

歐洲聯盟：電子商務之消費者 保護指令

歐盟 2000/31 號指令
300L0031

歐洲議會及部長理事會 2000 年 6 月 8 日第 2000/31/EC 號有關內部市場資訊社會服務，特別係電子商務，若干法律觀點之指令（簡稱電子商務指令）。

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歐盟之歐洲議會及部長理事會

基於「歐洲共同體設立條約」，特別係其第 47 條第二項、第 55 條及第 95 條，

基於執委會之提案¹，

基於經濟暨社會委員會之意見²，

COUNCIL DIRECTIVE

300L0031

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')
Official Journal L178, 17/07/2000 p0001 – 0016

Text:

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social

基於該條約³第 251 條規定之程序制訂本指令，

鑑於：

- (1) 歐盟正尋求加速進行歐洲國家與人民之間更加緊密之連繫，以確保經濟及社會之發展；依據該條約第 14(2)條之規定，內部市場建構出貨物、服務自由流通，並確保設立自由之無內部邊界區域；資訊社會服務於無內部邊界區域之發展對消除區隔歐洲人民之障礙至為重要。
- (2) 電子商務於資訊社會內之發展將提供歐體重要之就業機會，特別係中小型之企業，且將刺激經濟成長及歐洲公司在創新上之投資；若任何人均能使用網際網路，則亦能增加歐洲產業之競爭力。
- (3) 歐體法及歐體法律秩序之特色係一重要之資產，其使歐洲人民及營運者得以充分獲益於電子商務所提供之機會，而不須考量邊界；本指令之目的因而在於確立歐體法律之高度整合，以建構出真正無內部邊界區域之資訊

Committee²,
Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) The European Union is seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress; in accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movements of goods, services and the freedom of establishment are ensured; the development of information society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples.
- (2) The development of electronic commerce within the information society offers significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and will stimulate economic growth and investment in innovation by European companies, and can also enhance the competitiveness of European industry, provided that everyone has access to the Internet.
- (3) Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities afforded by

社會服務。

- (4) 確保電子商務得充分受益於內部市場係屬重要，因而其與部長理事會 1989 年 10 月 3 日第 89/552/EEC 號協調會員國有關進行電視廣播活動(註 4)之法律、規則或行政作為若干規定之指令，將達成歐體之高度整合。
- (5) 歐體境內資訊社會服務之發展受阻於對內部市場適當運作所構成之許多法律障礙，此將降低設立自由之運作及自由提供服務之吸引力；該等障礙來自於立法之分歧，及對該等服務應適用何項內國法規之法律不確定性；在相關領域中欠缺立法上之協調與調整，該等障礙依據歐體歐洲法院之案例法即可能被予以正當化；有關會員國得對來自於其他會員國之服務加以控制之範圍，存有法律之不確定性。
- (6) 依據歐體之目標、條約第 43 條及第 49 條及歐體次級立

electronic commerce; this Directive therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for information society services.

- (4) It is important to ensure that electronic commerce could fully benefit from the internal market and therefore that, as with Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁴, a high level of Community integration is achieved.
- (5) The development of information society services within the Community is hampered by a number of legal obstacles to the proper functioning of the internal market which make less attractive the exercise of the freedom of establishment and the freedom to provide services; these obstacles arise from divergences in legislation and from the legal uncertainty as to which national rules apply to such services; in the absence of coordination and adjustment of legislation in the relevant areas, obstacles might be justified in the light of the case-law of the Court of Justice of the European Communities; legal uncertainty exists with regard to the extent to which Member States may control services originating from another Member State.
- (6) In the light of Community objectives, of Articles 43 and

法之規定，該等障礙宜在內部市場適當運作之必要範圍內，藉由整合若干國內法律及釐清共同體層次上之若干法律概念，予以消除；在僅就內部市場所生問題若干特定事件之處理上，本指令完全符合尊重條約第 5 條所定輔助原則之需要。

- (7) 為確保法律之確定性及消費者之信賴，本指令應制訂明確且具一般性之架構，以涵括內部市場若干電子商務之法律觀點。
- (8) 本指令之目的係在建立一法律架構，以確保會員國間資訊社會服務之自由流通，但並非意在調和刑法領域之相關事項。
- (9) 資訊社會服務之自由流通，在許多情形下，係歐體法中較具普遍性原則之特定反映，亦即經全體會員國所批准之『人權及基本自由保護公約』第 10(1)條所定之表達自由；因此，含括提供資訊社會服務之指令，必須依據該款條之規定，確保該項活動得被自由從事之，且僅得依據該條第二項及該條約第 46(1)條之規定加以限制；本指令非意在影響各國關於表達自由之基本規範與原則。

49 of the Treaty and of secondary Community law, these obstacles should be eliminated by coordinating certain national laws and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market; by dealing only with certain specific matters which give rise to problems for the internal market, this Directive is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty.

- (7) In order to ensure legal certainty and consumer confidence, this Directive must lay down a clear and general framework to cover certain legal aspects of electronic commerce in the internal market.
- (8) The objective of this Directive is to create a legal framework to ensure the free movement of information society services between Member States and not to harmonise the field of criminal law as such.
- (9) The free movement of information society services can in many cases be a specific reflection in Community law of a more general principle, namely freedom of expression as enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, which has been ratified by all the Member States; for this reason, directives covering the supply of information society services must ensure that this activity may be engaged in freely in the light of that Article, subject only to the restrictions laid down in paragraph 2

(10) 依據比例原則，本指令所規定之措施應嚴格限於達成內部市場正常運作目的所需之最小程度；於歐體層次採取行動有其必要時，且為確保就電子商務事項之真正無內部邊界區域，本指令必須確保一般利益目標之高水準保護，特別係少數族群及人性尊嚴之保護、消費者保護及公共健康之保護；依據條約第 152 條之規定，公共健康之保護係其他共同體政策基本之一部。

(11) 本指令並不損及歐體法令已建立之保護標準，特別係公共健康及消費者利益；尤其係，部長理事會 1993 年 4 月 5 日第 93/13/EEC 號『消費契約(註 5)不公平條款』之指令，以及歐洲議會及部長理事會 1997 年 5 月 20 日第 97/7/EC 號『有關遠距契約(註 6)消費者保護』指令，其構成了契約事項上保護消費者之重要要素；該等指令亦完全適用於資訊社會服務；完全適用資訊社會服務之相同共同體既有體制，亦特別包括部長理事會 1984 年 9 月 10 日第 84/450/EEC 號『有關引入錯誤及比較性廣告(註 7)』指令，部長理事會 1986 年 12 月 22 日第 87/102/EEC 號『有關會員國消費者信用之法律、規則及行政命令之

of that Article and in Article 46(1) of the Treaty; this Directive is not intended to affect national fundamental rules and principles relating to freedom of expression.

