

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	1998/0325(COD) Procedure completed
Electronic commerce in the internal market: legal aspects, protection of consumer Amended by <a href="#">2020/0361(COD)</a>	
Subject 3.45.05 Business policy, e-commerce, after-sales service, commercial distribution 4.60.06 Consumers' economic and legal interests	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs and Internal Market		23/09/1999
		PPE-DE <a href="#">PALACIO VALLELERSUNDI Ana</a>	
	Former committee responsible		08/12/1998
	<b>JURI</b> Legal Affairs, Citizens' Rights		
		PSE <a href="#">ODDY Christine Margaret</a>	
Former committee for opinion			20/01/1999
<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		PPE <a href="#">HOPPENSTEDT Karsten Friedrich</a>	
<b>ENVI</b> Environment, Public Health and Consumer Protection		PSE <a href="#">WHITEHEAD Phillip</a>	18/02/1999
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2245</a>	28/02/2000
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2233</a>	07/12/1999
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2229</a>	02/12/1999
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2193</a>	21/06/1999
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2149</a>	07/12/1998
	Telecommunications	<a href="#">2140</a>	27/11/1998
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2112</a>	06/07/1998
<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2103</a>	05/06/1998	

## Key events

30/03/1998	Debate in Council	<a href="#">2079</a>	
05/06/1998	Debate in Council	<a href="#">2103</a>	
06/07/1998	Resolution/conclusions adopted by Council		
18/11/1998	Legislative proposal published	COM(1998)0586	Summary
27/11/1998	Debate in Council	<a href="#">2140</a>	
07/12/1998	Debate in Council	<a href="#">2149</a>	
15/01/1999	Committee referral announced in Parliament, 1st reading		
22/04/1999	Vote in committee, 1st reading		Summary
22/04/1999	Committee report tabled for plenary, 1st reading	<a href="#">A4-0248/1999</a>	
05/05/1999	Debate in Parliament		
06/05/1999	Decision by Parliament, 1st reading	T4-0450/1999	Summary
21/06/1999	Debate in Council	<a href="#">2193</a>	
17/08/1999	Modified legislative proposal published	COM(1999)0427	Summary
02/12/1999	Debate in Council	<a href="#">2229</a>	
28/02/2000	Council position published	<a href="#">14263/1/1999</a>	Summary
02/03/2000	Committee referral announced in Parliament, 2nd reading		
11/04/2000	Vote in committee, 2nd reading		Summary
11/04/2000	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0106/2000</a>	
03/05/2000	Debate in Parliament		
04/05/2000	Decision by Parliament, 2nd reading	<a href="#">T5-0187/2000</a>	Summary
08/06/2000	Final act signed		
08/06/2000	End of procedure in Parliament		
17/07/2000	Final act published in Official Journal		

## Technical information

Procedure reference	1998/0325(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by <a href="#">2020/0361(COD)</a>

Legal basis	EC Treaty (after Amsterdam) EC 095; EC Treaty (after Amsterdam) EC 055; Rules of Procedure EP 050; EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/12575

### Documentation gateway

Legislative proposal	<a href="#">COM(1998)0586</a> <a href="#">OJ C 030 05.02.1999, p. 0004</a>	18/11/1998	EC	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0248/1999</a> <a href="#">OJ C 279 01.10.1999, p. 0008</a>	22/04/1999	EP	
Economic and Social Committee: opinion, report	<a href="#">CES0457/1999</a> <a href="#">OJ C 169 16.06.1999, p. 0036</a>	29/04/1999	ESC	
Text adopted by Parliament, 1st reading/single reading	T4-0450/1999 <a href="#">OJ C 279 01.10.1999, p. 0257-0403</a>	06/05/1999	EP	Summary
Modified legislative proposal	COM(1999)0427 <a href="#">OJ C 248 29.08.2000, p. 0069</a>	17/08/1999	EC	Summary
Council position	<a href="#">14263/1/1999</a> <a href="#">OJ C 128 08.05.2000, p. 0032</a>	28/02/2000	CSL	Summary
Commission communication on Council's position	SEC(2000)0386	29/02/2000	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0106/2000</a> <a href="#">OJ C 041 07.02.2001, p. 0005</a>	11/04/2000	EP	
Text adopted by Parliament, 2nd reading	<a href="#">T5-0187/2000</a> <a href="#">OJ C 041 07.02.2001, p. 0025-0038</a>	04/05/2000	EP	Summary
Follow-up document	<a href="#">COM(2003)0259</a>	14/05/2003	EC	Summary
Follow-up document	<a href="#">COM(2003)0702</a>	21/11/2003	EC	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
---------------------	-------------------------

