

LAVO Kummoinen Katri

22.10.2010
JULKINEN

VASTAANOTTAJA
Eduskunta
Suuri valiokunta

Viite

Asia
EU; komission konsultaatio sähköisestä kaupankäynnistä

U/E-tunnus:

EUTORI-numero:
EU 2009/1279

Ohessa lähetetään perustuslain 97§:n mukaisesti selvitys sähköistä kaupankäyntiä koskevasta komission konsultaatiosta.

Ylijohtaja

Pekka Nurmi

Lainsäädäntöneuvos

Katri Kummoinen

LIITTEET Perusmuistio OM2010-00299, Komission konsultaatioasiakirja

Asiasanat	Euroopan digitaalistrategia, sähköinen kaupankäynti, kuluttajansuoja
Hoitaa	LVM, OM, TEM, UM
Tiedoksi	EUE, OKM, SM, STM, TH, VM, VNEUS, YM

Oikeusministeriö

PERUSMUISTIO

OM2010-00299

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Asia

EU; konsultaatio sähköisen kaupankäynnin tulevaisuudesta ja sähköisen kaupankäynnin direktiivin täytäntöönpanosta jäsenvaltiossa

Kokous

Liitteet

Viite

EUTORI/Eurodoc nro:

EU 2009/1279

U-tunnus / E-tunnus:

-

Käsittelyn tarkoitus ja käsittelyvaihe:

Komission julkinen konsultaatio, jonka määräaika päättyy 5.11.2010.

Asiakirjat:

Konsultaatioasiakirja sähköisen kaupankäynnin tulevaisuudesta ja sähköisen kaupankäynnin direktiivin täytäntöönpanosta

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

-

Käsittelijä(t):

Oikeusministeriö, lainsäädäntöneuvos Katri Kummoinen, 1606 7514

Suomen kanta:

Aiemmin digitaalisen strategian yhteydessä todetun mukaisesti Suomi pitää tärkeänä tavaroiden, palveluiden ja sisällön verkkokaupan sisämarkkinoiden vahvistamista, koska toimivat sisämarkkinat hyödyttäisivät suomalaisia yrityksiä, kansalaisia ja hallintoa tuoden kasvua ja työllisyyttä. Suomessa verkkokauppa on kasvanut ja se on viimeisimpien, vuoden 2010 tammi-kesäkuuta koskevan tilaston mukaan määrältään jo merkittävää. Mainittuna ajanjaksona suomalaiset kuluttajat ostivat verkosta tavaroita, palveluja ja sisältöjä yhteensä 4,8 miljardilla eurolla.

Vaikka kehitys on kansallisesti ollut myönteistä, EU:n laajuisesti kehitys voisi olla ripeämpääkin. Suomi onkin tyytyväinen, että komissio on nyt käynnistänyt sähköistä kaupankäyntiä koskevan laaja-alaisen konsultaation tiedon saamiseksi erityisesti niistä esteistä, jotka hidastavat rajat ylittävän sähköisen kaupankäynnin kehittymistä. Suomessa keskeisille etutahoille järjestetyssä kuulemistilaisuudessa ei ollut yksilöitävissä yhtä tiettyä, muita painavampaa estettä sähköisen kaupankäynnin kehittymiselle, vaan kyse on moninaisten seikkojen yhteisvaikutuksesta.

Sähköisessä kaupankäynnin direktiivin yksi keskeisimpiä säännöksiä on ns. alkuperämaaperiaate, jonka mukaan lähtökohta on, että palvelun tarjoajan on noudatettava sijoittautumisvaltionsa lainsäädäntöä. Poikkeuksen tästä muodostavat muun muassa kuluttajasopimukset, joihin sovellettava laki määräytyy kansainvälisen yksityisoikeuden säännösten mukaisesti. Kansallisten kuluttajansuojasäännösten välillä on yhä tuntuja eroja, minkä johdosta Suomi pitää poikkeusta edelleen perusteltuna. Tilannetta on syytä kuitenkin arvioida uudestaan sen jälkeen, kun neuvottelut kuluttajan oikeuksia koskevasta direktiivistä on saatu päätökseen.

Alkuperämaaperiaatteeseen liittyvä ilmoitusmenettely on Suomessa ja tietyvästi myös muissa EU-valtioissa jäänyt kuolleeksi kirjaimiksi. Ilmoitusmenettelyä ja ylipäätään viranomaisten välisiä yhteistyömenettelyjä lain rikkomistapauksissa on tarpeen kehittää, esimerkiksi luomalla sähköinen alusta eri EU-valtioiden viranomaisille. Näin voidaan paitsi parantaa verkkokaupan asiakkaiden asemaa myös vähentää yritysten välistä epätervettä kilpailua.

Suomi pitää tarpeellisenä myös sitä, että direktiiviin sisältyvien välittäjien vastuuvapautta koskevien säännösten ajantasaisuus selvitetään.

