

## REGULATORY IMPACT ASSESSMENT

### 1. Title of proposed measure

The Electronic Commerce (EC Directive) Regulations 2002<sup>1</sup>

### 2. The issue and objective

**Issue:** E-commerce provides the UK and the rest of the European Economic Area (EEA) with an opportunity to stimulate economic growth, industrial competitiveness and employment. To facilitate this, it is desirable to put in place an effective legal framework that would remove the chief obstacles to providing services electronically within the EEA. The Regulations will aim to do this and to meet legislative obligations in respect of the E-Commerce Directive. UK businesses will have to ensure that they are in compliance with the provisions of the Regulations.

**Objective:** The purpose of the Regulations is to create a framework within which UK business (particularly SMEs) and consumers will have the legal certainty needed to take full advantage of the opportunities offered by e-commerce. The main areas addressed are:

- (a) identifying and clarifying rules so that both consumers and business have greater confidence about whose laws apply to an online transaction;
- (b) ensuring transparency and consistency in the information to be provided by sellers to consumers about themselves, their offerings and how to conclude a contract online;
- (c) ensuring consistency in aspects of online commercial communications, such as conditions for unsolicited emails; and
- (d) limiting the liability of intermediaries who transfer or store information on behalf of others but are not aware of its content.

### 3. Risk assessment

The risks discussed below correspond to the four areas identified in the previous paragraph.

- (a) A substantial barrier to the more confident and widespread use of e-commerce within the EEA is the imposition of restrictions by any of the 18 different sets of national legislation. As the UK is a nation with a relatively high proportion of foreign trade, UK business is particularly exposed to any restrictions associated with doing online business abroad. Compliance with restrictions prevailing in the Member State in which the recipient of the service is located entails considerable expense for business wishing to provide electronic services across borders, in terms of both ensuring that activities are lawful and keeping abreast of any alterations to the legal framework. Moreover, the absence of a harmonised legal framework may create uncertainty for the recipient of the service. The Regulations are a first step to liberalising online services and implement a partial harmonisation of single market rules so as to reduce the cost and time burdens for businesses and create greater certainty for service recipients.

---

<sup>1</sup> Title of Regulations Transposing Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1). The text (PDF 106 KB) is at [europa.eu.int/eur-lex/en/lif/dat/2000/en\\_300L0031.html](http://europa.eu.int/eur-lex/en/lif/dat/2000/en_300L0031.html).

- (b) Without specific information, service recipients will not know where to complain if necessary and it will be difficult to ensure that the service in question is supervised at source. Information about the seller, the relevant authorities in the seller's home country, the products and services and their prices and what to do to order online needs to be clear. In particular, consumer take-up is also likely to be inhibited by a diversification of approaches.
- (c) Similarly, unless service recipients have information about an online advertiser (or the person on whose behalf he is advertising), they will not be able to protect themselves effectively against unwanted or unsolicited advertising emails. Without requirements that advertising emails are flagged as such, users may be discouraged from entering into e-commerce by the potential costs and difficulties of managing their electronic in-boxes.
- (d) Without some harmonisation of the conditions under which intermediary providers of access and storage services could limit their liability for illegal or harmful information and activities, disparities in treatment by national authorities may grow and competitiveness may suffer. If liability is imposed, service providers may become less willing to provide certain services or may be forced to impose conditions on access to their services.

There are also major risks associated with a failure to implement the provisions of the Directive correctly into UK law. This could lead to proceedings being brought by the European Commission in the European Court of Justice. Failure could also lead to the Government being held liable for any losses suffered by those denied their rights under the Directive.

#### **4. Identification of options**

Two principal options have been identified:

- option 1—do nothing; and
- option 2—specific implementation of the provisions of the Directive, in general and in detail.

#### **5. Issues of equity or fairness**

The harmonisation resulting from the Regulations will reduce the exposure of the public to certain risks.

The Regulations will improve the confidence of actual and potential consumers to engage in e-commerce and promote a level playing field for SMEs.

The Regulations are intended to impact evenly across all sectors of online service provision.

Though the Regulations apply to large and small businesses alike, SMEs in general have less administrative capacity to ensure compliance. However, they stand to benefit disproportionately, through easier access to new markets. SMEs trade less abroad than large companies, but even those confined to the UK market stand to benefit from the Regulations as most of the information, advertising and other provisions apply also to domestic transactions.

## **6. Identification of the benefits**

**Option 1:** This has the benefit that there would be, for the time being at least, no change to the current legal framework. There would be no immediate cost for Government or business and consumers would continue to benefit from current levels of protection.

**Option 2:** If implemented consistently across the EEA, this has the benefit of allowing UK providers of online services to comply with only one national legislation—that of the UK—to a much greater extent than is currently the case, irrespective of where they do business in the EEA, by removing the need to track and comply with restrictions in up to 18 different national legislations when providing services within the EEA. It will similarly lift restrictions on providers of online services into the UK. However, UK enforcement authorities and courts will be able to take proportionate measures against certain incoming services in certain circumstances, for example, where it is necessary to protect public policy or consumers. On the whole, the Regulations should increase competition between online service providers and create more choice for UK consumers. They also benefit business and consumer confidence by requiring the provision of information about the service provider and providing for limitations on the liability of service providers who may unwittingly transmit or store illegal information.