### Final act

<a href="#">Directive 2000/31</a> <a href="#">OJ L 178 17.07.2000, p. 0001</a> Summary
---

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

**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. ?

---

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

The Committee supported moves by the Commission to establish a clear and comprehensive legal framework for the increasingly important field of electronic commerce and other information services. The Committee unanimously adopted the proposal subject to a number of amendments aimed at further clarifying the legal responsibilities of service providers, and further improve consumer protection. The Committee fully supported the main principle behind the Commission proposal, namely that information society services should, subject to a number of exceptions, comply with the legislation in the country where the service provider is established. As far as consumer issues are concerned, the Committee voted to strengthen the text as regards the practice of sending unsolicited e-mail, so called spamming. While the Commission only proposed that junk mail must be easily identified as such, the Committee went one step further and introduced an obligation for Member States to ensure that consumers can avoid receiving junk mail altogether by having themselves entered in an opt-out register. The Committee agreed in principle with the Commission's proposal to limit the liability of on-line service providers for transmitting and storing third party information, but added an obligation for these companies to keep all information necessary for tracing and identifying providers of illegal content, as long as this does not violate EU rules on data protection. It also voted to extend the list of companies subject to limitations on liability to include companies providing Internet access. The Committee agreed with the Commission that the directive should not apply at all to certain fields, such as taxation, but added that it should not apply to television and radio services either. The rapporteur for the proposal is Christine ODDY (PES, UK). ?

---

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

In adopting the report drafted by Ms. Christine ODDY (PES, UK), the European Parliament approved, with some amendments, the Commission's proposal. In particular, the Parliament calls on the Member States to : - provide in their legislation that unsolicited commercial communications by electronic mail has to be identifiable as such; - ensure that consumers cannot receive junk e-mails by subscribing to an 'opt out' register which would need to be monitored regularly; - introduce in their legislation the obligation for providers to inform their customers on data protection in accordance with Directives 95/46/EC and 97/66/EC. The Parliament also emphasises that information society service providers should be in a position to provide the necessary information to pursue and identify suppliers of illegal content. The Directive should also establish the legal conditions to enable complaints to be lodged, both at law and otherwise, across borders and by electronic means. It also insists on the strengthening of co-operation with third countries in the field of electronic commerce, in particular with the European Union's accession candidates and its trans-Atlantic candidates. ?

---

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

The Commission's amended proposal accepts most of the amendments proposed by the European Parliament and notably those which relate to : - stressing that the development of e-commerce can enhance the competitiveness of European industry; - noting that the legal framework will foster the development of Information Society services to the benefit of European citizens and operators; - stressing that the balanced approach of the Directive and the fact that it establishes principles upon which industry agreements can be based; - emphasising that e-commerce is an opportunity to provide public services in the cultural, educational and linguistic fields. As for amendments concerning the objective and principles underlying the proposal, the amendments aim to evoke that the free movement Information Society services can be a reflection of the freedom of expression enshrined in the European Convention for the Protection of Human Rights and Fundamental freedoms. The amendments also underline the necessity to guarantee effective access to redress mechanisms including the availability of appropriate court actions and the need to examine the possibility to provide access to judicial procedures by appropriate electronic means. The Commission has again brought about the amendments concerning: - adding a reference to the protection of minors and human dignity to the list of general interest objectives; - ensuring the confidentiality of electronic messages Member States should abstain from prohibiting or restricting the use of cryptography methods or similar tools; - the need to ensure a clear and legal framework consistent with the rules applicable at international level; - the need to co-operate at global level to make the legal frameworks of the EU and third countries compatible; - the need to reinforce co-operation in particular with EU applicant countries and with the Union's transatlantic partners. Concerning the problem of unsolicited commercial communications by e-mail. The Commission did not accept the amendment aimed at deleting the obligation to have unsolicited commercial communications identified as soon as they are received by the recipient. On the other hand, it upholds the

