

Amended Proposal For a Coherent Legal Framework For E-Commerce in the Single Market

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An amended proposal for a Directive to establish a coherent legal framework for electronic commerce within the Single Market was put forward on 1 September 1999 by the European Commission. The amended proposal takes into account the favorable Opinion from the European Parliament, adopted on the 6 May 1999, on the original proposal that fully supported the Commission's Single Market approach. A number of clarifications have been introduced in the amended proposal concerning *inter alia* definitions of Information Society services and of consumers, the link between the electronic commerce proposal and existing consumer protection and data protection Directives, the treatment of unsolicited commercial communications via electronic mail and determination of the moment when an on-line contract is concluded. However, in order to preserve the careful balance of interests featured in the original proposal, the Commission has maintained the proposed rules limiting the liability of on-line service providers who act as intermediaries.

The proposed Directive aims at establishing a coherent legal framework for the development of electronic commerce within the Single Market by ensuring that information society services benefit from the Single Market principles of free movement of services and freedom of establishment. This would allow operators authorized in one Member state to provide services throughout the European Union (EU). The proposed Directive establishes specific harmonized rules only in a number of areas where this appears necessary to ensure the functioning of the Single Market and the protection of public interest objectives such as consumer protection. These areas include the definition of where operators are established, commercial communications, electronic contracts, liability of intermediaries and enforcement of rights. In order areas, the Directive builds on existing EU instruments which already provide for harmonization at Community level or on the mutual recognition of national laws.

The European Parliament's Opinion supported the Commission's initiative and in particular its Single Market-based approach. The Parliament also suggested a number of amendments, largely of a technical nature, generally aiming at clarifying the Commission's original proposal. The Commission's modified proposal reflects a large number of these amendments. The main substantive changes concern:

- the definition of an "Information Society service" (article 2 (a)) — a direct reference has been introduced to the definition established in the Directive on prior notification of draft technical standards and regulations (Directive 98/34);
- the definition of a "consumer" (article 2 (f)) — a specific definition has been introduced in line with that used in a number of existing Directives;
- the link between this proposal and existing Directives on consumer protection and protection of personal data (articles 5,6,7 and 22.1) — this has been further clarified;

- unsolicited commercial communications by e-mail (article 7) — Member States would be obliged to ensure that opt-out registers were made available to consumers and consulted regularly by service providers undertaking such unsolicited commercial communications. This opens up a pragmatic and workable solution to the problem of unsolicited commercial communications without prejudice to existing Directives;
- on-line contracts (article 11 (1)) — the criteria which would establish the moment of conclusion of certain on-line contracts have been clarified and simplified.

The amended proposal for a Directive will be forwarded to the European Parliament and the EU's Council of Ministers for adoption under the co-decision procedure.