

TRANSPOSITION NOTE FOR 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)

Article	Objective	Implementation	Responsibility
<u>Chapter I</u>	<u>General provisions</u>		
3	Internal market		
	<p>Article 3 requires Member States to ensure that information society services provided by a service provider established within their territory comply with the national provisions applicable in the Member State in question subject to certain exclusions and that the freedom to provide information society services from another Member State is not restricted. It permits Member States to derogate from the latter requirement in the event of actual or potential prejudice to public policy, public health, public security or consumer protection where the Member State where the service provider is established has been asked to take action and has not done so satisfactorily.</p>	<p>Regulation 4(1) makes requirements within the coordinated field apply to the provision of an information society service by a service provider established in the United Kingdom irrespective of whether that service is provided in the United Kingdom or in another member State. (Regulation 2(1) defines the coordinated field as requirements relating to the taking up and pursuit of the activity of an information society service and defines an information society service with reference to the definition in article 2(a) of the Directive.) Enforcement authorities are required under regulation 4(2) to secure compliance with those</p>	Secretary of State.

This latter requirement may be waived if the matter is one of urgency.

requirements. Conversely, regulation 4(3) provides that requirements within the coordinated field are not to be applied to information society services provided by a service provider established in the another member State for reasons which fall within the coordinated field where their application would restrict the freedom to provide information society services. By virtue of regulation 4(4), these provisions do not apply to those fields set out in the Schedule. Regulation 5 permits enforcement authorities and, where no enforcement authority is a party to the proceedings, courts, to derogate from regulation 4(3) in the event of actual or potential prejudice to public policy, public health, public security or consumer protection where, if an enforcement authority is acting, the Member State where the service provider is established has been asked to take action and has not done so satisfactorily. This latter requirement may be waived if the matter is one of urgency. The enforcement authority must

keep the European Commission informed of such measures taken in derogation from Regulation 4.

Chapter II

Principles

Section 1

Establishment and information requirements

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General information to be provided

Article 5(1) requires Member States to ensure that service providers make certain information (such as their name, geographic address, electronic mail address etc.) available to the recipient of the service and any competent authority easily, directly and permanently accessible.

Article 5(2) requires Member States to ensure that where information society services refer to prices, such references to prices are indicated clearly and unambiguously and in particular must indicate whether they are inclusive of tax and delivery costs.

Regulation 6(1) requires information society service providers to make certain information (such as their name, geographic address, electronic mail address etc.) available to the recipient of the service and any relevant enforcement authority in a form and manner which is easily, directly and permanently accessible.

Regulation 6(2) requires a person providing an information society service to ensure that references to prices are indicated clearly and unambiguously and in particular, indicate whether they are inclusive of tax and delivery

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costs.

Section 2

Commercial communications

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Information to be provided

Article 6 requires Member States to ensure that commercial communications which constitute or form part of an information society service are clearly identifiable as such, clearly identifies the person on whose behalf the communication is sent, clearly identifies as such any promotional offer or competition and any qualifying conditions are easily accessible and presented clearly and unambiguously.

Regulation 7 requires service providers to ensure that any commercial communication provided by them which constitutes or forms part of an information society service are clearly identifiable as such, clearly identify the person on whose behalf the communication is sent, clearly identify as such any promotional offer or competition and any qualifying conditions are easily accessible and presented clearly and unambiguously.

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Unsolicited commercial communication

Article 7(1) requires Member States who permit unsolicited commercial communications by electronic mail to ensure that such communications by a service provider established in their territory are clearly and

Regulation 8 requires service providers to ensure that any unsolicited commercial communications sent by them by electronic mail are clearly and unambiguously identifiable as such as soon as it is.

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unambiguously identifiable as such as soon as they are received by the recipient.

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Treatment of contracts

Article 9 requires Member States to ensure that (subject to certain excluded categories such as real estate contracts) the legal requirements applicable to the contractual process neither create obstacles for the use of electronic contracts nor result in such contracts being deprived of legal effectiveness and validity on account of their having been made by electronic means.

The majority of relevant statutory references are already capable of being fulfilled by electronic communications where the context in which they appear does not indicate to the contrary. Existing obstacles will be amended on a case-by-case basis via primary legislation or subordinate legislation.

Secretary of State, Scottish and Northern Ireland Executives.

