

COMMISSION

Proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market

(1999/C 30/04)

(Text with EEA relevance)

COM(1998) 586 final — 98/0325(COD)

(Submitted by the Commission on 23 December 1998)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

- (1) Whereas the European Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress; whereas, in accordance with Article 7a of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; whereas the development of Information Society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples;
- (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;

- (3) Whereas Information Society services span a wide range of economic activities which can, in particular, consist of selling goods online; whereas they are not solely restricted to services giving rise to online contracting but also, in so far as they represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering online information; whereas Information Society services also include online activities via telephony and telefax;

- (4) Whereas the development of Information Society services within the Community is restricted by a number of legal obstacles to the proper functioning of the internal market which hamper or make less attractive the exercise of the freedom of establishment and the freedom to provide services; whereas these obstacles arise from divergences in legislation and from the legal uncertainty as to which national rules apply to such services; whereas, in the absence of coordination and adjustment of legislation in the relevant areas, obstacles might be justified in the light of the case-law of the Court of Justice of the European Communities; whereas legal uncertainty exists with regard to the extent to which Member States may control services originating from another Member State;

- (5) Whereas, in the light of Community objectives, of Articles 52 and 59 of the Treaty and of secondary Community law, these obstacles should be eliminated by coordinating certain national laws and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market; whereas, by dealing only with certain specific matters which give rise to problems for the internal market, this Directive is

fully consistent with the need to respect the principle of subsidiarity as set out in Article 3b of the Treaty;

- (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;
- (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;
- (8) Whereas Information Society services should be supervised at the source of the activity, in order to ensure an effective protection of public interest objectives; whereas, to that end, it is necessary to ensure that the competent authority provides such protection not only for the citizens of its own country but for all Community citizens; whereas, moreover, in order to effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services, such Information Society services should only be subject to the law of the Member State in which the service provider is established; whereas, in order to improve mutual trust between Member States, it is essential to state clearly this responsibility on the part of the Member State whence the services originate;
- (9) Whereas the place at which a service provider is established should be determined in accordance with the case-law of the Court of Justice; whereas the place of establishment of a company providing services via an internet website is not the place at which the technology supporting its website is located or the place at which its website is accessible; whereas, where the same supplier has a number of establishments the competent Member State will be the one in which the supplier has the centre of his activities; whereas in cases where it is particularly difficult to assess in which Member States the supplier is established, cooperative procedures should be established between the Member States and the consultative committee should be capable of being convened in urgent cases to examine such difficulties;
- (10) Whereas commercial communications are essential for the financing of Information Society services and for developing a wide variety of new, charge-free services; whereas in the interests of consumer protection and fair trading, commercial communications, including discounts, promotional offers and promotional competitions, must meet a number of transparency requirements and that these requirements are without prejudice to Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts⁽¹⁾; whereas this Directive should not affect existing directives on commercial communications, in particular Directive 98/43/EC of the European Parliament and of the Council⁽²⁾ on tobacco advertising;
- (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⁽³⁾ address the issue of consent by receivers to certain forms of unsolicited commercial communication and are fully applicable to Information Society services;
- (12) Whereas, in order to remove barriers to the development of cross-border services within the Community which professional practitioners might offer on the internet, it is necessary that compliance be guaranteed at Community level with professional rules aiming, in particular, to protect consumers or public health; whereas codes of conduct at Community level would be the best means of determining the rules on professional ethics applicable to commercial communication; whereas the drawing-up or, where appropriate, the adaptation of such rules should in the first place be encouraged by, rather than laid down in, this Directive; whereas the regulated professional activities governed by this Directive should be understood in the light of the definition set out in Article 1(d) of

⁽¹⁾ OJ L 144, 4.6.1997, p. 19.

⁽²⁾ OJ L 213, 30.7.1998, p. 9.

⁽³⁾ OJ L 24, 30.1.1998, p. 1.

Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration ⁽¹⁾;

(13) Whereas each Member State should amend its legislation containing requirements, and in particular requirements as to form, which are likely to curb the use of contracts by electronic means, subject to any Community measure in the field of taxation that could be adopted on electronic invoicing; whereas the examination of the legislation requiring such adjustment should be systematic and should cover all the necessary stages and acts of the contractual process, including the filing of the contract; whereas the result of this amendment should be to make contracts concluded electronically genuinely and effectively workable in law and in practice; whereas the legal effect of electronic signatures is dealt with by European Parliament and Council Directive 98/.../EC [on a common framework for electronic signatures] ⁽²⁾; whereas it is necessary to clarify at what point in time a contract entered into electronically is considered to be actually concluded; whereas the service recipient's agreement to enter into a contract may take the form of an online payment; whereas the acknowledgement of receipt by a service provider may take the form of the online provision of the service paid for;

(14) Whereas, amongst others, Council Directive 93/13/EEC ⁽³⁾ regarding unfair contract terms and Directive 97/7/EC, from 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 ⁽⁴⁾ on misleading advertising, as amended by European Parliament and Council Directive 97/55/EC ⁽⁵⁾, Council Directive 87/102/EEC ⁽⁶⁾ on consumer credit; as last amended by European Parliament and Council Directive 98/7/EC ⁽⁷⁾, Council Directive 90/314/EEC ⁽⁸⁾ on package travel, package holi-

days and package tours, and European Parliament and Council Directive 98/6/EC ⁽⁹⁾ 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;

(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;

(16) Whereas, both 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;

(17) Whereas each Member State should be required, where necessary, to amend any legislation which is liable to hamper the use of schemes for the out-of-court settlement of disputes through electronic channels; whereas the result of this amendment must be to make the functioning of such schemes genuinely and effectively possible in law and in practice, even across borders; whereas the bodies responsible for such out-of-court settlement of consumer disputes must comply with certain essential principles, as set out in Com-

⁽¹⁾ OJ L 19, 24.1.1989, p. 16.

⁽²⁾ COM(1998) 297 final, 13.5.1998.

⁽³⁾ OJ L 95, 21.4.1993, p. 29.

⁽⁴⁾ OJ L 250, 19.9.1984, p. 17.

⁽⁵⁾ OJ L 290, 23.10.1997, p. 18.

⁽⁶⁾ OJ L 42, 12.2.1987, p. 48.

⁽⁷⁾ OJ L 101, 1.4.1998, p. 17.

⁽⁸⁾ OJ L 158, 23.6.1998, p. 59.

⁽⁹⁾ OJ L 80, 18.3.1998, p. 27.

mission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for such settlement of consumer disputes ⁽¹⁾.

- (18) Whereas it is necessary to exclude certain activities from the scope of this Directive, on the grounds that the freedom to provide services in these fields cannot, at this stage, be guaranteed under the Treaty or existing secondary legislation; whereas excluding these activities does not preclude any instruments which might prove necessary for the proper functioning of the internal market; whereas taxation, particularly value-added tax imposed on a large number of the services covered by this Directive, must be excluded from the scope of this Directive; whereas, in this respect, the Commission also intends to extend the application of the principle of taxation at source to the provision of services within the internal market, thus giving its approach a general coherence;
- (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;
- (20) Whereas this Directive should not apply to services supplied by service providers established in a third country; whereas, in view of the global dimension of electronic commerce, it is, however, appropriate to ensure that the Community rules are consistent with international rules; whereas this Directive is without prejudice to the results of discussions within international organisations (WTO, OECD, UNCITRAL) on legal issues; whereas this Directive should also be without prejudice to the discussions within the Global Business Dialogue which were launched on the basis of the Commission Communication of 4 February 1998 on 'Globalisation and the Information Society — The need for strengthened international coordination' ⁽²⁾;
- (21) Whereas the Member States need to ensure, that, when Community acts are transposed into national legislation, Community law is duly applied with the same effectiveness and thoroughness as national law;
- (22) 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 nor hinder cultural, and notably audiovisual, policy measures, which the Member States might adopt, in conformity with Community law, 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;
- (23) Whereas the Council, in its Resolution of 3 November 1998 on the consumer aspects of the Information Society, stressed that the protection of consumers deserved special attention in this field; whereas the Commission will examine the degree to which existing consumer protection rules provide insufficient protection in the context of the Information Society and will identify, where necessary, the deficiencies of this legislation and those issues which could require additional measures; whereas, if need be, the Commission should make specific additional proposals to resolve such deficiencies that will thereby have been identified;
- (24) Whereas this Directive should be without prejudice to Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerized reservation systems ⁽³⁾, as amended by Regulation (EEC) No 3089/93 ⁽⁴⁾;
- (25) Whereas Commission Regulation (EC) No 2027/97 ⁽⁵⁾ and the Warsaw Convention of 12 October 1929 place various obligations upon air carriers regarding the provision of information to their passengers, including information about the liability of the carrier; whereas this Directive is without prejudice to the requirements of those instruments.

