

MEMORANDUM SHOWING METHOD OF IMPLEMENTATION AND BODIES RESPONSIBLE FOR EACH OF THE ARTICLES OF THE ELECTRONIC COMMERCE DIRECTIVE (2000/31/EC) IN THE AREA OF FINANCIAL SERVICES.

NB: This memorandum is limited to implementation of the E-Commerce Directive in the area of financial services. It should be read alongside the separate memorandum produced by the Department of Trade and Industry on implementation of the Directive for other purposes.

Article	Objective	Requires	Achieved by
3(1)	Each EEA member state is required to ensure that information society services (“ISS”: in the main these are services provided over the internet) provided by a service provider established on its territory comply with its national provisions in areas within the “coordinated field” of the directive. (The coordinated field is made up of the legal requirements that apply to ISS or to the providers of ISS, regardless of whether these requirements are of a general nature or are specifically designed for such services or providers.).	<p>(a) Amendment to the Financial Services and Markets Act 2000 (“FSMA”) to extend its territorial application so as to include the provision of financial ISS by persons established in the UK, regardless of where in the EEA the services are actually provided.</p> <p>(b) Amendment of the scope of the financial promotion regimes established under FSMA to ensure that the financial promotion restriction applies to communications by persons established in the UK to persons in other EEA member states.</p>	<p>(a) HM Treasury through the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (regulation 13) and the Financial Services Authority (“FSA”) through its rules.</p> <p>(b) HM Treasury through the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (articles 3, 4, 8 and 9) and the FSA through its rules.</p> <p>(c) FSA through its rules.</p>

		(c) Where otherwise needed, extension of the territorial scope of the requirements of the FSA's <i>Handbook</i> to meet the requirements of article 3(1).	
3(2)	EEA member states must not restrict the freedom to provide ISS from another EEA state in areas within the coordinated field of the directive.	<p>(a) Amendment to the concept of "regulated activity" in the Financial Services and Markets Act 2000 ("FSMA") to exclude from its scope the provision of financial ISS from establishments in other EEA member states.</p> <p>(b) Amendment of the scope of the financial promotion regimes established under FSMA to ensure that the financial promotion restriction does not apply to communications by persons established in other EEA member states into the UK.</p>	<p>(a) HM Treasury through the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 2) (Electronic Commerce Directive) Order 2002 and the Financial Services Authority ("FSA") through its rules.</p> <p>(b) HM Treasury through the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (articles 6 and 10) and the FSA through its rules.</p>
3(3) + Annex	Provides that Articles 3(1) and 3(2) do not apply to the fields referred to in the Annex to the directive.	.Amendment of the FSA's rule making power (conferred by s. 138 of FSMA) to enable the FSA to apply rules to incoming ISS	HM Treasury through the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (regulations 3

		from establishments in other EEA member states in the fields referred to in the Annex to the directive that are relevant to the FSA's functions	and 4) and the FSA through its rules.
3(4)	Allows EEA member states to take measures to derogate from Article 3(2) in respect of a specific ISS subject to certain conditions and, except when it is urgent, only after asking the member state where the ISS provider is established to take action.	Enable the FSA to take action under the Article 3(4) derogation.	HM Treasury through the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (Part 3) and the FSA through its rules.
5	Requires EEA member states to ensure that service providers make certain information available to the recipient of the service in a form and manner which is easily, directly and permanently accessible.	Exercise of FSA's existing power to make rules	FSA through its rules.
6	Requires EEA member states to ensure that commercial communications which are part of, or constitute, an ISS comply with certain conditions	Exercise of FSA's existing power to make rules.	FSA through its rules.
7	Requires EEA member states to ensure that unsolicited	Exercise of FSA's existing power to make rules.	FSA through its rules.

commercial communications by electronic mail are clearly identifiable as such.

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| 9 | Requires EEA Members States to ensure that their legal systems allow contracts to be concluded by electronic means. | No action required—FSA rules already provide for establishments in the UK to conclude contracts electronically. | FSA through its rules. |
| 10 | Requires EEA Members States to ensure, except when otherwise agreed by parties who are not consumers, that service providers make certain information available prior to the order being placed. | Exercise of FSA’s existing power to make rules. | FSA through its rules. |
| 11 | Requires EEA Members States to ensure, except when otherwise agreed by parties who are not consumers, certain principles apply when the recipient of a service places an order through technological means. | Exercise of FSA’s existing power to make rules. | FSA through its rules. |

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Requires EEA Members States to ensure that intermediary service providers (ISPs) that act as mere conduits, or who cache or host material are not liable for the information transmitted or stored by them on behalf of ISS providers except under specific conditions. EEA member states cannot impose a general obligation on ISPs to monitor the information they transmit or store.

Amendment of the financial promotion regimes established under FSMA to align the definition of a “mere conduit” for ISS to that used in the directive. Removal of the financial promotion restriction for ISS.

HM-Treasury through the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2002 (article 5) and the FSA through its rules.