Section 3

Contracts concluded by electronic means

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Information to be provided

Article 10 requires Member States to ensure that service providers supply certain information to recipients of services (such as the different technical steps to follow to conclude the contract, whether or not the contract will be filed and accessible, the technical

Regulation 9 requires service providers to provide recipients of services with certain information (such as the different technical steps to follow to conclude the contract, whether or not the contract will be filed and accessible, the technical means for

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means for identifying and correcting input errors, the languages offered for the conclusion of the contract and details of codes of conduct they subscribe to and how they can be consulted electronically) prior to an order being placed. These requirements do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications, and parties who are not consumers may agree otherwise. Article 10 also requires service providers to ensure that, where terms and conditions are supplied to the recipient, they are made available in a way which enables them to be stored and reproduced.

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Placing of the order

Article 11 requires Member States to ensure that service providers acknowledge receipt of an electronic order without undue delay and by electronic means and make appropriate, effective and accessible technical means to identify and correct input errors

Regulation 11(1) requires service providers to acknowledge receipt of an electronic order without undue delay and by electronic means and make available to the service recipient appropriate, effective and accessible technical means to identify and correct

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available to the service recipient prior to the placing of the order. These requirements do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications, and parties who are not consumers may agree otherwise.

input errors prior to the placing of the order. These requirements do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications, and parties who are not consumers may agree otherwise.

Section 4

Liability of intermediary service providers

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‘Mere conduit’

Article 12 requires Member States to ensure that intermediary service providers who merely transmit information provided by a recipient of a service or provide access to communication networks are not liable for the information transmitted provided certain requirements are satisfied (namely they did not initiate the transmission, select the recipient or select or modify the information contained in the transmission).

Regulation 17 limits the liability of intermediary service providers who merely transmit information provided by a recipient of a service or provide access to communication networks provided certain requirements are satisfied (namely they did not initiate the transmission, select the recipient or select or modify the information contained in the transmission).

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‘Caching’

Article 13 requires Member States to ensure that intermediary service providers are not liable for the automatic and temporary storage of information supplied by a recipient of a service provided they do not modify the information or interfere with the lawful use of technology, they comply with conditions on access to the information and rules regarding the updating of information and act expeditiously to remove or disable access to the information stored upon obtaining actual knowledge of the fact that the information has been removed, access to it has been disabled or a court has made an order to that effect.

Regulation 18 limits the liability of intermediary service providers for the automatic and temporary storage of information supplied by a recipient of a service provided they do not modify the information or interfere with the lawful use of technology, they comply with conditions on access to the information and rules regarding the updating of information and act expeditiously to remove or disable access to the information stored upon obtaining actual knowledge of the fact that the information has been removed, access to it has been disabled or a court has made an order to that effect.

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Hosting

Article 14 requires Member States to ensure that intermediary service providers are not liable for the information stored at the request of a recipient of the service provided they do not have actual knowledge that an activity or information was illegal and, where a claim for damages is

Regulation 19 limits the liability of intermediary service providers who merely store information provided by a recipient of a service provided they do not have actual knowledge that an activity or information was unlawful and, where a claim for damages is made, are not aware of any facts

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involved, are not aware of any facts or circumstances from which it would have been apparent that the activity or information was illegal or upon obtaining such knowledge or awareness, act expeditiously to remove or disable access to the information. In order to avail of the limitation the recipient of the service must not be acting under the authority or control of the service provider.

or circumstances from which it would have been apparent that the activity or information was unlawful or, upon obtaining such knowledge or awareness, acts expeditiously to remove or disable access to the information. In order to avail of the limitation the recipient of the service must not be acting under the authority or control of the service provider.

Chapter III

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Implementation

Sanctions

Article 20 states that Member States shall determine the sanctions applicable to infringements of national provisions adopted pursuant to the Directive and take all measures necessary to ensure they are enforced. The sanctions shall be effective, proportionate and dissuasive.

Regulation 13 provides that the duties imposed by Regulations 6, 7, 8, 9(1) and 11(1)(a) shall be enforceable by an action against the service provider for damages for breach of statutory duty. Regulation 14 provides that, where on request a service provider has not provided terms and conditions in compliance with Regulation 9(3) the recipient may seek a court order requiring the service provider to comply. Regulation 15 provides that where a service provider has not made

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available means to identify or correct errors in compliance with Regulation 11(1)(b), the recipient may rescind the contract unless a court orders otherwise on the application of the service provider.

Annex

Derogations from Article 3

The derogations from Article 3 are set out in the Schedule to the Regulations and encompass copyright and related rights, the freedom of contracting parties to choose the applicable law, contractual obligations concerning consumer contracts, formal validity of contracts creating or transferring rights in real estate and the permissibility of unsolicited commercial communications by electronic mail.

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