



**A RESPONSE BY THE CONSUMER CREDIT TRADE ASSOCIATION
TO THE DEPARTMENT OF TRADE AND INDUSTRY'S CONSULTATION PAPER
ON THE DRAFT ELECTRONIC COMMERCE REGULATIONS 2002**

1. Summary of membership

The Consumer Credit Trade Association ("CCTA") represents: credit grantors; retailers providing credit; solicitors providing specialist consumer credit services; debt collecting agencies and related businesses. CCTA has approximately 500 members, of which approximately 75% are credit grantors. It is, in terms of numbers of members, one of the largest trade associations for businesses engaged in the credit industry.

2. Are regulations required?

There is already a substantial body of law in respect of the making of contracts. There is also supplementary law in relation to specific types of contracts, e.g. the distance selling regulations and the telecommunications regulations. CCTA does not believe that further regulation is required unless such regulation is to be limited to making provision for the harmonisation of E-commerce throughout the EU.

3. Would the draft regulations qualify for the crystal mark?

The draft regulations, particularly regulations 8, 9, 10 and 11, place obligations on specified parties to give clear information.

There is a great irony in the fact that draft regulations that seek clarity are not themselves drafted with clarity.

Not only are the regulations unclear, the following definitions contained in the draft regulations are not in plain English:

Coordinated field
Established service provider
Information society services

The following definition is unacceptable by reason of its various references to other documents:

Regulated profession

4. Comments on the specific draft regulations:

Regulation 2

The term “independently” in 2(1)(b) is not defined. Does this term signify that the communication must have been prepared by a third party or is the term intended to cover communications that have been prepared for an individual purpose and are intended to be sent to only one or a limited number of recipients.

Further the Regulation ought only to cover commercial communications sent for the purpose of promoting the business of the sender. Is it intended that a letterhead which includes a description of the senders business but which is sent for non-promotional purposes should be subject to the regulations?

What is the position if a person is acting as both consumer and in the course of their business, e.g. buying a car for mixed usage. Is that person to gain protection for that element of the purchase that is for business purposes or do they lose the protection as a consumer if a communication or transaction is in part for business purposes?

Regulation 3

What is meant by the phrase “the field of taxation” in 3(1)(a)? Does this exempt Accountants from the regulations provided they are giving or offering tax advice? Does this apply to any taxation communication, e.g. a communication stating what VAT is payable? Do the regulations apply where only part of a communication relates to the field of taxation?

Under 3(1)(b) are information society services covered by the Data Protection Directive and the Telecommunications Data Protection Directive excluded completely from the effect of the proposed regulations or is such exclusion limited to circumstances where those directives actually provide an alternative protection or remedy. In any event should the references not be to the relevant national legislation or at very least the directives and the relevant national legislation made thereunder?

Regulation 4

The phrase “Community acts” is not defined. As the European Parliament usually issues directives what is a Community act?

The definition at 4(3) is very confusing and appears to be tautologous. It is submitted that the regulation would be made clearer if the following definition was used:

“In this regulation, “national legislation” means any enactment or obligation created under a power in an enactment which implements Community law in that part of the United Kingdom to which the enactment relates.”

Regulation 6

The effect of this regulation is unclear.

Does this provide an exemption for all communications promoting cultural or linguistic diversity and the defence of pluralism or is it intended that the measures taken at national level should specify the extent, if at all, to which an exemption from the regulations is given?

Regulation 7

The wording of regulations 7(1), 7(2) and 7(3) is almost gobbledegoose.

CCTA believes that Regulation 7(1) could be reworded to read as follows:

“A person, in a Member State other than the United Kingdom, who seeks information society services provided by a service provider from a location in the United Kingdom shall be entitled to all the protection provided under these regulations, including all rights of enforcement, whether or not the service is provided in the United Kingdom.”

CCTA believes that Regulation 7(2) could be reworded to read as follows:

“Information society services provided to a person in the United Kingdom by a service provider established in a Member State other than the United Kingdom shall comply with these regulations unless the application of these regulations would unreasonably restrict the freedom to provide Information society services from that Member State.”

CCTA believes that Regulation 7(3) could be reworded to read as follows:

“Regulations 3(1) and 3(2) shall not apply to the matters set out in the Schedule to these regulations.”

It ought to be possible to combine regulations 7(6), 7(7), 7(8) and 7(9) to avoid the need for cross-referencing in those paragraphs.