amendment which establishes the obligation for Member States to ensure that opt-out registers are made available to consumers and are monitored regularly by service providers.?

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

---

Although the Council adopted the approach and aims proposed by the Commission and supported by the European Parliament, it considers it necessary, when drawing up its common position, to make a number of changes to both the substance and the wording of the proposed Directive. The principle changes made to the Commission proposal relate to: - the relationship of the draft Directive with International Private Law: the Council has considered it necessary to clarify the relationship of the draft Directive's provisions on home country control with provisions of international private law, in particular the existing Brussels and Rome Conventions; - ensuring the efficacy of criminal investigations: the Council was concerned that the draft Directive should not result in it becoming more difficult to investigate criminal offences occurring in the context of electronic commerce, and with this in mind a number of modifications of the Commission's proposal have been made. Changes to Article 3(4) (Article 22(3) of the Commission's proposal) permit Member States to derogate in particular cases from the Directive's requirements concerning the country of origin principle and the free movement of Information Society services, where this necessary for public policy, in particular the prevention, investigation, detection or prosecution of criminal offences. Article 15(2) now makes it clear that Member States may require service providers to inform the competent public authorities of alleged illegal activities or in some cases require service providers to communicate details of their clients; - modifications regarding electronic contracts: the Council considered that it was not appropriate to harmonize national law regarding the moment at which the contract is concluded. For this reason Article 11 has been renamed and now limits itself to certain requirements regarding the placing and receipt of order on-line. Furthermore, the Council considers it necessary to add exemptions to this provision for contracts transferring rights in real estate and for certain contracts of involving suretyship and collateral securities; - the deletion of comitology: the Council considers that the powers that the Commission was granted went beyond the implementation framework and were therefore incompatible with Article 202 of the Treaty.?

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

---

The proposed Directive aims at ensuring that Information Society services can benefit from the Internal Market principles of free movement of services and freedom of establishment and that the service providers can provide their services throughout the European Union without legal frontiers. The Commission is satisfied that the common position has incorporated the amendments of the European Parliament which have been accepted by the Commission and have been incorporated in the Commission's amended proposal. Moreover, the Commission is satisfied that the Council's common position maintains the overall balance of the proposal and fully preserves its Internal Market approach, which has been unequivocally supported by the European Parliament at the first reading. In particular, the Council, in line with the European Parliament's approach, decided against adding significant new general derogations to the Internal Market approach. Most of the changes introduced by the Council in comparison with the Commission's amended proposal, are of a clarifying nature and either do not - or at least not significantly - change the substance of the amended proposal and its overall balance, which takes account of all the various interests involved. The most significant changes concern the complete deletion of comitology in all relevant areas and the treatment of electronic contracts where the clarification of the moment of contract formation has been deleted. In order to facilitate rapid adoption of the Directive, which is a matter of urgency, the Commission has accepted these changes to its amended proposal. In conclusion, the Commission welcomes the adoption of the common position on the Proposed Directive of the European Parliament and of the Council on certain legal aspects of Information Society services, in particular electronic commerce, in the Internal Market which should allow a rapid adoption and implementation of the proposal and the establishment of a fully workable Internal Market for Information Society services.?

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

---

The committee adopted the recommendation for second reading (codecision procedure) by Ana PALACIO VALLELERSUNDI (EPP/ED, E) approving without amendment the Council common position on the e-commerce directive. It thereby paved the way for rapid adoption and implementation of proposed new rules on e-commerce. The committee felt that the Council's common position was broadly acceptable as it incorporated most of Parliament's amendments from first reading. It therefore recommended that the directive be adopted as soon as possible so that e-commerce could genuinely develop in Europe, and pointed out that the directive was to be reviewed within three years anyway.?