⁽¹⁾ OJ L 115, 17.4.1998, p. 31.

⁽²⁾ COM(1998) 50 final.

⁽³⁾ OJ L 220, 29.7.1989, p. 1.

⁽⁴⁾ OJ L 278, 11.11.1993, p. 1.

⁽⁵⁾ OJ L 285, 17.10.1997, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Objective and scope

1. This Directive seeks to ensure the proper functioning of the internal market, particularly the free movement of Information Society services between the Member States.

2. This Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, national provisions on Information Society services relating to the internal market arrangements, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.

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.

Article 2

Definitions

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.

(b) **'service provider'**: any natural or legal person providing an Information Society service;

(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;

(d) **'recipient of the service'**: any natural or legal person who, for professional ends or otherwise, uses an Information Society service, in particular for the purpose of seeking information or making it accessible;

(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:

— information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an e-mail address,

— communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, in particular without financial consideration.

(f) **'coordinated field'**: the requirements applicable to Information Society service providers and Information Society services.

Article 3

Internal market

1. Each Member State shall ensure that the Information Society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within this Directive's coordinated field.

2. Member States may not, for reasons falling within this Directive's coordinated field, restrict the freedom to provide Information Society services from another Member State.

3. Paragraph 1 shall cover the provisions set out in Articles 9, 10 and 11 only in so far as the law of the Member State applies by virtue of its rules of international private law.

CHAPTER II

PRINCIPLES

SECTION 1

ESTABLISHMENT AND INFORMATION REQUIREMENTS

Article 4

Principle excluding prior authorisation

1. Member States shall lay down in their legislation that access to the activity of Information Society service providers may not be made subject to prior authorisation or any other requirement the effect of which is to make such access dependent on a decision, measure or particular act by an authority.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at Information Society services, or which are covered by Directive 97/13/EC of the European Parliament and of the Council⁽¹⁾.

Article 5

General information to be provided

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:

- (a) the name of the service provider;
- (b) the address at which the service provider is established;
- (c) the particulars of the service provider, including his e-mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;

(d) where the service provider is registered in a trade register, the trade register in which the service provider is entered and his registration number in that register;

(e) where the activity is subject to an authorisation scheme, the activities covered by the authorisation granted to the service provider and the particulars of the authority providing such authorisation;

(f) as concerns the regulated professions:

— any professional body or similar institution with which the service provider is registered;

— the professional title granted in the Member State of establishment, the applicable professional rules in the Member State of establishment and the Member States in which the Information Society services are regularly provided;

(g) where the service provider undertakes an activity that is subject to VAT, the VAT number under which he is registered with his fiscal administration.

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

SECTION 2

COMMERCIAL COMMUNICATIONS

Article 6

Information to be provided

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 behalf the commercial communication is made shall be clearly identifiable;
- (c) promotional offers, such as discounts, premium 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;

⁽¹⁾ OJ L 117, 7.5.1997, p. 15.

- (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.

Article 7

Unsolicited commercial communication

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.

Article 8

Regulated professions

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.

2. Member States and the Commission shall encourage professional associations and bodies to establish codes of conduct at Community level in order to determine the types of information that can be given for the purpose of providing the Information Society service in conformity with the rules referred to in paragraph 1.

3. Where necessary, in order to ensure the proper functioning of the internal market, and in the light of the internal market, and in the light of the codes of conduct applicable at Community level, the Commission may stipulate, in accordance with the procedure laid down in Article 23, the information referred to in paragraph 2.