(10) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as electronic commerce is concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity, consumer protection and the protection of public health; according to Article 152 of the Treaty, the protection of public health is an essential component of other Community policies.

(11) This Directive is without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts; amongst others, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁵ and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts⁶ form a vital element for protecting consumers in contractual matters; those Directives also apply in their entirety to information society services; that same Community acquis, which is

整合(註 8)』指令，部長理事會 1993 年 5 月 10 日第 93/22/EEC 號『債券領域之投資服務(註 9)』指令，部長理事會 1990 年 6 月 13 日第 90/314/EEC 號『有關套裝旅遊、套裝假期及套裝行程(註 10)』指令，歐洲議會及部長理事會 1998 年 2 月 16 日第 98/6/EC 號『提供消費者消費性產品價格標示(註 11)』指令，部長理事會 1992 年 6 月 29 日第 92/59/EEC 號『一般產品安全(註 12)』指令，歐洲議會及部長理事會 1994 年 10 月 26 日第 94/47/EC 號『有關購買分時使用度假別墅不動產權利契約之購買者保護(註 13)』指令，歐洲議會及部長理事會 1998 年 5 月 19 日第 98/27/EC 號『保護消費者利益禁制令(註 14)』指令，部長理事會 1985 年 7 月 25 日第 85/374/EC 號『有關產品瑕疵責任之法律、規則及行政命令整合(註 15)』指令，歐洲議會及部長理事會 1999 年 5 月 25 日第 1999/44/EC 號『有關消費性商品銷售及連帶保證若干層面(註 16)』指令，以及未來歐洲議會及部長理事會『有關消費性金融服務之遠距行銷』指令，部長理事會 1992 年 3 月 31 日第 92/28/EEC 號『藥品廣告』指令(註 17)；本指令並不損及歐洲議會及部長理事會 1998 年 7 月 6 日第 98/43/EC 號『有關會員國於內部市場架構內所採納之煙草商品，其贊助與廣告之法律、規則及行政命令整合(註 18)』指令，其亦不損及保護公共健康之指令；本指令補充了上述指令所建立之資訊要件，特別係第 97/7/EC 號指令。

fully applicable to information society services, also embraces in particular Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising⁷, Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit⁸, Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field⁹, Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours¹⁰, Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer production in the indication of prices of products offered to consumers¹¹, Council Directive 92/59/EEC of 29 June 1992 on general product safety¹², Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects on contracts relating to...

to the purchase of the right to use immovable properties on a timeshare basis¹³, Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests¹⁴, Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions concerning liability for defective products¹⁵, Directive 1999/44/EC of the European Parlia-

- (12)排除若干活動於本指令之範圍外有其必要，蓋於此階段，依據條約及既存之次級立法，於該等領域內提供服務之自由並無法被確保；惟排除該等活動並不妨礙內部市場適當運作所須任何法規之適用；在稅賦上，特別係對本指令所涵括之多數服務所課徵之加值稅，則必須排除於本指令之範圍。

ment and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees¹⁶, the future Directive of the European Parliament and of the Council concerning the distance marketing of consumer financial services and Council Directive 92/28/EEC of 31 March 1992 on the advertising of medicinal products¹⁷; this Directive should be without prejudice to Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products¹⁸ adopted within the framework of the internal market, or to directives on the protection of public health; this Directive complements information requirements established by the abovementioned Directives and in particular Directive 97/7/EC.

- (12)It is necessary to exclude certain activities from the scope of this Directive, on the grounds that the freedom to provide services in these fields cannot, at this stage, be guaranteed under the Treaty or existing secondary legislation; excluding these activities does not preclude any instruments which might prove necessary for the proper functioning of the internal market; taxation, particularly value added tax imposed on a large number of the services covered by this Directive, must be excluded from the scope of this Directive.

(13)本指令非旨在建立財政義務之規範，亦非意在預先擬訂有關電子商務財政方面之歐體法規。

(14)有關個人資料處理之保護僅由歐洲議會及部長理事會 1995 年 10 月 24 日第 95/46/EC 號『有關個人資料處理之保護及其資料之自由流通』指令(註 19)，以及歐洲議會及部長理事會 1997 年 12 月 15 日第 97/66/EC 號『完全適用於資訊社會服務之電信產業，其個人資料處理及隱私權保護』指令(註 20)加以規範；該等指令已在個人資料之領域上建構出歐體之法律架構，故本指令無須含括此議題，以確保內部市場之順利運作，特別係個人資料於會員國間之自由流通；本指令之實施及適用宜完全遵守關於個人資料保護之原則，特別係關於主動提供之商業訊息傳遞以及中間媒介者之責任；本指令並不妨礙於網際網路等開放性網路上之匿名使用。

(15)通訊祕密係由第 95/66/EC 號指令第 5 條之規定予以確

(13)This Directive does not aim to establish rules on fiscal obligations nor does it pre-empt the drawing up of Community instruments concerning fiscal aspects of electronic commerce.

(14)The protection of individuals with regard to the processing of personal data is solely governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁹⁾ and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector²⁰ which are fully applicable to information society services; these Directives already establish a Community legal framework in the field of personal data and therefore it is not necessary to cover this issue in this Directive in order to ensure the smooth functioning of the internal market, in particular the free movement of personal data between Member States; the implementation and application of this Directive should be made in full compliance with the principles relating to the protection of personal data, in particular as regards unsolicited commercial communication and the liability of intermediaries; this Directive cannot prevent the anonymous use of open networks such as the Internet.