Where a criminal sanction is being imposed, e.g. 7(10), it is unsatisfactory to require a person to have to refer to another statute to ascertain the maximum penalty for that offence.

Regulation 8

This regulation is again unclear.

Does the geographic address in 8(1)(a) include a PO Box number if this is the usual address for the purpose of sending communications?

If the service provider has several sites from which it operates will this be the principal/registered office address or can it be the address where any communication will be dealt with?

What is meant by the phrase “the details of the service provider” in regulation 8(1)(c)? If this means a telephone and facsimile number why not simply say so. The name and address have to be given under 8(1)(a) and 8(1)(b). It is not obvious what other information would have to be given,

Regulation 10

It will not be possible to comply with this regulation as it is drafted. If the recipient uses the “by sender” view format in Microsoft Outlook not even the header to an electronic communication will be shown. The regulation must have a less stringent obligation to be workable. Perhaps compliance with the regulation should be satisfied if the communication “is capable of being identified” whether or not it actually is.

Regulation 11

Not all codes of conduct will be available by electronic means. Regulation 11(2) should have added at the end “or by other means”.

Regulation 13

What is the definition of “technological means”? Does it include a telephone (including an internet telephone), mobile phone or facsimile?

What is the definition of “without undue delay”? If the regulations are to be enforced by an extension to the powers under the Stop Now Orders time limits should be readily ascertainable and reliance should not have to be placed on imprecise time periods.

Should an acknowledgement have to be by electronic means where for example the service provider has to send a hard copy of a document in any event? Does the customer want to receive both an electronic receipt and a letter?

Regulation 14

This is misleading and ambiguous.

Regulations 11 and 13, as drafted, refer to the “placing” of an order. That must intend the reference to an “order” to be a contractual offer or acceptance of a contractual offer. It is therefore inappropriate to use the extended definition of “order” in regulation 14 for any part of regulation 11 and/or 13.

Regulation 14 should therefore be deleted.

If an “order” is not to be limited to a contractual offer it ought to be defined so that the parties can be certain as to whether or not an “order” exists and regulations 11 and 13 should be redrafted to identify when the wider definition of “order” in regulation 14 would apply.

CCTA accepts that a person ought to be clearly advised if they are entering into a contract and ought to have the opportunity to withdraw from the contract once all the information has been supplied but before the electronic order is sent.

Provided that advice is given the other information is only needed at the time that a person indicates that they are considering placing an order (order here is given its common usage not the proposed wider usage suggested in regulation 14).

If the purpose of this regulation is to prevent customer’s ordering inadvertently it should say so.

Regulation 15

Breach of statutory duty is a tortious act. It is unsatisfactory to bring the law of torts into a contractual situation.

Regulation 16

This regulation may be incompatible with the Human Rights Act 1998.

The sanction is certainly disproportionate to the breach.

The regulation as presently drafted would enable a person to obtain goods, use them for 10 years or more and then demand their money back and make the service provider liable for payment of interest on any sum paid and the costs of collection.

The right to cancel should not be greater than that available under the distance selling regulations, which would in any event probably cover the transaction.

Regulation 18

The reference to “technology, widely recognised and used by industry” is unduly restrictive. There may be a reluctance to bring new technology on-line if it results in protection being lost simply because it is not widely recognised and used.

Conclusions

1. There is no need for a further regulatory framework along the lines proposed.
2. If additional regulations are required it would be preferable to amend the existing law and regulations. The imposition of a further tier of regulations does not help business or consumers to understand their rights and obligations and may create inconsistent requirements dependant upon which regulations are applied.
3. A regulatory framework should be limited to ensuring harmonisation of E-commerce legislation throughout the EU.
4. The present draft regulations are often unclear.
5. The present draft regulations are often ambiguous.
6. The present draft regulations could easily cause a service provider to commit an unanticipated breach of the regulations.
7. Some of the sanctions proposed are disproportionate to the anticipated breach.
8. It is inappropriate to consider applying the Stop Now Orders to regulations which are ambiguous, uncertain and which could be inadvertently breached as a result of that ambiguity and/or uncertainty.
9. The draft regulations are inappropriate for approval.

Consumer Credit Trade Association
Suite 8
The Wool Exchange,
10 Hustlergate,
Bradford
BD1 1RE

Contact:

Brian Adams
Legal and Compliance Manager
Tel: 01274 390380 (Switchboard)
Fax: 01274 729002
E-mail: brian@ccta.co.uk or <mailto:info@ccta.co.uk>
Web: www.ccta.co.uk