SECTION 3

ELECTRONIC CONTRACTS

Article 9

Treatment of electronic contracts

1. Member States shall ensure that their legislation allows contracts to be concluded electronically. Member States shall in particular ensure that the legal requirements applicable to the contractual process neither prevent the effective use of electronic contracts nor result in such contracts being deprived of legal effect and validity on account of their having been made electronically.

2. Member States may lay down that paragraph 1 shall not apply to the following contracts:

- (a) contracts requiring the involvement of a notary;
- (b) contracts which, in order to be valid, are required to be registred with a public authority;
- (c) contracts governed by family law;
- (d) contracts governed by the law of succession.

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

4. Member States shall submit to the Commission a complete list of the categories of contracts covered by the derogations provided for in paragraph 2.

Article 10

Information to be provided

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.

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 give their full and informed consent.

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.

*Article 11***Moment at which the contract is concluded**

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 acknowledgement of receipt of the recipient's acceptance, and
 - has confirmed receipt of the acknowledgement of receipt;
- (b) acknowledgement of receipt is deemed to be received and confirmation is deemed to have given when the parties to whom they are addressed are able to access them;
- (c) acknowledgement 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.

SECTION 4

LIABILITY OF INTERMEDIARIES*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;
- (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.

*Article 13***Caching**

Where an Information Society service is provided that consists in the transmission in a communication network 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 automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- (a) the provider does not modify the information;
- (b) the provider complies with conditions on access to the information;
- (c) the provider complies with rules regarding the updating of the information, specified in a manner consistent with industrial standards;
- (d) the provider does not interfere with the technology, consistent with industrial standards, used to obtain data on the use of the information; and
- (e) the provider acts expeditiously to remove or to bar access to the information upon obtaining actual knowledge of one of the following:
- the information at the initial source of the transmission has been removed from the network;
 - access to it has been barred;
 - a competent authority has ordered such removal or barring.

*Article 14***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.

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

*Article 15***No obligation to monitor**

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.

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, investigation, detection and prosecution of criminal offences.

CHAPTER III

IMPLEMENTATION*Article 16***Codes of conduct**

1. Member States and the Commission shall encourage:

- (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 their compatibility with Community law;
- (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.

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.

*Article 17***Out-of-court dispute settlement**

1. Member States shall ensure that, in the event of disagreement between an Information Society service provider and its recipient, their legislation allows the effective use of out-of-court schemes for dispute settlement, including appropriate electronic means.

2. Member States shall ensure that bodies responsible for the out-of-court settlement of consumer disputes apply, whilst abiding by Community law, the principles of independence and transparency, of adversarial techniques, procedural efficacy, legality of the decision, and freedom of the parties and of representation.

3. Member States shall encourage bodies responsible for out-of-court dispute settlement to inform the Commission of the decisions they take regarding Information Society services and to transmit any other information on the practices, usages or customs relating to electronic commerce.

*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.

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 (¹).

Article 19

Cooperation between authorities

1. Member States shall ensure that their competent authorities have the appropriate powers of supervision and investigation necessary to implement this Directive effectively and that service providers supply those authorities with the requisite information.

2. Member States shall ensure that their national authorities cooperate with the authorities of other Member States; they shall, to that end, appoint a contact person, whose coordinates they shall communicate to the other Member States and to the Commission.

3. Member States shall, as quickly as possible, provide the assistance and information requested by authorities of other Member States or by the Commission, including by appropriate electronic means.

4. Member States shall establish, within their administration, contact points which shall be accessible electronically and from which recipients and service providers may:

- (a) obtain information on their contractual rights and obligations;
- (b) obtain the particulars of authorities, associations or organisations from which recipients of services may obtain information about their rights or with whom they may file complaints; and
- (c) receive assistance in the event of disputes.

5. Member States shall ensure that their competent authorities inform the Commission of any administrative

or judicial decisions taken in their territory regarding disputes relating to Information Society services and practices, usages and customs relating to electronic commerce.

6. The rules governing cooperation between national authorities as referred to in paragraphs 2 to 5 shall be laid down by the Commission in accordance with the procedure set out in Article 23.

