

2 May 2002

Guy Russell  
Department of Trade and Industry  
151 Buckingham Palace Road  
London  
SW1W 9SS

Dear Mr Russell

**DTI Consultation Paper on the implementation of the Electronic Commerce Directive  
(the “Directive”)**

The IMA is grateful for the opportunity to respond to the DTI’s Consultation Paper on the draft Electronic Commerce (EC Directive) Regulations. The Investment Management Association (IMA) was formed on 1 February 2002 when the Association of Unit Trusts and Investment Funds (AUTIF) merged with the Fund Managers’ Association (FMA).

AUTIF was the trade association representing authorised investment funds (unit trusts and open ended investment companies) established in the UK. The FMA represented the interests of UK based institutional fund managers. These two operations are now combined within the IMA to form an association that represents the whole of the UK investment management industry. IMA Members between them manage assets of over £2 trillion (£2,000 billion), including over 99% of the UK investment funds industry.

We have a few general points on the draft order, as follows: The DTI’s approach to implementation broadly consists of a copy-out of the Directive. Whilst this ensures that in general all the provisions of the Directive are covered, it makes no attempt to deal with how the Directive applies to the specifics of the UK legal and regulatory system. It also has the effect of extending some of the provisions beyond the boundaries of the European Community and/or appearing to apply some of them to service providers or authorities based outside the UK where this is clearly not the intention. For example, in regulation 7(1) it is not obvious that the “enforcement authority” referred to is a UK enforcement authority. In regulations 8 to 11 it is not clear that these provisions apply only to UK based service providers. The competent authorities in other Member States will be responsible for implementing and enforcing these powers with respect to service providers based in their jurisdiction. The FSA’s implementation of the Directive makes this distinction (see the FSA’s draft E-Commerce Directive Sourcebook). Furthermore, the DTI’s (and indeed the FSA’s) implementation of the Directive applies its provisions to UK based service providers with respect to any ISS whether or not the recipient is situated within a Member State. This

goes beyond the scope of the Directive which is intended to facilitate the European single market.

If you wish to discuss any of the above comments further, please telephone me on 020 7831 0898 or e-mail me at [pfroggatt@investmentuk.org](mailto:pfroggatt@investmentuk.org).

Yours sincerely

Penny Froggatt  
Legal Consultant