

CHAPTER 7

CODES OF CONDUCT AND OTHER MEANS OF IMPLEMENTATION; MISCELLANEOUS PROVISIONS

Codes of conduct

The requirement

- Article 16
- Recital 49

Article 16 requires Member States to encourage the drawing-up and publication of codes of conduct (including codes on the protection of minors and human dignity) and the involvement of consumer organisations in code development and implementation.

The Government strongly supports such initiatives. It is encouraging and promoting the development of a number of self- and co-regulatory schemes. In relation to codes for retail e-commerce, the Government has supported work carried out by the Alliance for Electronic Business (AEB) and the Consumers' Association on TrustUK, which has set criteria for e-codes and approved four schemes. The Government is closely following the evolution of plans for a European scheme, based on the UK model, that is being co-ordinated under the European Commission's e-confidence initiative. It will also use the forthcoming Enterprise Bill to strengthen the powers of the Director-General of Fair Trading in relation to codes of practice. The Office of Fair Trading's response to its recent consultation on consumer codes of practice identified direct marketing as a priority for the new regime. TrustUK has recently been the subject of a review, the outcome of which is expected to be announced shortly by the AEB and the Consumers' Association.

Out-of-court dispute settlement

The requirement

- Article 17
- Recital 51

Article 17 requires Member States to ensure that their legislation does not hamper the use of out-of-court or alternative dispute-resolution (ADR) schemes (e.g. ombudsmen or arbitration). It also requires Member States to encourage out-of-court schemes to provide adequate procedural guarantees and to inform the European Commission of significant decisions on e-commerce cases.

The Government is keen to encourage wider use of ADR, particularly in consumers' contractual disputes with e-commerce traders. It has played a major role in the development of the European Extra-Judicial Network (EEJ-Net), which will give consumers easier access

to ADR schemes in other Member States in cross-border cases. As part of this initiative, it is funding the National Association of Citizens Advice Bureaux to form the UK EEJ-Net Clearing House; the pilot phase of the scheme is expected to start later this year. The Government has also drawn the attention of UK ADR bodies to European Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹ and Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.²

The Commission has launched a Community-wide complaints network (FIN-NET, http://europa.eu.int/comm/internal_market/en/finances/consumer/intro.htm) for consumers of cross-border financial services. Through this, consumer disputes are forwarded by consumer agencies (e.g. the Financial Ombudsman Service or citizens advice bureaux) to the relevant ADR scheme in the service provider's country of establishment.

Court actions

The requirement

- Article 18
- Recitals 52-53

Article 18 requires Member States to ensure that court action can be taken against infringements of the E-Commerce Directive and provides for it to be added to the list of consumer Directives in the Annex to the Injunctions Directive. The Stop Now Orders (E.C. Directive) Regulations 2001³ will be amended so that the powers to seek injunctions that are available to the Director-General of Fair Trading and qualified entities will apply in relation to breaches of legal requirements to which the E-Commerce Directive applies or that implement its provisions.

Cooperation

The requirement

- Article 19

Article 19 requires Member States to have adequate enforcement arrangements, to cooperate with other Member States and to provide information on contractual rights and obligations, redress and sources of further help.

The Government is still considering the extent to which there will need to be new powers to obtain information and what provision is needed to enable information obtained under these and other powers to be provided to other Member States.

¹ OJ L 115, 17.4.1998, p. 31.

² OJ L 109, 19.4.2001, p. 56.

³ SI 2001/1422.

The Government makes available information (including contractual rights and obligations) about legislation in a number of fields, not least consumer protection and financial services. It also directs users to further sources of information and advice. Government sites include:

- UK Online Citizens' Portal (<http://www.ukonline.gov.uk>)
- UK Online for Business (<http://www.ukonlineforbusiness.gov.uk>)
- The Consumer Gateway (<http://www.consumer.gov.uk/>)
- The Small Business Service (<http://www.businesslink.org>)
- The Office of Fair Trading (<http://www.oft.gov.uk/>)
- The Lord Chancellor's Department (<http://www.lcd.gov.uk/>)
- HM Treasury (<http://www.hm-treasury.gov.uk/>)
- The Home Office (<http://www.homeoffice.gov.uk>)

Sanctions

The requirement

- Article 20
- Recital 54

Article 20 requires Member States to ensure that sanctions for breaches of the rules established under the Directive are effective, proportionate, dissuasive and enforced.

Re-examination

The requirement

- Article 21

Article 21 provides for regular re-examination of the Directive. It is envisaged that this will take place every two years in order to reflect the rapid development of both technology and case law.

Questions for consultees

- 7.1 Are there provisions in UK law that you believe may hamper the use of out-of-court or online-dispute resolution in the consumer field?