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

---

In its second reading, the Parliament approves the Council's common position. With respect to the liability of intermediate service providers, it asked the Commission to encourage the establishment of efficient notice and take-down procedures by interested parties.?

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

---

**PURPOSE:** to set out certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). **COMMUNITY MEASURE:** Directive 2000/31/EC of the European Parliament and the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). **CONTENT:** The development of information society services within the Community is hampered by a number of legal obstacles to the proper functioning of the Internal Market which makes less attractive the exercise of the freedom of establishment and the freedom to provide services. These obstacles arise from divergences in legislation and from the legal uncertainty as to which national rules apply to such services. In the absence of coordination and adjustment of legislation in the relevant areas, obstacles might be justified in light of the case-law of the Court of Justice of the European Communities. Moreover, legal uncertainty exists with regard to the extent to which Member States may control services originating from another Member States. Against this background, in order to ensure legal certainty and consumer confidence,

this Directive must lay down a clear and general framework to cover certain legal aspects of electronic commerce in the Internal Market. The objective of this Directive is to create a legal framework to ensure the free movement of information society services between the Member States and not to harmonise the field of criminal law as such. In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the Internal Market. Furthermore, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of public health. Certain activities are excluded from the scope of this Directive, on the grounds that the freedom to provide services in this field cannot, at this stage, be guaranteed under the Treaty or existing secondary legislation. The Directive does not aim to establish rules on fiscal obligations nor does it pre-empt the drawing up of Community instruments concerning fiscal aspects of electronic commerce. The definition of information society services already exists in Community law (Directives 98/34/EC, 98/84/EC). According to the current Directive, information society services refers to the selling of goods on-line but it also extends to services which are not remunerated by those who receive them. In addition, information society services also include services consisting of the transmission of information via a communication network and the provision of commercial communications by electronic mail. The main provisions of the Directive include the following: - the principle excluding prior authorisation in the pursuit of the activity of an information society service provider; - the requirement of general information to be provided to the recipients of the service in relation to the service provider; - the definition of the information to be provided; - unsolicited commercial communication; - the provision of an information society service by a regulated profession; - the treatment of contracts; - the information to be provided; - the placing of an order for a service; - liability of intermediary service providers - implementation of the Directive (out-of-court dispute settlement, court actions, for example) In conclusion, before 17.07.2003, and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee, a report on the application of the Directive. ENTRY INTO FORCE: 17.07.2000 TRANSPOSITION INTO NATIONAL LAW: 17.01.2000?

---

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

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 prejudice 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).?

---

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

The European Commission's report provides the first assessment of the transposition and application of Directive 2000/31/EC on electronic commerce and its impact. It is based both on the Commission's experience and on feedback received from Member States, industry, professional and consumer associations and other interested parties of their experience with the Directive. In view of the short period of time since the adoption and transposition of the Directive, such experience is necessarily limited. However, it shows that the Directive has had a substantial and positive effect on e-commerce within Europe. Together with the Directive on transparency for information society services, which establishes a mechanism allowing the Commission to assess draft national legislation as to its compatibility with Community law, it creates a straightforward Internal Market framework which allows e-commerce to grow across national borders. With the new legal framework for e-commerce created by the Directive being in the process of being put into place in all Member States, it is now necessary to collect information and gain experience on how the new framework works in practice. To this end, the Commission has launched an open consultation on legal problems in e-business with a view to collecting feedback and practical experience from the market and to identifying remaining practical barriers or new legal problems encountered by enterprises when doing e-business. The analysis to date has not shown a need to adapt the Directive as yet and, given the lack of practical experience, a revision of the Directive would in any event be premature. However, e-commerce is a quickly evolving area, in which legal, technical, and economic developments need to be constantly monitored and analysed.?