7. Member States may ask the Commission to convene urgently the committee referred to in Article 23 in order to examine difficulties over the application of Article 3(1).

Article 20

Electronic media

The Commission may take measures, in accordance with the procedure provided for in Article 23, to ensure the proper functioning of electronic media between Member States, as referred to in Article 17(1) and 19(3) and (4).

Article 21

Sanctions

Member States shall determine the sanctions applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are enforced. The sanctions they provide for shall be effective, proportionate and dissuasive. Member States shall notify these measures to the Commission no later than the date specified in Article 25 and shall inform it of all subsequent amendments to those measures without delay.

CHAPTER IV

EXCLUSIONS FROM SCOPE AND DEROGATIONS

Article 22

Exclusions and derogations

1. This Directive shall not apply to:

- (a) taxation;

⁽¹⁾ OJ L 166, 11.6.1998, p. 51.

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

(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.

2. Article 3 shall not apply to the fields referred to in Annex II.

3. By way of derogation from Article 3(2), and without prejudice to court action, the competent authorities of Member States may take such measures restricting the freedom to provide an Information Society service as are consistent with Community law and with the following provisions:

(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;

(b) prior to taking the measures in question, the Member State has:

— asked the Member State referred to in Article 3(1) to take measures and the latter did not take such measures, or the latter were inadequate;

— notified the Commission and the Member State in which the service provider is established of its intention to take such measures;

(c) Member States may lay down in their legislation that, in the case of urgency, the conditions stipulated in point (b) do not apply. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State in which the service provider is established, indicating the reasons for which the Member State considers that there is urgency;

(d) the Commission may decide on the compatibility of the measures with Community law. Where it adopts a negative decision, the Member States shall refrain from taking any proposed measures or shall be required to urgently put an end to the measures in question.

CHAPTER V

ADVISORY COMMITTEE AND FINAL PROVISIONS

Article 23

Committee

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

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.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

*Article 25***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within one year of its entry into force. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 26***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 27***Addressees**

This Directive is addressed to the Member States.

*ANNEX I***ACTIVITIES EXCLUDED FROM THE SCOPE OF APPLICATION OF THE DIRECTIVE**

Information Society services' activities, as referred to in Article 22(1), which are not covered by this Directive:

- the activities of notaries;
 - the representation of a client and defence of his interests before the courts;
 - gambling activities, excluding those carried out for commercial communication purposes.
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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 ⁽¹⁾ and Directive 96/6/EC ⁽²⁾ 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 ⁽³⁾;
- Article 44 paragraph 2 of Directive 85/611/EEC ⁽⁴⁾;
- Article 30 and Title IV of Directive 92/49/EEC ⁽⁵⁾, Title IV of Directive 92/96/EEC ⁽⁶⁾, Articles 7 and 8 of Directive 88/357/EEC ⁽⁷⁾ and Article 4 of Directive 90/619/EEC ⁽⁸⁾;
- contractual obligations concerning consumer contracts;
- unsolicited commercial communications by e-mail, or by an equivalent individual communication.

⁽¹⁾ Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products; OJ L 24, 27.1.1987, p. 36.

⁽²⁾ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases; OJ L 77, 27.3.1996, p. 20.

⁽³⁾ European Parliament and Council Directive [on the taking up and the prudential supervision of the business of electronic money institutions]

⁽⁴⁾ Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertaking for collective investment in transferable securities (UCITS), OJ L 375, 31.12.1985, p. 3, as last amended by Directive 95/26/EC of the European Parliament and of the Council (OJ L 168, 18.7.1995, p. 7).

⁽⁵⁾ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) OJ L 228, 11.8.1992, p. 1, as amended by Directive 95/26/EC.

⁽⁶⁾ Council Directive 92/56/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life insurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive), OJ L 360, 9.12.1992, p. 1, as amended by Directive 95/26/EC.

⁽⁷⁾ Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC, OJ L 172, 4.7.1988, p. 1, as last amended by Directive 92/49/EEC.

⁽⁸⁾ Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, OJ L 330, 29.11.1990, p. 50, as amended by Directive 92/96/EEC.