Komission konsultaatioon vastataan oikeusministeriöstä yllä selvitettyjen linjausten mukaisesti.

Pääasiallinen sisältö:

Konsultaatioasiakirja sisältää yksityishenkilöille (kysymykset 1–18) ja organisaatioille osoitettuja kysymyksiä (kysymykset 19–77). Organisaatioille osoitetut kysymykset koskevat seuraavia aihealueita:

- sähköisen kaupankäynnin kehitys
- poikkeukset alkuperämaaperiaatteesta
- rajat ylittävä kaupallinen viestintä, erityisesti liittyen säänneltyihin ammatteihin
- verkkolehdistön kehitys
- vastuuvapaussääntely
- viranomaisyhteistyö
- riitojen ratkaisumenettelyt verkossa.

Kansallinen käsittely:

Kuulemistilaisuus 1.10.2010
Kilpailukykyjaosto 21.10.2010

Eduskuntakäsittely:

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Käsittely Euroopan parlamentissa:

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Kansallinen lainsäädäntö, ml. Ahvenanmaan asema:

Sähköisen kaupankäynnin direktiivi on pantu Suomessa täytäntöön lailla tietoyhteiskunnan palvelujen tarjoamisesta (458/2002)

Taloudelliset vaikutukset:

-

Muut mahdolliset asiaan vaikuttavat tekijät:

-

Asiasanat Euroopan digitaalistrategia, sähköinen kaupankäynti, kuluttajansuoja

Hoitaa

Tiedoksi



The EUROPEAN COMMISSION

Directorate-General for Internal Market and Services

Public consultation on the future of electronic commerce in the internal market and the implementation of the Directive on Electronic commerce (2000/31/EC)

TITLE: Public consultation on the future of electronic commerce in the internal market and the implementation of the Directive on electronic commerce (2000/31/EC)

POLITICAL FIELD: Internal market/Internal Market for services/Electronic commerce

AUDIENCE TARGETS:

- Ministries responsible for the various aspects of electronic commerce such as, in particular, ministries of Economic Affairs, Culture, Justice..
- Economic operators of the information society (e.g. undertakings involved in electronic commerce, internet service providers, information service providers, on-line media, etc) and the professional associations which represent them.
- The regulated professions, in particular pharmacists, lawyers and magistrates.
- Citizens/consumers/patients having an interest in the question of electronic commerce and consumer associations.
- Rightholders and organisations representing them.

However, comments from all other interested parties not-cited above are welcome and are encouraged by Commission services.

PERIOD OF CONSULTATION:

Please reply by **15 October** at the latest, completing either the entire questionnaire or just those parts relating to your activities interests. Late responses will be taken into account only as much as possible.

OBJECTIVES OF THE CONSULTATION:

Electronic commerce constitutes an important means to promote cross-border trade, improving the accessibility of Europe's population to more varied products, to more qualitative products, and exerting greater price competition in the on-line and off-line world. However, 10 years after the adoption of the "directive concerning certain legal aspects of information society services and, in particular, electronic commerce" the so-called Electronic Commerce Directive, the development of retail electronic commerce remains limited to less than 2% of European total retail trade.

The "Electronic Commerce" Directive (hereafter also named "the Directive") aims to

remove barriers to the establishment of providers of information society services¹ and to the cross-border provision of on-line services in the internal market, therefore giving both to businesses and citizens legal certainty.

Technologically neutral, it covers a broad field: not only electronic commerce (businesses-to-business and business-to-consumer) in the strictest sense (including on-line pharmacies), but also on-line newspapers, on-line financial services, services of regulated professions, etc. On-line gambling, however, is excluded².

The Directive considers five key provisions:

- The internal market clause (Article 3)³ which, although subject to derogations, provides the legal certainty which is essential to the development of cross-border on-line services;
- Requirements aimed at facilitating the development of providers of information society services, boosting confidence and strengthening legal security (Article 4): namely the prohibition of prior authorisations, obligations to provide information and ensure transparency with a view to ensure consumer confidence as well as the provision of a framework for commercial communications (Articles 6 to 8). It abolishes the prohibition of commercial communication for the regulated professions, enabling them to open internet sites, and leaves it to the professional associations to regulate such new practices in their codes of conduct.
- The regulatory framework for electronic contracts (Articles 9 to 11), including the harmonisation of the conditions necessary for the conclusion of such contracts (e.g. the obligation for the service provider to acknowledge the receipt of the customer/user without undue delay and by electronic means).
- The regulation of the exemptions of the liability of intermediaries (Section 4, Articles 12 to 15) with a view to ensuring, on the one hand, the provision of basic intermediary services guaranteeing the free movement of information on the network and, on the other, a legal framework enabling the development of the internet and electronic commerce.
- Administrative cooperation (Articles 19 and 3.4), both between Member States and between the Member States and the European Commission, with a view to ensuring the proper implementation of the Directive, through mutual assistance and the setting up of contact points. It also encourages Member States to inform the European Commission of important administrative and legal decisions taken on their territory regarding disputes relating to information society services and of practices, usages and customs relating to

¹ As defined in Directive 98/48/CE: any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

² On-line gambling will be the subject of a consultation scheduled for the second half of 2010.

