commission to bind themselves to the following main objectives: a cheaper, faster and more secure Internet, investing in people's skills and access, and stimulating the use of the Internet. All key elements should be in place by 2002. The thrust of the plan is to accelerate legislation, roll out infrastructure and services across Europe and open co-ordination between EU Member States – including benchmarking from the Commission. The above-mentioned directives should be seen in the light of the eEurope initiative.

28. eEurope is meant to ensure that Europe benefits fully from the economic and social advantages which the Internet and related digital technologies can bring. The uptake of these technologies for economic growth and employment were recognised by the European Heads of State and Government. As such, the eEurope action plans underpins the good functioning and development of the Single market.

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**RESOLUTION****On e-Commerce and EEA legislation**

The Joint Parliamentary Committee of the European Economic Area:

1. Stresses the importance of removing artificial barriers for e-commerce caused by differences in taxation systems between the EU and the EEA EFTA States;
  2. Points out that for the free movement of goods and services, it is essential to concentrate on creating a neutral tax environment between the EU and the EEA EFTA States so that open questions relating for example to VAT in e-commerce will be dealt in a coordinated way;
  3. Emphasizes the importance of a close cooperation between the EU and the EEA EFTA States in matters concerning the protection of personal data and privacy and protection of consumers in issues relating to e-commerce;
  4. Stresses the importance of cooperation between the EEA EFTA States and the EU in the battle against cyber crime and e-piracy as well as in solving the problems relating to certain aspects of copyright and related rights in the information society;
  5. Is pleased that most of the EU legislation related to electronic commerce has been integrated into the EEA system and hopes that remaining open questions i.e. directives on distance marketing of financial services and copyright can be incorporated as swiftly as possible;
  6. Is of the opinion that intellectual property rights should be protected in a balanced way without creating distortions of the internal EEA market, and asks the Joint Committee to consider this question and to report back to the JPC;
  7. Welcomes the e-Europe initiative and the Action Plan and recommends that the EEA EFTA States follow the initiative and take relevant actions;
  8. Emphasized the importance of the new regulation on local loop unbundling for the development of e-commerce and encourages the EEA States to open the competition in local fixed telephone networks in order to bring the internet prices down as quickly as possible;
  9. Urges the EEA EFTA States to develop their legislation in coordination with the EU in issues concerning the safeguarding the e-commerce transactions, namely the electronic signatures.
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