(15)The confidentiality of communications is guaranteed by

保：依據該項指令，除經合法授權者外，會員國必須禁止發送者及接收者外以外之第三人，以任何形式對該通訊予以截取或監視。

- (16) 本指令適用範圍所排除之賭博性活動，僅含括靠技巧取勝之賭博、彩券及賭博交性交易等涉及以金錢價值為賭注之賭博行為；但並不含括以鼓勵商品或服務銷售為目的之促銷性競賽或遊戲，以及僅對獲得促銷商品或服務者所為之可能給付。

- (17) 資訊社會服務之定義已規定於歐體法歐洲議會及部長理事會 1998 年 6 月 22 日第 98/34/EC 號指令，其規定了在技術性標準及規範領域中提供資訊之程序，及提供資訊社會服務規則之程序²¹；歐洲議會及部長理事會 1998 年 11 月 20 日第 98/84/EC 號『基於或含括附條件接取服務之法律保護』指令；該定義含括在通常情形下，依服務接受者個別之要求，藉由電子設備提供資料處理(包含數位壓縮)及儲存，而受有報酬之任何一定距離之服務；第 98/34/EC 號指令附件 V 指示性清單所提及，不包含資料處理及儲存之服務，並不含括於該定義中。

Article 5 Directive 97/66/EC; in accordance with that Directive, Member States must prohibit any kind of interception or surveillance of such communications by others than the senders and receivers, except when legally authorised.

- (16) The exclusion of gambling activities from the scope of application of this Directive covers only games of chance, lotteries and betting transactions, which involve wagering a stake with monetary value; this does not cover promotional competitions or games where the purpose is to encourage the sale of goods or services and where payments, if they arise, serve only to acquire the promoted goods or services.

- (17) The definition of information society services already exists in Community law in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services²¹ and in Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access²²; this definition covers any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service; those

- (18) 資訊社會服務跨及大範圍發生於線上之經濟活動；特別係，該等活動係由在線上銷售商品所組成；惟並不包括商品之遞付或離線之服務提供；資訊社會服務不僅限於在線上發生之契約性服務，在代表經濟活動之範圍內，其亦擴及於接受者不須付費之服務，例如提供線上資訊或商業訊息之服務；或提供搜尋、連線及取得資料之工具之服務；資訊社會服務亦包括藉由通訊網路傳送資訊之服務，提供連線到通訊網路之服務，或代管服務接受者所提資訊之服務；第 EEC/89/552 號指令意義下之電視播放及無線電廣播並非資訊社會服務，蓋其並非依個人之要求而加以提供；相對地，點對點之傳送服務，例如視訊自選節目或藉電子郵件提供之商業訊息傳遞，係屬於資訊社會服務；例如自然人基於其貿易、商業或專業以外之身分使用電子郵件或同等之個人訊息傳遞方式，包括其等之間基於締結契約而使用者，則非屬於資訊社會服務；受雇人與雇用人間之契約關係非屬於資訊社會服務；本質上無法在一定距離，並藉由電子方式執行之活動，例如公司會計之法定稽查或須對病人進行身體檢查之醫療建議皆非資訊社會服務。

services referred to in the indicative list in Annex V to Directive 98/34/EC which do not imply data processing and storage are not covered by this definition.

- (18) Information society services span a wide range of economic activities which take place on-line; these activities can, in particular, consist of selling goods on-line; activities such as the delivery of goods as such or the provision of services off-line are not covered; information society services are not solely restricted to services giving rise to on-line contracting but also, in so far as they represent an economic activity, extend to services which are not remunerated by those who receive them, such as those offering on-line information or commercial communications, or those providing tools allowing for search, access and retrieval of data; information society services also include services consisting of the transmission of information via a communication network, in providing access to a communication network or in hosting information provided by a recipient of the service; television broadcasting within the meaning of Directive EEC/89/552 and radio broadcasting are not information society services because they are not provided at individual request; by contrast, services which are transmitted point to point, such as video-on-demand or the provision of commercial communications by electronic mail are information society services; the use of electronic mail or equivalent individual communica-

- (19)服務提供者之設立據點，宜以在一段不確定時間內，透過固定營業據點實際從事經濟活動所涉及之設立概念加以認定，以符合歐洲法院之案例法；於特定時間內所成立之公司亦得滿足此要件；藉網路網路而提供服務之公司設立所在地，並非為技術上支援之主機所在地，亦非得與主機連線之所在地，而係該公司實際從事經濟活動之所在地；在服務提供者有若干設立據點之情形，認定相關服務係自何處加以提供者係屬重要；自若干設立據點中認定特定服務之提供有其困難之情形，則以服務提供者有關該特定服務之主要活動地為其設立地。

tions for instance by natural persons acting outside their trade, business or profession including their use for the conclusion of contracts between such persons is not an information society service; the contractual relationship between an employee and his employer is not an information society service; activities which by their very nature cannot be carried out at a distance and by electronic means, such as the statutory auditing of company accounts or medical advice requiring the physical examination of a patient are not information society services.

- (19)The place at which a service provider is established should be determined in conformity with the case-law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period; this requirement is also fulfilled where a company is constituted for a given period; the place of establishment of a company providing services via an Internet website is not the place at which the technology supporting its website is located or the place at which its website is accessible but the place where it pursues its economic activity; in cases where a provider has several places of establishment it is important to determine from which place of establishment the service concerned is provided; in cases where it is difficult to determine from which of several places of establishment a given service

- (20)「服務接受者」之定義，含括於開放性網路提供資訊之個人，例如網際網路，以及為私人或專業之理由於網際網路上尋求資料之個人，其使用資訊社會服務之所有類型。
- (21)協調領域之範圍並不損及未來歐體關於資訊社會服務之調和，以及未來依據歐體法所採行之內國立法；協調之領域僅包括關於線上活動之要件，例如線上資訊、線上廣告、線上購物，線上契約交易，但不涉及會員國有關商品之法律要件，例如安全標準、標示責任、或產品責任、或會員國關於交付或運送商品之要件，包括藥品之經銷；此協調領域並不包括政府機關以先占方式取得例如藝術著作等若干商品之權利。
- (22)為確保公共利益目標之有效保護，資訊社會服務宜自活動之來源即予以監督；為達此目的，有必要確保主管機關不僅對該國人民提供保護，其亦應保護所有歐體人民；為有效改善會員國之互信，服務來源會員國明確表達此責任係屬重要；再者，為有效確保提供服務之自由