³ Otherwise known as the "country of origin principle": each Member State shall ensure that the information society services provided by a service provider established on its territory complies with the national provisions applicable in the Member State in question which fall within the "coordinated field", even when he provides the service in another Member State.

electronic commerce.

- The European Commission wishes to study in detail the various reasons for the limited takeoff of electronic commerce, as stated in the Retail Market Monitoring Report "Towards more efficient and fairer retail services in the internal market for 2020"⁴ and evaluate the implementation of the Directive, in accordance with its Article 21, as announced in the Communication "A Digital Agenda for Europe"⁵. For this purpose, Commission services wish to consult interested parties directly and receive their reaction and experience on a number of subjects:
- The level of development, both national and cross-border, of information society services.
- Issues concerning the application of Article 3(4) by the Member States (administrative cooperation).
- Contractual restrictions on cross-border on-line sales.
- Cross-border on-line commercial communications, in particular by the regulated professions.
- The development of on-line press services.
- The interpretation of the provisions concerning the liability of intermediary information society service providers.
- The development of on-line pharmacy services
- The resolution of on-line disputes.

• See the questionnaire	
	Insert a link here
Reference documents	
	Contributions received will be added to the information already collected, in particular the two studies ⁶ commissioned by the European Commission on the economic impact of the directive, completed in November 2007 and available at: and on the liability of intermediate internet service providers, completed in April 2008 and available at: Directive 2000/31/EC on electronic commerce

⁴ COM (2010) 355.

⁵ COM (2010) 245.

⁶ The Commission indicates that the conclusions of these studies represent the opinion of their authors and do not bind the institution.

Contact		
	Relevant service	DG Internal Market and Services Unit Free movement of services and establishment II: retail and information services
	E-mail	markt-e-commerce@ec.europa.eu
	Address	J 59 8/61
<ul style="list-style-type: none"> • Number of answers received 		
		•
<ul style="list-style-type: none"> • See the contributions received 		
	For the sake of transparency, organisations have been invited to publish information by registering into the Register of interested representatives and undertaking to comply with its code of conduct. Contributions of organisations which are not registered are published separately.	
<ul style="list-style-type: none"> • Results of the consultation and next stages 		
	<p>The result of this work will be taken into account in the Commission's deliberations with a view to the adoption in the first half of 2011 of a Communication on electronic commerce, including on the impact of the Electronic Commerce Directive⁷.</p>	

HOW TO SUBMIT YOUR CONTRIBUTION

Answers to questions must be sent by using the electronic application IPM. They can also be transmitted by electronic mail to the following address: markt-e-commerce@ec.europa.eu or by post to the European Commission, DG Internal Market and Services, Unit E2 - Services II, J59 8/61, B-1049 Brussels, Belgium. Responses can be in any of the 23 official languages of the EU, but replying in French, English, or German would enable Commission services to process them more quickly.

Contributions received and the identity of the contributor will be published on the internet, unless the contributor is opposed to the publication of personal data for fear that this would damage his/her legitimate interests, in which case the contribution may be

⁷ An application report COM (2003) 702 final was published on 21 November 2003, which is shortly after the end of the transposition delay given to the Member States (17 January 2002).

published anonymously. Otherwise, the contribution will not be published, and its content will not be taken into account (cf. Annex).

1. I answer as (*question filtered directing the answers towards a specific part of the questionnaire*)

a) A private individual

b) An association of citizens or consumers

c) A business (electronic commerce supplier included)

d) A federation of businesses

e) More specifically: a member of a regulated profession

f) An internet service provider

g) A public administration

h) A legal professional or specialising in information society services.

REFERENCE DOCUMENTS:

Text of the Directive -

Press release

INTRODUCTION

- Identification of your organisation, with postal and e-mail addresses
- What is your interest in the information society services sector?
- In which Member State(s) are you established and/or where do you perform your activity?

ABBREVIATIONS:

PRIV: PRIVATE INDIVIDUALS

CONS ASS: CONSUMER ASSOCIATIONS

BUS: BUSINESSES

ISP: INTERNET SERVICE PROVIDERS

FED BUS: FEDERATIONS OF BUSINESSES

RP: REGULATED PROFESSIONS

INFOSOC LAW: PROFESSIONALS OF INFORMATION SOCIETY LAW

PUBSER: PUBLIC SERVICES

Issue 1: The development and practice of electronic commerce

Since the adoption of the Directive, electronic commerce and information society services (directly paid for by users or financed by advertising) have expanded, but they still have significant growth potential, particularly in certain segments and at cross-border level.

