

Study on the Economic Impact of the E-Commerce Directive

Christian Jervelund | Copenhagen | 8 September 2008

INFORMED DECISIONS



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SANKT ANNAE PLADS 13, 2. | 1250 KØBENHAVN K | TELEFON: 7027 0740 | FAX: 7027 0741 | WWW.COPENHAGENECONOMICS.COM

Main points

- What does the e-commerce directive (Directive) do?
- Limited liability
- E-contracts
- Country of origin principle

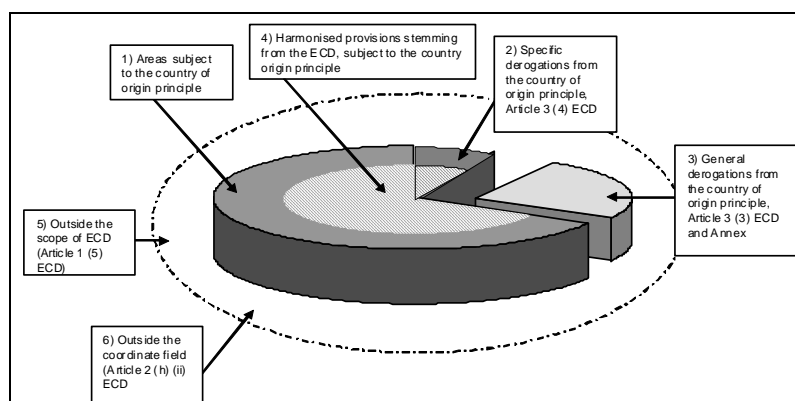
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Two key elements

- Adopted in 2000 and transposed by most EU Member States in 2002
- Main objective is proper functioning of the internal market for information society services
- 1) The country of origin principle applies within the coordinated field: a business needs only comply with its domestic laws when selling abroad
- 2) The harmonised provisions

The elements of the Directive



Note: ECD means here the Directive
Source: Copenhagen Economics and Ramboll Management 2006.

Limited liability provisions

- Articles 12-14 in the Directive define and limit the liability for intermediary service providers where they act as mere conduits, caches or hosts of information
- The liability provisions have clarified the applicable legislation in this area
- Out of the 18 Member States that replied, 17 had no clear legislation in this area prior to the Directive

Clarifying legislation

: The legal impact of article 12-14, number of Member States

	Prior to the transposition, did a specific legislation concerning liability for intermediaries exist?
Yes	1
No	17

Note: The table shows that 17 out of 18 Member States did not have specific legislation in place in the area of liability for intermediary service providers.

Source: Appendix B, question 11.

Important for ISP's but little quantitative data to support

- Several intermediary service providers suggested that this provision is the single most important one because it so clearly provides certainty in a crucial area where there was uncertainty before.
- A consultation held by the British Department of Trade and Industry (DTI) supports this view
- We may expect to see a rise in cross border trade of such services However, data on this does not exist

E-contracts

- Article 9.1 in the Directive states that Member States shall assure that contracts concluded by electronic means carry the same weight as 'paper' contracts
- Prior to transposition of the Directive, 12 out of 18 Member States' legislation in this area was unclear

Providing legal certainty

Legal situation for e-contracts prior to the Directive

	Prior to transposition of the Directive, did a contract concluded by electronic means have equivalent legal status as a 'paper' contract?
Yes, the electronic contract had the same legal status as an "off-line" contract	6
There existed no specific law stating the status of an electronic contract	12

Note: The table shows that prior to the Directive 12 Member States did not have clear legislation about the legal status of an electronic contract

Also indirect impact

- Direct effect import
 - > Firm interviews suggest that not being able to conclude contracts electronically prior to the Directive implied higher costs and more legal uncertainty
- Indirect effect may also be important
 - > greatest source of higher costs was incorporating an offline procedure into business processes dominated by online procedures

Country of origin principle

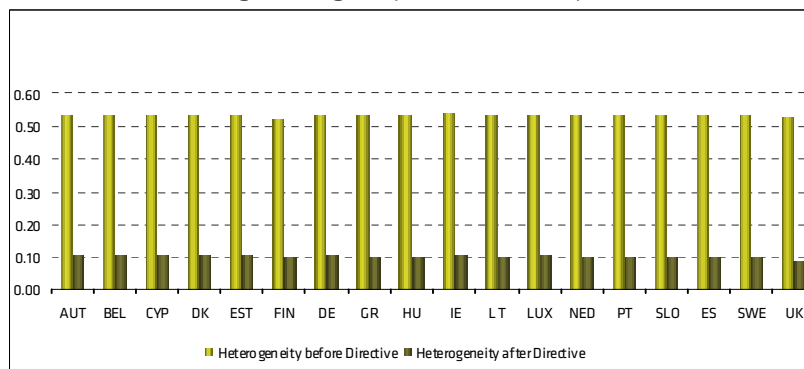
- The country of origin principle of the Directive is a core principle of the Directive.
- Idea is to give the suppliers the possibility to provide their services all over Europe while only adhering to one set of rules instead of different rules in different Member States.
>thereby stimulating cross-border on-line services
- The Directive has produced a lower level of legal heterogeneity between Member States.