- is provided, this is the place where the provider has the centre of his activities relating to this particular service.
- (20)The definition of "recipient of a service" covers all types of usage of information society services, both by persons who provide information on open networks such as the Internet and by persons who seek information on the Internet for private or professional reasons.
- (21)The scope of the coordinated field is without prejudice to future Community harmonisation relating to information society services and to future legislation adopted at national level in accordance with Community law; the coordinated field covers only requirements relating to on-line activities such as on-line information, on-line advertising, on-line shopping, on-line contracting and does not concern Member States' legal requirements relating to goods such as safety standards, labelling obligations, or liability for goods, or Member States' requirements relating to the delivery or the transport of goods, including the distribution of medicinal products; the coordinated field does not cover the exercise of rights of pre-emption by public authorities concerning certain goods such as works of art.
- (22)Information society services should be supervised at the source of the activity, in order to ensure an effective protection of public interest objectives; to that end, it is necessary to ensure that the competent authority provides such protection not only for the citizens of its own

及服務提供者及接受者其法律上之確定性，原則上，資訊社會服務宜由服務提供者設立地所屬會員國法律之規範。

(23) 本指令之目的非就有關法律衝突之國際私法制訂額外規則，亦非意在處理法院之管轄權；依國際私法原則所指定之準據法規定，不得限制本指令所定提供社會資訊服務之自由。

(24) 於本指令之上下文中，即使具有管制資訊社會服務來源之規則，會員國在本指令所定條件下採取限制資訊社會服務自由流通之措施係屬合法。

(25) 內國法院，包括民事法院，於處理私法爭議時，在符合本指令所定條件下，得採取限制自由提供資訊社會服務之措施。

(26) 會員國在符合本指令所定條件下，為採取偵查及起訴犯罪所需之所有調查及其他必要措施，得適用其內國刑法

country but for all Community citizens; in order to improve mutual trust between Member States, it is essential to state clearly this responsibility on the part of the Member State where the services originate; moreover, in order to effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services, such information society services should in principle be subject to the law of the Member State in which the service provider is established.

(23) This Directive neither aims to establish additional rules on private international law relating to conflicts of law nor does it deal with the jurisdiction of Courts; provisions of the applicable law designated by rules of private international law must not restrict the freedom to provide information society services as established in this Directive.

(24) In the context of this Directive, notwithstanding the rule on the control at source of information society services, it is legitimate under the conditions established in this Directive for Member States to take measures to restrict the free movement of information society services.

(25) National courts, including civil courts, dealing with private law disputes can take measures to derogate from the freedom to provide information society services in conformity with conditions established in this Directive.

(26) Member States, in conformity with conditions established in this Directive, may apply their national rules

及刑事訴訟程法，而不須就該措施通知執委會。

(27)本指令及將來歐洲議會及部長理事會有關消費者金融服務遠距市場行銷指令，有助於制訂線上金融服務提供之法律架構；本指令並非預先創制將來金融服務領域之方案，特別係有關此領域中行為規範之調和；會員國依據本指令所設，為保護消費者而限制提供資訊社會服務自由可能性之若干情形，亦含括金融服務領域之措施，特別係旨在保護投資者之措施。

(28)會員國不以事前授權為接取資訊社會服務提供者活動之義務，其不涉及歐洲議會及部長理事會 1997 年 12 月 15 日第 97/67/EC 號『發展歐體內部市場郵政服務共同規則，及改善服務品質(註 23)，包括列印電子郵件訊息之物理交付』指令，且其並不影響自動鑑定系統，特別係電子簽章鑑定服務之提供者。

on criminal law and criminal proceedings with a view to taking all investigative and other measures necessary for the detection and prosecution of criminal offences, without there being a need to notify such measures to the Commission.

(27)This Directive, together with the future Directive of the European Parliament and of the Council concerning the distance marketing of consumer financial services, contributes to the creating of a legal framework for the on-line provision of financial services; this Directive does not pre-empt future initiatives in the area of financial services in particular with regard to the harmonisation of rules of conduct in this field; the possibility for Member States, established in this Directive, under certain circumstances of restricting the freedom to provide information society services in order to protect consumers also covers measures in the area of financial services in particular measures aiming at protecting investors.

(28)The Member States' obligation not to subject access to the activity of an information society service provider to prior authorisation does not concern postal services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service²³⁾ consisting of the physical delivery of a printed electronic mail message and does not

(29)商業訊息傳遞對資訊社會服務之融資及種種創新及免費服務之發展係屬必要；在消費者保護及公平貿易之利益上，商業訊息傳遞，包括折扣、促銷、促進競爭之比賽或遊戲，必須符合許多透明化之要件；該等要件並不損及第 97/7/EC 指令之規定；本指令不宜影響既存商業訊息傳遞指令，特別係第 98/43/EC 號指令。

(30)以電子郵件主動提供之商業訊息傳遞，可能不受消費者及資訊社會服務提供者所歡迎，且其可能干擾互聯網路之順利運作；接受者所同意之若干形式之主動提供商業訊息傳遞，其已由，特別係第 97/7/EC 號指令及第 97/66/EC 號指令加以處理，故本指令並不處理之；授權以電子郵件主動提供商業訊息之會員國，應鼓勵並促進建構適當之產業濾除方案；此外，主動提供商業訊息之傳遞在任何情形下須被明確加以辨識有其必要，以增進透明化及促進該產業方案之運作；以電子郵件主動提供商業訊息不宜造成接受者額外之通訊成本。

affect voluntary accreditation systems, in particular for providers of electronic signature certification service.