It is difficult at this stage to measure statistically the cross-border dimension of electronic commerce but it is still largely to be developed. The Commission receives many reports or even complaints about refusal to sell to a consumer or citizen (patient, audio-visual service user, student, researcher, publisher, etc) from another Member State: whether in terms of refusal to sell or provide access, refusal to deliver, refusal of a credit card from another Member State, etc.

FOR PRIVATE INDIVIDUALS:

2. What factor (s) is (are) likely to prompt your interest in purchasing goods and services on-line?

- a) access to goods/services which are not available in your neighbourhood,**
- b) access to products/services sold in your neighbourhood but at a more favourable price,**
- c) access to goods and services sold "physically" in your neighbourhood but which are available in more efficient or higher quality versions,**
- d) access to goods and services sold "physically" in your locality in a more practical way (time saving, home delivery, etc).**

3. Which activities do you engage in on-line?

- a) On-line shopping (ordering on-line irrespective of whether the payment is carried out on-line or off-line)?**
- b) On-line research into goods and services that you intend to buy later in conventional bricks and mortar retail outlets**
- c) Listening to radio, watching television or reading press on-line**
- d) Downloading music, videos, games**
- e) Using on-line banking or other financial services**
- f) Participating in social networks**
- g) Other**

4. If you shop online (a), which types of goods or services do you buy on-line?

- a) Fresh food products**
- b) Foodstuffs other than fresh products**
- c) House-hold goods (furniture, toys etc)**
- d) Prescribed medicines**
- e) Non-prescribed medicines**
- f) Films, music**
- g) Books, periodicals**
- h) Clothing and accessories**
- i) Electronic equipment (e.g. cameras) or computer equipment**
- j) Financial services**
- k) Tourist services (hotels, transport, car hire)**
- l) Professional services (e.g. accountant)**
- m) Health services (information on diseases, treatment, specialists, etc)**

5. From whom did you buy these goods or services?

- a) A business in your Member State of residence but beyond your usual local shopping area**
- b) A business in your Member State of residence , within your local shopping area**
- c) A business in another Member State of the European Union**
- d) A business in a non-EU State**
- e) You do not know the origin of the business**

6. What is the estimated value of on-line purchases over the last 12 months? (if you use a currency other than the Euro, please make an estimate of the conversion)

- a) Less than 50€**
- b) Between 50 and 100€**
- c) Between 100 and 500€**
- d) From 500 to 1000€**
- e) Over 1000€**
- f) You do not know**

7. How did you pay for your on-line purchases?

- a) Using a credit card or debit card on-line
- b) Using a prepaid card or on-line credit account
- c) By electronic transfer
- d) Payment carried out off-line (cash on delivery, by cheque...)
- e) By Online Banking Based ePayment (OBeP) such as iDEAL in the Netherlands or GiroPay in Germany
- f) By mobile phone payment
- g) Other

8. How often do you engage in this on-line activity?

- a) At least once a week,
- b) Once or several times a month
- c) Once or several times a year
- d) More seldom

9. What problems have you encountered in your on-line purchasing?

- a) Technical problems during the ordering or payment
- b) Lack of information on the seller, the guarantee and consumer rights
- c) Delivery problems
- d) Payment problems
- e) Other
- f) I have not encountered any problem

10. Please specify which delivery problems you have encountered:

- a) Product did not arrive
- b) Delay in delivery
- c) Damaged product
- d) High costs
- e) Refusal of delivery in your geographical area
- f) Need to travel to a pick-up point due to absence from your residence at time of delivery

11. Please specify which payment problems you have encountered:

- a) Refusal of credit card**
- b) Fraud of the credit card**
- c) Reimbursement problem**
- d) Insufficient variety of payment methods**

12. Which obstacles are likely to dissuade you or have dissuaded you from buying on-line?

- a) No need**
- b) Preference for direct purchasing in shops**
- c) Lack of choice of services or products on-line**
- d) Lack of knowledge/difficulty of access to the service**
- e) Delivery problems**
- f) Payment problems**
- g) Apprehension on personal data protection**
- h) Lack of confidence in after sale service (guarantee, returns, remedies, complaints)**
- i) Limited broadband accessibility**
- j) Absence of advice during purchase**
- k) Other**

13. Are you aware of the following rights, related to your on-line purchases (excluding auctions)

- a) Right to cancellation of purchase and to reimbursement during a brief period after the purchase, for the majority of products**
- b) Obligation to deliver at the latest 30 days after the order, unless otherwise agreed between both parties**
- c) Obligation to respect privacy and data protection**
- d) Obligation of the seller to provide an address and contact details**
- e) Obligation of the seller to provide you with written confirmation or confirmation in another durable medium of the main features of a distance contract**
- f) No knowledge of consumer rights**

FOR CONSUMER ASSOCIATIONS

14. Which problems, according to your information, are the most important ones encountered by consumers in their on-line purchases?

