

Electronic commerce in the internal market: legal aspects, protection of consumer

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The main aim of this Communication is to describe the mechanisms introduced in the specific area of financial services by Article 3(4) to (6) of the Electronic Commerce Directive. Concerning financial services, the communication is justified by the fact that, since the adoption of the Electronic Commerce Directive and, in particular, during the negotiations on the Directive on the distance selling of financial services, a number of Member States have expressed misgivings regarding full application of the "internal market" clause in the area of financial services. They have taken the view that, pending closer convergence in certain areas (such as the rules of conduct for investment services or non-harmonised funds), they should still be able to impose some of their rules on input services provided electronically despite the existence of the Electronic Commerce Directive. A transitional period of this kind, which would have been tantamount to an albeit temporary derogation from the Directive, was rejected by the Commission and by a majority of the Member States. The Commission had stressed at the time that Article 3(4), (5) and (6) of the Electronic Commerce Directive provides sufficient safeguards for Member States wishing to take measures on a case-by-case basis against a service provider that is prejudicing one of the objectives of general interest specified in Article 3(4)(a)(i) of the Directive or presenting a serious risk of prejudice to such an objective. This communication sets out to provide assistance to Member States who may wish to avail themselves of these mechanisms. In no way does it constitute an interpretative document. Nor does it systematically cover all the aspects of Article 3(4) to (6) of the Directive, addressing only those aspects where the Commission has noted that there is a need for some explanation and assistance. It should be noted that this communication does not impose any legal obligation on Member States nor does it prejudge the position that the Commission might decide to take on the same matters if developments, including Court rulings, were to lead it to revise some of the views expressed in this document. The communication calls on the Commission and the Member States to continue to identify the areas in which closer convergence of national rules might be necessary. In this connection, it will examine the harmonisation needs in certain sectors where it transpired that national rules still diverged, creating potential problems for the free movement of services and consumer protection (e.g. in the case of certain non-harmonised investment funds).