(29)Commercial communications are essential for the financing of information society services and for developing a wide variety of new, charge-free services; in the interests of consumer protection and fair trading, commercial communications, including discounts, promotional offers and promotional competitions or games, must meet a number of transparency requirements; these requirements are without prejudice to Directive 97/7/EC; this Directive should not affect existing Directives on commercial communications, in particular Directive 98/43/EC.

(30)The sending of unsolicited commercial communications by electronic mail may be undesirable for consumers and information society service providers and may disrupt the smooth functioning of interactive networks; the question of consent by recipient of certain forms of unsolicited commercial communications is not addressed by this Directive, but has already been addressed, in particular, by Directive 97/7/EC and by Directive 97/66/EC; in Member States which authorise unsolicited commercial communications by electronic mail, the setting up of appropriate industry filtering initiatives should be encouraged and facilitated; in addition it is necessary that in any event unsolicited commercial communities are clearly identifiable as such in order to

(31)會員國容許未經接受者事前同意而以電子郵件主動發送商業訊息之服務提供者在其領域內設立者，其須確保服務提供者定期詢問，並尊重無意接受該商業訊息之自然人得自行登錄之取消機制。

(32)為消除共同體境內，受規制專門職業之成員得以網際網路提供跨國界服務之發展障礙，有必要確保於歐體層次上對職業規則之遵守，特別係旨在保護消費者或公共健康者；歐體層次上之行為準則將係決定適用於商業訊息之職業倫理規則之最佳方式；該等規則之擬定及於適當情形下之修正，宜在不損及職業團體及工會之自治下被鼓勵。

(33)本指令補充歐體法及內國法中關於受規制專門職業之規定，以維持此領域內適用法律之一致性。

improve transparency and to facilitate the functioning of such industry initiatives; unsolicited commercial communications by electronic mail should not result in additional communication costs for the recipient.

(31) Member States which allow the sending of unsolicited commercial communications by electronic mail without prior consent of the recipient by service providers established in their territory have to ensure that the service providers consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves.

(32) In order to remove barriers to the development of cross-border services within the Community which members of the regulated professions might offer on the Internet, it is necessary that compliance be guaranteed at Community level with professional rules aiming, in particular, to protect consumers or public health; codes of conduct at Community level would be the best means of determining the rules on professional ethics applicable to commercial communication; the drawing-up or, where appropriate, the adaptation of such rules should be encouraged without prejudice to the autonomy of professional bodies and associations.

(33) This Directive complements Community law and national law relating to regulated professions maintaining a coherent set of applicable rules in this field.

(34)各會員國應修正其含括要件規定之內國立法，特別係有關可能限制以電子方式為契約應用之形式要件；對要求進行調整之立法宜作系統化之審查，且宜包含所有契約程序之必要階段與行為，包括契約之建檔；修正結果應使以電子方式締結契約切實可行；關於電子簽章法律效力已由歐洲議會及部長理事會 1999 年 12 月 13 日第 1999/93/EC 號『電子簽章之歐體架構』指令加以處理(註 24)；服務提供者得以線上之方式確認服務之提供。

(35)本指令並不影響會員國維持或制訂一般或特別法律要件，以規範完全以電子方式締結契約之可能性，特別係，關於安全電子簽章之要件。

(36)關於契約依法律規定涉及法院、政府機關及行使公權力之專門職業人員時，會員國得維持對電子契約使用上之限制；此可能性亦包含為對第三人發生效力而涉及法院、政府機關及行使公權力之專門職業人員之契約及依法應經公證人公證及認證之契約。

(34)Each Member State is to amend its legislation containing requirements, and in particular requirements as to form, which are likely to curb the use of contracts by electronic means; the examination of the legislation requiring such adjustment should be systematic and should cover all the necessary stages and acts of the contractual process, including the filing of the contract; the result of this amendment should be to make contracts concluded electronically workable; the legal effect of electronic signatures is dealt with by Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures²⁴; the acknowledgement of receipt by a service provider may take the form of the on-line provision of the service paid for.

(35)This Directive does not affect Member States' possibility of maintaining or establishing general or specific legal requirements for contracts which can be fulfilled by electronic means, in particular requirements concerning secure electronic signatures.

(36)Member States may maintain restrictions for the use of electronic contracts with regard to contracts requiring by law the involvement of courts, public authorities, or professions exercising public authority; this possibility also covers contracts which require the involvement of courts, public authorities, or professions exercising public authority in order to have an effect with regard to

- (37)會員國消除電子契約使用障礙之義務，僅指因法律要件所產生之障礙，而不包含在若干情形下，因無法使用電子方式所產生之實際障礙。
- (38)會員國消除使用電子契約障礙之義務，應依據歐體法對契約所定要件加以執行。
- (39)以電子郵件或本指令所定同等於個人通訊方式排他性地締結契約之除外規定，關於所提供之資訊及要約之地點，不宜造成使資訊社會服務提供者得規避該等規定之結果。
- (40)各會員國在有關服務提供者為媒介者之責任上，其立法及案例法之現存及正出現之差異，阻礙了內部市場之順利運作，特別係以減損跨國界服務之發展及產生競爭扭曲之方式；在若干情形下，服務提供者有責任防止或停止違法行為；對消除及使其無法接取違法資訊之迅速而具信賴程序之發展，本指令構成了適當之基礎；該等機制得以所有相關當事人之自願協議為基礎加以發展，並宜受會員國之鼓勵；接受及執行該等機制係符合與資訊社會服務提供相關之所有當事人之利益；本指令有關責任

- third parties as well as contracts requiring by law certification or attestation by a notary.
- (37)Member States' obligation to remove obstacles to the use of electronic contracts concerns only obstacles resulting from legal requirements and not practical obstacles resulting from the impossibility of using electronic means in certain cases.
- (38)Member States' obligation to remove obstacles to the use of electronic contracts is to be implemented in conformity with legal requirements for contracts enshrined in Community law.
- (39)The exceptions to the provisions concerning the contracts concluded exclusively by electronic mail or by equivalent individual communications provided for by this Directive, in relation to information to be provided and the placing of orders, should not enable, as a result, the by-passing of those provisions by providers of information society services.
- (40)Both existing and emerging disparities in Member States' legislation and case-law concerning liability of service providers acting as intermediaries prevent the smooth functioning of the internal market, in particular by impairing the development of cross-border services and producing distortions of competition; service providers have a duty to act, under certain circumstances, with a view to preventing or stopping illegal activities; this Directive should constitute the appropriate basis for