- a) Technical problems during the ordering or payment**
- b) Lack of information on seller, the guarantee and consumer rights**
- c) Problem of delivery**
- d) Payment problems**
- e) Problems in settlement of disputes**
- f) Other - specify**

15. Please specify which delivery problems are encountered according to you by consumers:

- a) Product did not arrive**
- b) Delay in delivery**
- c) Damaged product**
- d) High costs**
- e) Refusal of delivery in the relevant geographical area**
- f) Need to travel to a pick-up point when absent from residence at time of delivery**

16. Please specify which payment problems are encountered according to you by consumers:

- a) Refusal of credit card**
- b) Fraud of the credit card**
- c) Reimbursement problem**
- d) Insufficient variety of payment methods**

17. Which obstacles are likely to dissuade consumers to buy on-line?

- a) No need**
- b) Preference for direct purchasing in shops**
- c) Lack of knowledge/difficulty of access to the service**
- d) Delivery problems**
- e) Payment problems**
- f) Apprehension on personal data protection**

- g) Lack of confidence in after sale service (guarantee, returns, remedies, complaints)**
- h) Limited access to broadband**
- i) Absence of advice during purchase**
- j) Other**

18. According to you, are consumers correctly informed of the following rights, related to their on-line purchases (excluding auctions)

- a) Right to cancellation of purchase and to reimbursement for a brief period after the purchase, for the majority of products**
- b) Obligation to deliver 30 days at the latest after the order, except where agreed otherwise by both parties**
- c) Obligation to respect privacy and data protection**
- d) Right to information on the conditions of sale**
- e) Obligation of the seller to provide an address and contact details**
- f) Obligation of the seller to provide you with written confirmation or confirmation in another durable medium of the main features of a distance contract**
- g) No knowledge of consumer rights**

TRANSITION TOWARDS THE OPEN QUESTIONNAIRE: if you wish to continue and share your experience with the Commission by the reply to open questions click. If not, thank you, goodbye.

If so, questions:

19. What are your views on the growth of the economic development of electronic commerce and information society services in Europe, in general and compared to its most important competitors? *All*

20. More specifically, do you have any indications that delivery problems would be an obstacle to the development of your electronic commerce activity? If so, which? *BUS, BUS FED, PUBSER*

21. Do you encounter problems in raising capital for your electronic commerce activities from banks or venture capital? If so, please specify? *BUS, BUS FED*

22. Is a lack of knowledge of your legal or fiscal obligations in the context of electronic commerce or of the provision of information society services an element dissuading you from entering into such activities? *BUS, BUS FED*

23. Are you deterred from undertaking such activity by insufficient offer of competitive legal or fiscal advisory services, specialised in electronic commerce or information society services? *BUS, BUS FED*

24. Do you have information according to which payment problems (lack of choice in terms of methods of payment, confidentiality issues, refusal of payment cards from another Member State, etc) would be an obstacle to the development of your electronic commerce activity? If so, can you assess and illustrate these problems? *BUS, BUS FED*

25. Do high bank charges for accepting payments hinder your online activities and do you think that, at European level, there are sufficient alternative payment schemes without high charges for the retailer?

26. Do you experience problems in accepting payments of small amounts due to the high level of bank charges (for instance merchant service charges) or, in general, due to the scarce availability of payment methods which are suitable for this purpose? *BUS, BUS FED*

27. Are you aware of statistics or general or sectoral studies at national level on the electronic commerce market and in particular its cross-border aspects? If in the affirmative, which? *All except PRIV*

28. Are you aware of information on the types and growth of e-commerce businesses and on whether this substitutes or complements off-line retail services? If so, please specify *All except PRIV*

29. In your view, what are the economic sectors⁸ where electronic commerce has developed significantly over the past decade and the fields where, on the other hand, its potential has not yet been sufficiently exploited? *All except PRIV*

30. Do you consider that the offer of viewing sporting and cultural events on the internet, for example by direct streaming, is sufficiently developed? If not, in your view, what are the obstacles to such development? *CONS and CONS ASSO*

31. As organisers of sporting or cultural events, do you see an interest in proposing direct on-line access to your events, in particular if they are not broadcast on traditional media, at national level or in other Member States? *BUS, BUS FED*

⁸ Questions related to gambling will be dealt with in a distinct consultation in a near future.