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Reducing legal heterogeneity

Level of barriers due to legal heterogeneity in areas covered by the Directive



Note: The graph shows the extent of legal differences seen from the perspective of a firm established in each country. The maximum value of the index is one. If a country scores a value of one, it means that firms in that country will experience different legislation in all other countries.

Source: Own calculations based on replies from expert group in appendix B.

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Lack of data a real issue

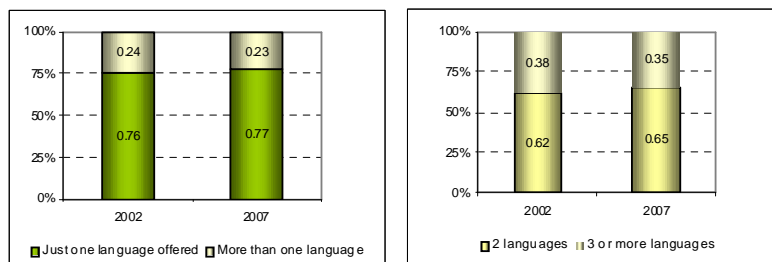
- Difficult to conclude on current impact of country of origin
- Few statistics exist on cross border specific goods or services suitable for online trade.
- Most data is not able to distinguish online from offline cross border sales
- Must resort to more creative data – see next graph

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Number of languages offered

Number of languages offered by online firms, 2002 and 2007.



Note: Figure 3.4a (the one to the left) shows the share of web sites offering just one language, or two or more languages. Figure 3.4b shows that of the firms offering two or more languages, 65% offered two languages in 2007 while 35% offered three or more languages.

Source: For 2002: "Realities of the European Online Marketplace" - A cross border e-commerce project by the European Consumer Centre's Network. Researchers visited a number of 262 websites to identify among other things, the number of languages they offered. In 2007, Copenhagen Economics repeated the exercise and revisited the same websites. 55 of which did not exist anymore.

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Scope and economies of scale

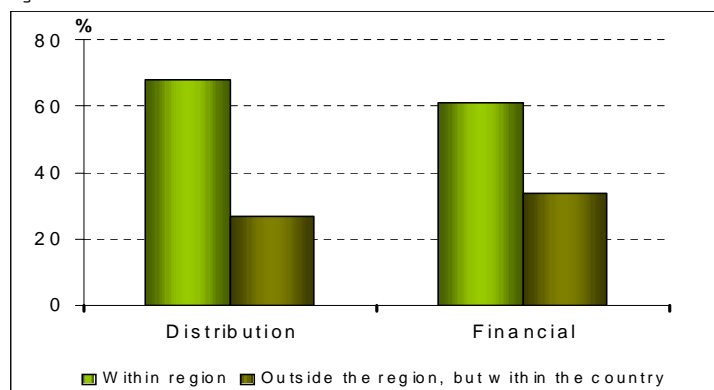
- Data is a serious issue – but time may also play a role
- Potential for country of origin principle stimulating cross border activities could be big: thanks to scope and economies of scale
- Scope: The Directive has the potential to affect the entire economy not just information society service providers in a narrow sense
 - > In reality, any business making use of information society services (except gambling services) may benefit from the Directive. This suggests a great scope for the Directive, and hence a great potential economic impact.
- Economies of scale: Increasing cross border trade may increase productivity through economies of scale.
 - > Economies of scale are most dominant in industries with high fixed costs and low marginal costs. IT-distribution systems conform to that
 - > In a 2006 report on the expected future potential for providing cross border financial services, it was suggested that an important reason for financial institutions to engage in cross border business is benefits from economies of scale

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However still facing a strong preference for locally produced services

Regional market area for online sales



Note: The figures show that firms sell more online in the region they are situated in than they do to the rest of the country. This implies that different legislation between countries is not the only important barrier to cross border trade.

Source: BISER "Business Enterprise in the Information Society-the Regional Dimension", 2001.

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Main points revisited

- What does the e-commerce directive do?
 - > Proper functioning of the internal market for information society services through country of origin principle and harmonised provisions
- Limited liability
 - > A success for ISP's
- E-contracts
 - > Providing legal clarity
- Country of origin principle
 - > Reduced legal heterogeneity
 - > Hard to find quantitative evidence of increase in cross border activities
 - > Serious lack of data
 - > Theoretically the effects could be big due to scope and ec. of scale
 - > ...but many consumers still prefer locally produced services