之規定不宜妨礙在第 95/46/EC 號及第 97/66/EC 號指令所定限制內，不同利害關係人就保護及確認技術體系以及可能以數位技術進行技術監督機制之發展及有效運作。

- (41) 本指令在不同權利之間尋求平衡，並依據產業協議及標準以建立原則。
- (42) 本指令所定之免責規定，僅限於資訊社會服務提供者之活動係為使第三者可得資訊之傳送更具效率之唯一目的而被傳送及暫存，其所為運作及提供進入通訊網路之技術過程；該活動僅具有技術、自動及被動之性質，亦即資訊社會服務提供者對於被傳送及儲存之資訊並不知悉，亦無法加以控制。

the development of rapid and reliable procedures for removing and disabling access to illegal information; such mechanisms could be developed on the basis of voluntary agreements between all parties concerned and should be encouraged by Member States; it is in the interest of all parties involved in the provision of information society services to adopt and implement such procedures; the provisions of this Directive relating to liability should not preclude the development and effective operation, by the different interested parties, of technical systems of protection and identification and of technical surveillance instruments made possible by digital technology within the limits laid down by Directives 95/46/EC and 97/66/EC.

- (41) This Directive strikes a balance between the different interests at stake and establishes principles upon which industry agreements and standards can be based.
- (42) The exemptions from liability established in this Directive cover only cases where the activity of the information society service provider is limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored, for the sole purpose of making the transmission more efficient; this activity is of a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of nor control

- (43) 服務提供者在其未涉及資訊之傳輸時，可得益於「單純傳輸」及「快取服務」之免責規定；此外，其要求服務提供者必須未修改傳輸資訊；此條件不包括發生在傳輸過程中具技術本質之操作，蓋其並不改變傳輸中所含資訊之完整性。
- (44) 若服務提供者為進行超出「單純傳輸」及「快取服務」活動範圍外之違法行為，而故意與其服務接受者之一合作，則無法獲益於為該等活動所定之免責規定。
- (45) 本指令所定媒介服務提供者責任之限制，並不影響各類禁制令適用之可能性；該等禁制令特別包括由法院或行政機關所為要求終止或防止任何侵害行為之命令，包括非法資訊之消除或使其無法接取之。
- (46) 為了享有責任限制之利益，因資訊儲存而實際上得知或明知有違法行為之服務提供者，應迅速消除該相關資訊或使其無法存取；進行消除或使其無法存取時應應遵守表達自由及為此目的所設之程序；本指令並不影響會員國訂定在消除資訊或使其無法存取之前應迅速履行之特

- over the information which is transmitted or stored.
- (43) A service provider can benefit from the exemptions for "mere conduit" and for "caching" when he is in no way involved with the information transmitted; this requires among other things that he does not modify the information that he transmits; this requirement does not cover manipulations of a technical nature which take place in the course of the transmission as they do not alter the integrity of the information contained in the transmission.
- (44) A service provider who deliberately collaborates with one of the recipients of his service in order to undertake illegal acts goes beyond the activities of "mere conduit" or "caching" and as a result cannot benefit from the liability exemptions established for these activities.
- (45) The limitations of the liability of intermediary service providers established in this Directive do not affect the possibility of injunctions of different kinds; such injunctions can in particular consist of orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal information or the disabling of access to it.
- (46) In order to benefit from a limitation of liability, the provider of an information society service, consisting of the storage of information, upon obtaining actual knowledge or awareness of illegal activities has to act expeditiously to remove or to disable access to the information

別要件之可能性。

- (47)會員國僅在具一般性質之義務方面不得課予服務提供者監督之義務；其不涉及在特定情情下之監督義務，特別係，其並不影響國家機關依據內國法所為之命令。
- (48)本指令並不影響會員國要求代接受者管理資訊之服務提供者負擔可合理期待且經內國法律規定之注意義務之可能性，以檢視並防止若干形式之違法活動。
- (49)會員國及執委會鼓勵行為準則之擬定；惟此並不減損該等準則自願性之本質，及利害關係人得自由決定是否遵守該準則之可能性。
- (50)為於共同體層次上就媒介服務提供者所為著作權及相關權利違法行為之責任問題建立明確之規則架構，使本指

concerned; the removal or disabling of access has to be undertaken in the observance of the principle of freedom of expression and of procedures established for this purpose at national level; this Directive does not affect Member States' possibility of establishing specific requirements which must be fulfilled expeditiously prior to the removal or disabling of information.

- (47)Member States are prevented from imposing a monitoring obligation on service providers only with respect to obligations of a general nature; this does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation.
- (48)This Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities.
- (49)Member States and the Commission are to encourage the drawing-up of codes of conduct; this is not to impair the voluntary nature of such codes and the possibility for interested parties of deciding freely whether to adhere to such codes.
- (50)It is important that the proposed directive on the harmonisation of certain aspects of copyright and related

令與為調和資訊社會中若干著作權及相關權利規定所提出之指令在相近之時間下生效至為重要。

- (51)各會員國於必要時宜修正其阻礙透過電子頻道於法庭外解決糾紛之利用方案之任何立法；修正之結果須使該等方案之運作在法律上及實務上真正並有效地具有可能性，即使於跨國界之情形。
- (52)內部市場自由之有效運作須確保受害人有效採取解決爭端之方式；與資訊社會服務有關，可能產生之損害具有迅速及地理範圍之特性；鑑於該特性及確保各國機關不致危及彼此應有之互信之必要，本指令要求會員國應確保提供適當之法庭措施；會員國宜審視提供適當電子方式進行司法程序之必要。
- (53)適用於資訊社會服務之第 98/27/EC 號指令，提供了採取禁制令行動以保護消費者集體利益之機制；該機制藉確保高標準之消費者保護，將有助於資訊社會服務之自由

rights in the information society and this Directive come into force within a similar time scale with a view to establishing a clear framework of rules relevant to the issue of liability of intermediaries for copyright and relating rights infringements at Community level.