Issue 2: Questions concerning derogations from Article 3 (Article 3(4) and Annex)

The Electronic Commerce Directive includes in its Article 3 a so-called "internal market clause", with case by case derogations provided for in Article 3(4). This clause allows information society service providers to offer cross-border services whilst remaining subject to the legislation of their Member State of establishment. Member States may, under certain conditions, impose case by case derogations to this principle to ensure the protection of certain interests such as public order, public health, public safety or consumer protection. Any such derogations must be necessary and proportionate to the objective pursued. They must be adopted within the framework of an administrative cooperation mechanism between Member States and notified beforehand to the European Commission.

Moreover, the Annex to the Directive provides for exemptions from Article 3, in particular for contractual obligations relating to contracts concluded with consumers. Since 2000, the EU's legislative framework has evolved, in particular Community legislation having as an objective consumer protection (in particular the application of the directives on distance contracts and on the sale and guarantees of consumer goods; the adoption of the Directive on the unfair commercial practices⁹ and the proposal for a Directive on consumer rights in 2008), and with the Directive on services in the Internal Market¹⁰, which was due to be transposed by the end of 2009. Article 20 of the Services Directive is likely to have a direct impact on the issue of cross-border sales to consumers as its paragraph 2 prohibits the application of discriminatory provisions relating to the nationality or place of residence of the recipient of a retail service. Differences of treatment are allowed only if such service providers can demonstrate that they are justified directly by objective criteria.

32. Are you aware of cases where a Member State applied the derogation possibility provided for in Article 3(4) of the Directive described above? If so, please describe how, indicating the information society services restricted (e.g. on-line media, on-line pharmacies, advertising or promotion of certain products like alcohol, services provided by regulated professions, broadcasting of cultural events or on-line sport events) and the basis for the derogation (public order, consumer protection, public safety or public health)? *All EXCEPT PRIV*

33. In the event of an affirmative reply to the previous question, were you restricted in the exercise of your professional activity by the use of such a derogation? *All EXCEPT PRIV, INFOSOC LAW PUBSERV*

⁹ 2005/29/CE, OJ L 149 of 11.6.2005, p. 22-39.

¹⁰ 2006/123/CE, L 376 of 27.12.2006, p. 36-68

34. In your view, is the derogation to the internal market clause covering contractual obligations concerning contracts concluded by consumers, set out in the Annex to the Directive, still useful, despite the development over the last ten years of Community and national legislation concerning consumer protection? If yes, could you provide the reasons justifying the maintenance of such an exemption? *All EXCEPT PRIV AND RP*

35. Have you practised or been subject to discrimination on the basis of nationality or place of establishment/residence, or are you aware of such discriminations? If so, please indicate the information society services affected and the reasons given to justify this discrimination. *All EXCEPT PUB SERV*

36. In your view, does the purchase and sale of copyright protected works subject to territorial rights and the territorial distribution of goods protected by industrial property rights, encourage or impede cross-border trade in information society services? *All*

37. In your view, are there other rules or practices which hinder the provision or take-up of cross-border on-line services? If so, which? *All*

Issue 3: Cross-border commercial communications, in particular for the regulated professions.

Articles 6 and 7 of the Directive cover commercial communications and, in particular, unsolicited commercial communications.

38. Are you aware of any mechanisms in your Member State which guarantee that unsolicited commercial communications can be identified in a clear and unambiguous manner by the addressee?

39. Do measures exist in your Member State which guarantee that the service provider who sends unsolicited commercial communications by email regularly consults "opt-out" registers (in which natural persons who do not wish to receive this type of communication can register)? If so, are these registers respected?

40. Is the legislation of your Member State sufficiently clear on the criteria making it possible to determine if a commercial communication can be regarded as unsolicited or not?

41. Is the 'acquis communautaire' (European law) on unsolicited commercial communications and national regulations well-adapted to new forms of commercial communications?

Article 8 of the Directive stipulates that commercial communications of regulated professions should be permitted, subject to the compliance with the professional rules. It encourages the development of codes of conduct at Community level with regard to the provision of information society services.

42. What information society services provided by the regulated professions are you aware of or do you have access to? *All*

43. Are you aware of which types of commercial communication practices are undertaken by the regulated professions (communication on fees,, on specialisms, etc) in one or more Member States or at European level? For which regulated professions? *All except PRIV*

44. Are you aware of codes of conduct covering on-line commercial communications for certain regulated professions in one or more Member State(s)? If so, please specify. *All*

45. What are, in your opinion, the obstacles to the development of codes of conduct for on-line commercial communications for regulated professions at European level? *All*

On-line pharmacy services merit particular attention in view of the specific nature of the sold products. These are essential goods, where on-line sales can enhance accessibility for isolated population, citizens with reduced mobility, etc, but for which a particular framework is necessary in order to avoid risks of misuse. 'On-line pharmacy services', as referred to below, means the sale of medicines on-line by operators other than physical pharmacies, with no physical contact between the pharmacist and the consumer.