## **7. Quantifying and valuing the benefits**

The Regulations implement a complex Directive, with implications across several major areas of national and European Community law. Only broad, qualified estimates of its financial impact could be made. It is possible, however, to give an indication of the costs which service providers operating in a number of EC states currently bear, and which the Regulations should remove or decrease substantially.

The explanatory memorandum accompanying the original proposal for a Directive cites several examples of the costs associated with compliance with multiple sets of legislation, following a survey carried out by the Commission. In order to ensure compliance with different legislation, respondents indicated that they require considerable legal advice: examples were 50 days of legal advice to set up an appropriate system; 3-4 days of advice per month; and half an hour per month to maintain the system. One German estimate was DM70,000 per year. Another operator estimated that a review of the regulatory framework for online services in the UK alone had cost 60,000 ECUs. Assuming comparable review costs for each Member State, dependence on regulatory control in the state of destination might cost a company over €1m were it to cover all of the EEA, with ongoing costs of around €35,000 a year thereafter. Given the requirements of the applicant states to implement the directive on or before accession, these costs can be roughly increased by two-thirds again in respect of pan-single market operation in the medium term. This compares to costs of regulatory control in the country of origin, which might for such a business be £40,000 initially, with minor recurrent costs thereafter. These are very general indicative illustrations. The simple calculation below takes much lower figures as its basis.

There were 3.7 million businesses in the UK at the start of 1999. Only 7,000 were large i.e. over 250 employees; and 24,000 were medium i.e. 50-249 employees. Small businesses (those with less than 50 employees) made up 38% of all turnover and most were micro i.e. 1-9 employees. 2.3 million businesses were sole traders or those without employees. The UK Online Annual Report 2000 indicated that 450,000 SMEs were actually trading online, and seven out of ten entrepreneurs were pursuing e-commerce opportunities. Over 81% of all British businesses are now online (and over half of micro-businesses)

Assuming the benefits of doing without one-off review costs are on average £15,000 and yearly costs thereafter are £5,000 for the 31,000 large and medium companies (who are assumed to want or need to trade online widely in the single market), and respectively £3,000 and £1,000 for say 200,000 SMEs likely to trade online in Europe, this produces one-off benefits for the UK of about £1 billion and yearly savings of about £350 million.

This calculation leaves out sole traders, and businesses not yet online. It disregards the likelihood that many businesses will either have already done a one-off review, or would still want to do a substantial periodic review of legal conditions for trading across borders in Europe.

Whilst this example is only illustrative, it does suggest the order of magnitude of the savings that may accrue to businesses—and ultimately to the consumer—through Regulations implementing option 2. The calculation is also sensitive to the precise scope of implementation in the different Member States. Option 1 would not yield these benefits but would avoid the costs associated with transposition, implementation and enforcement of the Directive.

## **8. Compliance costs for business, charities and voluntary organisations**

### **(i) Business sectors affected**

The Regulations affect everyone providing online services within the internal market, given the definition of “information society services” as any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. It follows that the Regulations affect a large number of businesses, charities and voluntary organisations now, and their numbers should increase as the attractiveness of e-commerce grows.

### **(ii) Compliance costs for a “typical” business**

The following costs are for option 2; option 1 imposes no immediate direct additional costs on business.

There will be costs relating to ensuring that the provision of services complies with all the relevant national legislation. In some cases, there may be a cost of changing to compliance with UK legislation instead of that of particular markets in the EEA. If these costs are greater than those that businesses bear at the moment, however, it is likely to be because of compliance with other instruments (covering advertising, licensing etc.) since the present Regulations will merely require compliance with home-state controls in such areas.

There will be some additional expenses involved in ensuring that certain information is provided on a website or other means of promoting the service. However, the type of information required is not expensive to procure, the majority of responsible businesses would aim to provide such information anyway and the costs and effort concerned would probably be integrated with the burden of meeting the interrelated information requirements of the Consumer Protection (Distance Selling) Regulations 2000.

There may also be some costs for certain businesses (e.g. those standing to benefit from the sending of unsolicited commercial communications) from the requirement for information provision, though much of this is already undertaken by advertisers in accordance with industry standard practice.

Intermediary providers of access and storage services may face some expenses if they are to benefit from the limitation of liability provisions of the Regulations. One respondent to the public consultation on draft Regulations who engages in such activities estimated that it would incur the following costs per annum to operate an effective notice and takedown regime in the 13 Member States in which it currently operates:

- £60-90,000 in legal costs;
- £80-120,000 in engineering and technical costs.

