

Directive over-view

The Electronic Commerce Directive was first adopted back in 2000 and is now under review. The directive was intended to enable and thereby increase cross-border commerce. It established harmonised rules on issues such as the minimum transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary services providers. However, the Commission is concerned that take-up of cross-border provision of services and purchasing by consumers has been slow and held a public consultation that ended in **15 October 2010**. We now await a Communication sometime this year.

What the EPC says:

The EPC's view has always been that this legal framework creates the conditions to allow businesses wishing to trade outside their home country to thrive and compete fairly whilst offering consumers adequate protection.

EPC Concerns:

In the consultation, online press is specifically identified by the Commission as an area for discussion. Concerns about any changes to existing legislation are more or less identical to concerns expressed during the original consultation for the e-commerce directive back in 2000:

- **Country of origin:** it is imperative that cross border businesses have only the laws of the country of establishment **and not 27 different** legal frameworks to comply with;
- **Online advertising** must be compliant with the country of establishment and Member States will not be able to interfere with or block access to foreign sites on the grounds that their own advertising regulation is different. Advertising is a major and sometimes only source of income for e-commerce services, including the media;
- Established **rules on liability of intermediaries (hosting, caching, mere conduit)** must be maintained, but not extended (e.g. to location tools and content aggregators) in the digital environment.
- Online publishers and online service providers must not be liable for illegal material accessed via their sites (via subscribers for example) when they are acting as mere conduits.
- **Privacy** has been raised as an issue for investigation as sometimes fear of lack of respect for data privacy is cited as a barrier to cross-border trading.

The EPC believes that the existing directive is still fit for purpose. Any review must therefore consider **freedom of the press** and **freedom to advertise** as a means of funding a **free and pluralistic media in the EU**.

What happens next?

The Commission is due to publish a Communication on next steps in 2011 based on "lessons learned" from the consultation.

Useful background:

http://ec.europa.eu/internal_market/consultation/s/2010/e-commerce_en.htm

<http://www.epceurope.org/issues/issues-archive.shtml#ecommerce>

Study on the Economic Impact of the Electronic Commerce Directive (2007):

http://ec.europa.eu/internal_market/e-commerce/docs/study/ecd/%20final%20report_070907.pdf

Study on liability of internet intermediaries (2007):

http://ec.europa.eu/internal_market/e-commerce/docs/study/liability/final_report_en.pdf

The two studies are background material for the Commission but can also be useful for stakeholders in relation to the public consultation.

talk to use

For further information, contact:

Angela Mills Wade
EPC Executive Director

Tel: +44 1865 310 732;
angela.mills@wade.uk.net

or Heidi Lambert

Tel: +44 1245 476 265;
heidilambert@hcltd.demon.co.uk

Alternatively visit
www.epceurope.org