46. Are on-line pharmacy services authorised in your Member State for over-the-counter (OTC) medicines ¹¹and/or for prescription-only medicines? If so, under which conditions? Please indicate the relevant legislative provisions. *All*

47. Are there specific measures in your Member State on products (safety devices, checks of compliance with medicine marketing regulations, etc), and/or on internet sites (specific logo indicating legal pharmacies, public register of legal pharmacies, etc) aiming to guarantee that all medicines bought on-line are safe? If so, what are they? *PUB SERV, PRIV, BUS, CONS ASSO, RP*

48. What are the advantages and disadvantages of the legal possibility for citizens in general or certain categories of citizens to buy medicines on-line and of having them home-delivered? *All except PRIV and ISPs*

¹¹ E.g.: paracetamol, aspirin, vitamins etc.

49. Are you aware of studies or surveys relating to the volume of legal or illegal purchase of on-line medicines within the European Union and, more specifically, in your Member State? If so, what sources and assessment methods were used? *PUB SERV, BUS, CONS ASSO, BUS FEDE, RP*

Issue 4: The development of the press on the Internet

Press editors benefit from the provisions of the Electronic Commerce Directive. However, whereas all have developed on-line activities, the business models of on-line press are still to be refined so as to be profitable and viable.

Certain characteristics in the development of the press on the Internet are common to other sectors and already are the subject of questions under other sections, such as questions on micro-payments and on bank charges related to the payments over the internet. Others seem more specific to this sector, such as the provisions on advertising and the activities of news aggregators, subject to the questions below.

50. Does the regulation of advertising contracts require an adaptation in the virtual world? If so, can you specify the problems and the possible solutions. All except PRIV

51. In your view, is it necessary to ensure more transparency on the origin of the contents presented by news aggregators of information¹²? If so, by which mean(s)? All except PRIV

Issue 5: Interpretation of the provisions concerning intermediary liability in the Directive

The Electronic Commerce Directive was drawn up and negotiated in the late 1990s with the aim of developing a balanced liability framework for Internet operators that on the one hand protected rights and on the other encouraged the development of new information society services.

Section 4 of the ECD covers the responsibility of intermediary service providers. It defines the conditions for exemptions of liability of intermediary Internet service providers for certain activities: "mere conduit", "caching" and "hosting" (Articles 12 to 14). These mention the concepts of "actual knowledge" of an infringement and of an "expeditious" response. The Commission, and also national courts and administrations, have frequently been called on to interpret these concepts.

Article 14(1)(b) leaves open the possibility of notice and take down procedures to be agreed between parties, if problematic information is detected. The Directive does not regulate the detail of such procedures.

¹² Application that aggregates and synthesises information published on various websites.

Article 15 states that providers offering the services covered by the Articles above have no general obligation to monitor but that Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities.

The Commission has found, through its contacts with the various stakeholders, that the interpretation of the provisions concerning the liability of intermediaries is frequently considered necessary towards solving problems. The study commissioned on this issue (see above) found differences in interpretation between national courts and even within Member States.

52. Overall, have you had any difficulties with the interpretation of the provisions on the liability of the intermediary service providers? If so, which? *BUS (ISPs), PUB SERV, INFOSOC LAW PUBLIC SERVICE*

53. Have you had any difficulties with the interpretation of the term "actual knowledge" in Articles 13(1)(e) and 14(1)(a) with respect to the removal of problematic information? Are you aware of any situations where this criterion has proved counter-productive for providers voluntarily making efforts to detect illegal activities? *BUS (ISPs), PUB SERV, INFOSOC LAW PUBLIC SERVICE*

54. Have you had any difficulties with the interpretation of the term "expeditious" in Articles 13(1)(e) and 14(1)(b) with respect to the removal of problematic information? *BUS(ISPs), PUB SERV, INFOSOC LAW PUBLIC SERVICE*

55. Are you aware of any notice and take-down procedures, as mentioned in Article 14.1(b) of the Directive, being defined by national law? *BUS (ISPs), PUB SERV, PRIV*

56. What practical experience do you have regarding the procedures for notice and take-down? Have they worked correctly? If not, why not, in your view? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

57. Do practices other than notice and take down appear to be more effective? ("notice and stay down"¹³, "notice and notice"¹⁴, etc) *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

58. Are you aware of cases where national authorities or legal bodies have imposed general monitoring or filtering obligations? *BUS(ISPs), INFOSOC LAW PUBLIC SERVICE*

59. From a technical and technological point of view, are you aware of effective

¹³ Regime of notification, take down and making sure that the content will not be reposted.

