

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

1998/0325(COD) - 18/11/1998 - Legislative proposal

**PURPOSE** : Proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market. **CONTENT** : This proposed Directive seeks to remove the legal obstacles which remain to the on-line provision of services thereby allowing citizens and industry to benefit in full from the development of electronic commerce in Europe. It follows on from the Commission's 1997 Communication which had, as one of its stated aims, the creation of a coherent legal framework by the year 2000. It builds upon and complements a number of other initiatives that, together, will eliminate the remaining obstacles, while ensuring that general interest objectives are met, particularly the achievement of a high level of consumer protection. It will reinforce the position of the Community in international discussions on the legal aspects of electronic commerce which are currently under way in a number of fora. The proposal provides a light, enabling and flexible approach. Particular attention has been paid both to the special nature of the Internet and to the role of interested parties and of self-regulation. It meets the principles of subsidiarity and proportionality by covering only those issues where a Community initiative is indispensable. At present, there is uncertainty in a number of areas about how existing legislation can be applied to the on-line provision of services. There is divergent national legislation already in place or under discussion. In addition, diverging jurisprudence is emerging. The proposal seeks to remove the obstacles that exist for service providers by tackling five inter-related issues: 1) Establishment of Information Society service providers - the proposal provides a definition of the place of establishment in line with the principles of the Treaty and the jurisprudence of the Court of Justice. The proposal prohibits special authorisation schemes for Information Society services and sets out information requirements that the provider must fulfil in order to ensure transparency of its activities; 2) Commercial communications (advertising, direct marketing, etc.) - these are an essential part of most electronic commerce services. It is therefore important to clarify and facilitate their use. The proposal thus defines what constitutes a commercial communication and fair trading. In order to allow consumers to react more readily to harmful intrusion, the proposal requires that commercial communications by e-mail are clearly identifiable. In addition, for regulated professions (such as lawyers and accountants), the proposal lays down the general principle that commercial communications are permitted provided they respect certain rules of professional ethics which should be reflected in codes of conduct to be drawn up by professional associations; 3) On-line conclusion of contracts - Electronic commerce will not fully develop if concluding on-line contracts is hampered by certain form and other requirements which are not adapted to the on-line environment. To this end, Member States shall be obliged to adjust their national legislation. In addition, the proposal removes legal insecurity by clarifying in certain cases the moment of conclusion of the contract, whilst fully respecting contractual freedom; 4) Liability of intermediaries - To facilitate the flow of electronic commerce activities, there is a recognised need to clarify the responsibility of on-line providers for transmitting and storing third party information (i.e. when service providers act as 'intermediaries'). To eliminate the existing legal uncertainty and to bring coherence to the different approaches that are emerging at Member State level, the proposal establishes a 'mere conduit' exemption and limits service providers' liability for other 'intermediary' activities. A careful balance is sought between the different interests involved in order to stimulate co-operation between different parties thereby reducing the risk of illegal activity on-line; 5) Implementation - Rather than inventing new rules, the Commission has sought to ensure that existing EC and national legislation is effectively enforced. By strengthening the enforcement mechanisms, the development of a genuine Internal Market - based on mutual confidence between Member States - is stimulated. Such strengthening is achieved by encouraging the development of codes of conduct at Community level, by stimulating administrative co-operation between Member States, and by facilitating the setting up of effective cross-border alternative dispute resolution systems. For similar reasons, the proposal also requires Member States to provide for fast, efficient legal redress appropriate to the on-line environment.