The Regulations may result in some one-off expenses for affected organisations. These would result from any necessary alterations to the systems in place and would vary according to the organisation. They are very hard to estimate with any degree of accuracy. None of the 100 respondents was able to give an estimate of any of these costs in the DTI's consultation exercise on the draft Directive in 1999, and only one respondent felt able to suggest the areas in which costs would be reduced or increased, despite a specific question about this. Similarly, only one of the almost 100 respondents to DTI's consultation in 2001 on its approach to implementation provided an estimate of compliance costs, and this was predicated on assumptions that are not reflected in the Regulations.

### **(iii) Total compliance costs**

The costs of compliance with these Regulations will depend on the size of the organisation, its current level of involvement in e-commerce, the extent of the changes required to comply with the Directive, the level of systems change required and the extent to which alterations resulting from this Directive are made as part of the process of updating and upgrading required to provide an effective online service.

## **9. Consultation with small business: “the litmus test”**

Small businesses have not provided figures for compliance costs. We expect there will be some impact on small business, although it should not be significant given that most small businesses involved in e-commerce should already comply with the majority of the requirements anyway. In principle, costs for small businesses would in themselves be lower (but greater in proportion to revenues), and benefits higher, than for larger businesses.

## **10. Identification of any other costs**

**Option 1:** The absence of specific implementation of the Directive is likely to cause uncertainty that will inhibit the growth of e-commerce and therefore potentially impose costs on the UK (e.g. resulting from reduced competitiveness, lower employment and less economic growth).

**Option 2:** Implementation of the Directive by legislative and non-legislative means and enforcement of the Regulations will entail additional costs for Government and other organisations as set out below.

There will be enforcement costs for UK enforcement authorities (e.g. the Director General of Fair Trading, Trading Standards Departments etc.) acting on behalf of consumers in other Member States and encouraging other Member States' authorities to act on behalf of UK consumers. Implementation of the Directive will place a resource demand on local authorities in England, Wales and Scotland to effectively ensure compliance with the Regulations. The publicity surrounding implementation may give rise to an initial increase in demand for consumer and business advice and there may be an expectation on local enforcement

authorities to undertake promotional and educational work for consumers and businesses on the new legislation.

Additional administrative functions also flow from Articles 16, 17, 19 and 21 of the Directive, which are not directly implemented by the Regulations. Activities that will need to be resourced include:

- implementing and monitoring the Regulations and other obligations under the Directive;
- encouraging the development of codes of conduct and means of alternative dispute resolution;
- establishing and acting as contact points for the provision of advice and assistance to business and consumers;
- forwarding information to the Commission on developments in the UK, attending discussions on the implementation of the Directive and participating in the review of the Directive in 2003 and every two years thereafter;
- providing information and assistance when sought by other Member States and cooperating with their requests for regulatory enforcement action and the search for acceptable solutions to cross-border problems before Community legal action is invoked; and
- the operation of the procedures associated with the exercise of derogations from the requirement not to restrict the cross-border provision of information society services, whether invoked by the UK or by other Member States in respect of services originating in the UK.

## **11. Results of consultation**

DTI consulted generally on the draft Directive in 1999 and on its approach to implementation in 2001. It received some 100 contributions from businesses, consumers, their representative organisations and others on each occasion. It consulted on draft Regulations and accompanying guidance for business between March and May 2002. In the course of discussions with interested parties, a number of other unquantifiable points about the costs and benefits of the Directive have emerged. These are additional to points dealt with above and might be summarised as follows:

- Regulations that genuinely facilitate the use of e-commerce are likely to reduce business costs by encouraging the use of cost-effective delivery mechanisms that are able to reach the maximum number of consumers; and
- SMEs will be particularly handicapped by inconsistent implementation of the Directive since they are less likely to be able to afford sound legal advice and will therefore be discouraged from exploiting the opportunities afforded by the internal market and investing in the European development of their businesses.

## **12. Summary and recommendation**

Option 1 is not attractive since it foregoes substantial likely net benefits and would be in breach of the UK's Community obligations.

Option 2 will bring some costs in the form of business-systems changes required to ensure compliance with the Directive. However, these should, on the whole, be relatively small and may not apply to those entering the electronic market in the future (although, clearly, they will need to comply from day one). It will also bring costs with regard to transposition and enforcement. Offsetting these are commensurate benefits to consumer and business confidence and the fact that business opportunities will be increased considerably through the removal of restrictions on the cross-border provision of information society services. The DTI's assessment is that the benefits of the Regulations outweigh the costs and justify option 2.

## **13. Enforcement, sanctions, monitoring and review**

See section 7, above.

### **Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

**Signed by the Minister .....**

**(Minister of State for Employment Relations, Industry and Regions)**

**Date .....**

**Contact:** Mary Tait  
BRCII2 International Communications,  
Department of Trade and Industry  
Room 206  
151 Buckingham Palace Road  
London, SW1W 9SS  
tel: (020) 7215 1807  
fax: (020) 7215 4161  
email: [Mary.Tait@dti.gsi.gov.uk](mailto:Mary.Tait@dti.gsi.gov.uk)