- (51)Each Member State should be required, where necessary, to amend any legislation which is liable to hamper the use of schemes for the out-of-court settlement of disputes through electronic channels; the result of this amendment must be to make the functioning of such schemes genuinely and effectively possible in law and in practice, even across borders.
- (52)The effective exercise of the freedoms of the internal market makes it necessary to guarantee victims effective access to means of settling disputes; damage which may arise in connection with information society services is characterised both by its rapidity and by its geographical extent; in view of this specific character and the need to ensure that national authorities do not endanger the mutual confidence which they should have in one another, this Directive requests Member States to ensure that appropriate court actions are available; Member States should examine the need to provide access to judicial procedures by appropriate electronic means.
- (53)Directive 98/27/EC, which is applicable to information society services, provides a mechanism relating to actions for an injunction aimed at the protection of the

流通。

- (54)本指令所定之制裁並不損及內國法所定之任何其他制裁或救濟；會員國就依據本指令所採內國法之違反，其無義務提供刑事制裁。
- (55)本指令並不影響適用於消費者契約之契約義務法律；故本指令不得造成剝奪消費者保護之結果，該保護係基於消費者慣居地會員國法律強制規定下契約義務所提供者。
- (56)至於本指令中關於消費者契約上義務之剝奪，該等義務宜被解釋為包含，契約內容上重要要素之資訊，包括在締約上有決定性影響力之消費者權利。
- (57)歐洲法院向來認定，若服務提供者設立據點之選擇係為規避應對其適用之設立會員國法律，則該會員國有權對在其他會員國設立，但於該會員國領域內指示其全部或大部分之活動之服務提供者採取措施。

collective interests of consumers; this mechanism will contribute to the free movement of information society services by ensuring a high level of consumer protection.

- (54)The sanctions provided for under this Directive are without prejudice to any other sanction or remedy provided under national law; Member States are not obliged to provide criminal sanctions for infringement of national provisions adopted pursuant to this Directive.
- (55)This Directive does not affect the law applicable to contractual obligations relating to consumer contracts; accordingly, this Directive cannot have the result of depriving the consumer of the protection afforded to him by the mandatory rules relating to contractual obligations of the law of the Member State in which he has his habitual residence.
- (56)As regards the derogation contained in this Directive regarding contractual obligations concerning contracts concluded by consumers, those obligations should be interpreted as including information on the essential elements of the content of the contract, including consumer rights, which have a determining influence on the decision to contract.
- (57)The Court of Justice has consistently held that a Member State retains the right to take measures against a service provider that is established in another Member State but directs all or most of his activity to the terri-

- (58) 本指令不適用於在第三國設立之服務提供者提供之服務；然基於電子商務之全球性，確保歐體法律符合國際規則係屬適當；本指令並不損及國際組織(例如 WTO、OECD、Uncitral)在法律議題上討論的結果。
- (59) 儘管電子通訊具有全球性之本質，為避免內部市場之分裂及適當歐洲規範架構之建立，在歐盟層次下協調內國之規範施係屬必要；該等調和亦有助於在國際論壇上建立一共同且強大之談判地位。
- (60) 為使電子商務得以不受阻礙之發展，法律架構須明確、單一、具可預知性並符合適用於國際層次之規則，並不致對歐洲產業競爭力有不利之影響或阻礙於產業上之創新。
- (61) 在全球化架構下，若市場實際上係藉電子方式加以運作

- tory of the first Member State if the choice of establishment was made with a view to evading the legislation that would have applied to the provider had he been established on the territory of the first Member State.
- (58) This Directive should not apply to services supplied by service providers established in a third country; in view of the global dimension of electronic commerce, it is, however, appropriate to ensure that the Community rules are consistent with international rules; this Directive is without prejudice to the results of discussions within international organisations (amongst others WTO, OECD, Uncitral) on legal issues.
- (59) Despite the global nature of electronic communications, coordination of national regulatory measures at European Union level is necessary in order to avoid fragmentation of the internal market, and for the establishment of an appropriate European regulatory framework; such coordination should also contribute to the establishment of a common and strong negotiating position in international forums.
- (60) In order to allow the unhampered development of electronic commerce, the legal framework must be clear and simple, predictable and consistent with the rules applicable at international level so that it does not adversely affect the competitiveness of European industry or impede innovation in that sector.
- (61) If the market is actually to operate by electronic means

者，歐盟與主要的非歐盟地區必須相互協商，以使其法律與程序具相容性。

- (62)在電子商務領域中與第三國之合作應予加強，特別係申請加入歐盟之國家、開發中國家及歐盟的其他貿易夥伴。
- (63)本指令之採行並不妨礙會員國考量存於資訊社會之各項社交、社會及文化上之影響；特別係其不宜阻礙會員國考量語言差異、內國及區域特殊性以及文化資產，為達成社會、文化及民主目標；及為確保並維持大眾得接取最廣範圍之資訊社會服務而採行符合歐體法律之措施；在任何情形下，資訊社會之發展係為確保歐體人民得以接觸數位環境所被提供之文化歐洲資產。
- (64)電子通訊給予會員國一個絕佳的方式，使其得以在文化、教育及語言的領域上，提供公共的服務。
- (65)部長理事會在 1999 年 1 月 19 日『資訊社會消費者之重要性(註 25)』中強調電子商務領域中消費者之保護應受

in the context of globalisation, the European Union and the major non-European areas need to consult each other with a view to making laws and procedures compatible.