¹⁴ Regime in which ISP must on request inform the person who uploaded content violating the law.

specific filtering methods? Do you think that it is possible to establish specific filtering? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

60. Do you think that the introduction of technical standards for filtering would make a useful contribution to combating counterfeiting and piracy, or could it, on the contrary make matters worse? *BUS(ISPs), INFOSOC LAW PUBLIC SERVICE*

61. Are you aware of cooperation systems between interested parties for the resolution of disputes on liability? *BUS (ISPs), INFOSOC LAW PUB SERVICE*

62. What is your experience with the liability regimes for hyperlinks in the Member States? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

63. What is your experience of the liability regimes for search engines in the Member States? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

64. Are you aware of specific problems with the application of the liability regime for Web 2.0 and "cloud computing"? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

65. Are you aware of specific fields in which obstacles to electronic commerce are particularly manifest? Do you think that apart from Articles 12 to 15, which clarify the position of intermediaries, the many different legal regimes governing liability make the application of complex business models uncertain? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

The Internet has given counterfeiters and those involved in piracy new and powerful ways of selling their products, such as the illegal use of "peer to peer", electronic commerce sites, on-line auction sites and e-spamming. The digital environment is attractive to counterfeiters and pirates for several reasons, in particular anonymity, the possibility of creating sites anywhere in the world, removing or moving them if need be to states where the legislation on intellectual property or its application are laxer, the huge size of the markets (number of electronic commerce sites and number of references), the relative ease of misleading consumers in the target market, etc.

66. The Court of Justice of the European Union recently delivered an important judgement on the responsibility of intermediary service providers in the Google vs. LVMH case¹⁵. Do you think that the concept of a "merely technical, automatic and passive nature" of information transmission by search engines or on-line platforms is sufficiently clear to be interpreted in a homogeneous way? *BUS (ISPs), INFOSOC*

¹⁵ Joined cases C-236/08 and C-238/08, Google vs. Louis Vuitton Malletier SA, judgement of 23 March 2010.

67. Do you think that the prohibition to impose a general obligation to monitor is challenged by the obligations placed by administrative or legal authorities to service providers, with the aim of preventing law infringements? If yes, why? *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

68. Do you think that the classification of technical activities in the information society, such as "hosting", "mere conduit" or "caching" is comprehensible, clear and consistent between Member States? Are you aware of cases where authorities or stakeholders would categorise differently the same technical activity of an information society service? *BUS(ISPs), PUBLIC SERVICE INFOSOC LAW*

69. Do you think that a lack of investment in law enforcement with regard to the Internet is one reason for the counterfeiting and piracy problem? Please detail your answer. *BUS (ISPs), INFOSOC LAW PUBLIC SERVICE*

Issue 6: Administrative cooperation in the Directive

Article 3(4) provides for a notification system between the Member States as regards case by case restrictions to information society services. Moreover, Article 19(5) provides for communication to the Commission of any significant administrative or judicial decisions regarding litigation relating to information society services including electronic commerce. The Commission has received very few such notifications over the years, and the communication to other Member States has therefore been limited.

70. Does a procedure to ensure notification to the other Member States and to the Commission of any restriction falling under Article 3 (4) exist in your Member State. If so, please specify this procedure and the number of notifications made to the Commission and to other Member States since 17 January 2002. *PUB SERV*

71. Do you think that the system of notification provided for in Article 3(4) is effective or should it be clarified, or strengthened by information systems such as the IMI (Internal Market Information System)? *ADMI, INFOSOC LAW, PUBLIC SERVICE*

72. Do you take the view that administrative cooperation between Member States, in particular by means of the designation of contact points, has worked satisfactorily? How could it be improved? *INFOSOC LAW, PUBLIC SERVICE*

73. According to your information, what are the important administrative and judicial decisions relating to information society services or practices and customs relating to electronic commerce to be communicated to the Commission? *INFOSOC LAW, PUBLIC SERVICE*

Issue 7: The resolution of on-line disputes

The Internet can entail risks, and may even, in some contexts, resemble a place beyond the law. Despite the introduction of on-line mediation and resolution systems, this impression persists and may curb the development of information society services. For example, there is a very high number of internet sites in Europe which do not comply with the transparency conditions provided for in the Directive and transposed in the legislation of all Member States. It also appears that the efforts of Member States have been limited to adapt their legal systems to new communication technologies, in particular through the development of mechanisms of on-line dispute settlements so as to make justice more accessible to citizens.

74. What knowledge do you have of on-line dispute settlement systems (legal and extrajudicial) in your Member State or in other Member States? All

75. To your knowledge, are the financial costs, the necessary processing time and the facility to solve a traditional dispute (personal data theft, non-delivery of ordered services, fraud, non-payment, misleading advertising, illegal copy etc.) equivalent if the resolution takes place on-line or off-line? If not, can you explain the reasons for any differences? All

76. Are you aware of statistics or studies at national level on law enforcement on the internet by the supervisory authorities and/or the judiciary of Member States? All except PRIV

77. Do you take the view that the services of on-line disputes settlements (judicial and non-judicial) where these exist have improved victims' rights in European society? If so, how? If not, how can these services be improved? All except PRIV