

## EUROPEAN UNION

### **The Impact on E-Commerce of proposed Changes to EU Conventions**

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On 14 July 1999, the European Commission issued a proposal for a Council Regulation which, if adopted, will replace the 1968 Brussels Convention on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters. The Commission is also known to be considering the revision of the 1980 Rome Convention on the Law Applicable to Contractual Obligations.

The proposed amendments could have a serious impact on the regulation of electronic commerce and will therefore affect all those doing business or planning to do business on the Internet. In response to the concerns expressed by industry, the Commission will be organizing a public hearing in the autumn to discuss the whole question of the legal implications of electronic commerce.

### **The Proposed Directive on Electronic Commerce**

On 23 December 1998, the Commission published a proposal for a European Parliament and council Directive on certain legal aspects of electronic commerce in the internal market. Article 3 of the proposal provides that all services provided electronically at the request of the recipient by a service provider established in a Member State must comply with the national requirements applicable in the Member States of establishment of the service provider. Member States may not generally restrict such services being provided from another Member State, as long as they are lawful in the Member State of establishment of the service provider. The Article therefore establishes the principles of control in the country of origin and mutual recognition.

However, these principles will not necessarily apply to contracts completed by electronic means. Article 22(2) of the Proposal specifically excludes contractual obligations concerning consumer contracts from the country of origin principle and Article 3(3) states that the country of origin principle will only apply to any contract insofar as the national laws of the Member state of establishment would, in any event, be applicable under the 1968 Brussels Convention and the 1980 Rome Convention.

### **The Brussels Convention**

The 1968 Brussels Convention establishes rules for the enforcement of judgments given in the European Community. It was initially concluded between the six original member States of the Community but countries which have subsequently joined the EC have also been required to accede to the Convention, so that it now applies to all 15 Member States.

Under the Convention, proceedings for breach of contract can generally be brought in the place of performance of the obligation in question. An exception is made for specific

categories of consumer contracts, in respect of which consumers may choose to bring proceeding either in the courts of the country in which they are domiciled or in the courts where the supplier is domiciled. The proposed Electronic Commerce Directive would not change these basic rules.

### **The New Regulation**

The new Regulation which it is now proposed will replace the Brussels Convention provides that where a supplier directs its activities to the consumer's state of domicile or to several states including that state, this will be regarded as a consumer contract falling within the exception referred to above. If the Regulation was adopted in this form, it would mean that, whenever a contract was concluded over the Internet using a website, a consumer would be able to sue in his or her country of residence.

### **The Impact on Electronic Commerce**

Companies engaging in electronic commerce with consumers would therefore have to contend with potential litigation in every Member State, or would have to specify that their products or services are not intended for consumers domiciled in certain Member States.

The Commission services responsible for the proposal have defended this situation on the basis that a distinction must be made between rules concerning the jurisdiction in which parties to a contract may sue—which are regulated by the Brussels Convention—and the regulation of companies providing information society services which under the Proposed Directive on Electronic Commerce will be regulated on the basis of control in the country of origin. This distinction may be theoretically correct but in practice the proposed new Regulation would obstruct the use of electronic commerce and would make a nonsense of the Single Market.

### **Industry's Response**

Industry associations protesting against the proposed amendment of the Convention have highlighted the fact that the Commission has introduced draft legislation which will effect numerous European companies without holding public consultation. This can be regarded as a violation of the Amsterdam Protocol, which imposes on the Commission a duty to hold far-reaching consultations before adopting such proposals. The Commission has reacted to this pressure by deciding to organize a hearing in the autumn of 1999, aimed at clarifying the legal implications of electronic commerce, both in general and in the context of the revision of the Brussels Convention. Regulators, legislators, consumers, industry and other interested parties will be invited to participate.

### **The Rome Convention**

The 1980 Rome Convention lays down rules for deciding which law is applicable to contracts with an international element where there is a conflict of laws. The European

Commission is known to be considering a draft text to replace this Convention also. The precise nature of the changes is unknown at the moment but there are fears that “country of effect” rules could be imposed in some areas, thus giving rise to further obstacle to electronic commerce.