- (62)Cooperation with third countries should be strengthened in the area of electronic commerce, in particular with applicant countries, the developing countries and the European Union's other trading partners.
- (63)The adoption of this Directive will not prevent the Member States from taking into account the various social, societal and cultural implications which are inherent in the advent of the information society; in particular it should not hinder measures which Member States might adopt in conformity with Community law to achieve social, cultural and democratic goals taking into account their linguistic diversity, national and regional specificities as well as their cultural heritage, and to ensure and maintain public access to the widest possible range of information society services; in any case, the development of the information society is to ensure that Community citizens can have access to the cultural European heritage provided in the digital environment.
- (64)Electronic communication offers the Member States an excellent means of providing public services in the cultural, educational and linguistic fields.
- (65)The Council, in its resolution of 19 January 1999 on the consumer dimension of the information society(25),

特別之注意：執委會將檢視在資訊社會服務的背景，
現行消費者保護規範不足之程度，並確認立法的不完備
處和確認那些得要求額外考量的議題；如有必要，執委會
應該提出特定、額外的建議以解決以下發現之不完備
處。

本指令所通過之條文

第一節 一般條款

第一條 立法目的與適用範圍

1. 本指令追求的是，藉由確保會員國間資訊社會服務之自由流通，以促進內部市場之適當運作。
2. 為達成第一項所設立之目標，本指令盡可能使會員國間關於內部市場、服務提供者之設立、商業訊息傳遞、電子契約、仲介服務提供者之責任、行為規範、法庭外爭議處理、法庭機制及相互合作若干之資訊社會服務相關規定趨於一致。
3. 本指令增補適用於資訊社會服務之歐體法，並不損害原

stressed that the protection of consumers deserved special attention in this field; the Commission will examine the degree to which existing consumer protection rules provide insufficient protection in the context of the information society and will identify, where necessary, the deficiencies of this legislation and those issues which could require additional measures; if need be, the Commission should make specific additional proposals to resolve such deficiencies that will thereby have been identified,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I GENERAL PROVISIONS

Article 1 Objective and scope

1. This Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States.
2. This Directive approximates, to the extent necessary for the achievement of the objective set out in paragraph 1, certain national provisions on information society services relating to the internal market, the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.
3. This Directive complements Community law applicable to in-

先依歐體法已建立之保護水準，特別是，公共衛生及消費者權益；亦不限制在資訊社會服務提供之自由流通範圍內內國立法之履行。

4. 本指令既未在國際私法上設立額外的規範，亦未處理法院管轄權。
5. 本指令不適用於：
 - (a) 賦稅領域；
 - (b) 涉及第 95/46/EC 指令及第 97/66/EC 指令所涵蓋之資訊社會服務議題；
 - (c) 卡特爾法所規範關於協議或實行之問題；
 - (d) 以下所列之資訊社會服務活動：
 - 涉及公證人活動或其他與政府機構有直接而明確關連之相類似專業活動，
 - 當事人之陳述及在法庭上為保護其權益所為之抗辯，
 - 以具有金錢價值之物品為賭資之投機賭博活動，包含彩券及賭博交易行為。
6. 本指令為促進文化及語言上之多樣性及確保多元化之保護，將不影響在歐體及內國層次就歐體法所採取之措施。

formation society services without prejudice to the level of protection for, in particular, public health and consumer interests, as established by Community acts and national legislation implementing them in so far as this does not restrict the freedom to provide information society services.

4. This Directive does not establish additional rules on private international law nor does it deal with the jurisdiction of Courts.
5. This Directive shall not apply to:
 - (a) the field of taxation;
 - (b) questions relating to information society services covered by Directives 95/46/EC and 97/66/EC;
 - (c) questions relating to agreements or practices governed by cartel law;
 - (d) the following activities of information society services:
 - the activities of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority,
 - the representation of a client and defence of his interests before the courts,
 - gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.
6. This Directive does not affect measures taken at Community or national level, in the respect of Community law, in order to promote cultural and linguistic diversity

第二條 名詞定義

本指令所用名詞，定義如下：

- (a) 「資訊社會服務」：經第 98/48/EC 號指令所修正之第 98/34/EC 號指令第 1(2)條意義內之服務；
- (b) 「服務提供者」：任何提供資訊社會服務之自然人或法人；
- (c) 「設立之服務提供者」：在一段不確定的時間內能有效使用固定營業所而從事經濟活動之服務提供者；提供服務所需之技術方法及科技之呈現及使用本身，則不構成提供者之設立）
- (d) 「服務接收者」：為專業或其他目的，特別係基於追求資訊或使其可使用之目的，使用資訊社會服務之任何自然人或法人。
- (e) 「消費者」：基於自身貿易、商業或專業以外之目的從事交易之自然人；
- (f) 「商業訊息傳遞」：任何針對從事商業、工業或手工業活動或專門職業時，直接或間接促銷貨品、服務、

and to ensure the defence of pluralism.

Article 2 Definitions

For the purpose of this Directive, the following terms shall bear the following meanings:

- (a) "information society services": services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC;
- (b) "service provider": any natural or legal person providing an information society service;
- (c) "established service provider": a service provider who effectively pursues an economic activity using a fixed establishment for an indefinite period. The presence and use of the technical means and technologies required to provide the service do not, in themselves, constitute an establishment of the provider;
- (d) "recipient of the service": any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible;
- (e) "consumer": any natural person who is acting for purposes which are outside his or her trade, business or profession;
- (f) "commercial communication": any form of communication designed to promote, directly or indi-

或公司、組織、個人形象之訊息傳遞方式。以下規定本身並不屬於商業訊息傳遞。

- 可直接連線到公司、組織或個人活動之資訊，特別係網域名稱及電子郵件位址。
 - 以獨立方式所編輯關於商品、服務、或公司、組織或個人形象之商業訊息，特別係其與融資考量無關者。
- (g) 「受管制之專門職業」：係指在部長理事會 1988 年 12 月 21 日第 89/48/EEC 號『承認於完成專門職業教育及三年以上訓練所授予高等教育文憑之一般制度』指令(註 26)或部長理事會 1992 年 6 月 18 日第 92/51/EEC 號『關於補充第 89/48/EEC 號指令之承認職業教育及訓練之第二種一般制度』指令(註 27)第 1(f)條規定意義下之任何專門職業。
- (h) 「協調領域」：係指規定於會員國法律系統中而能適用至資訊社會服務提供者或資訊社會服務之條件，不管其原來之規範目的，或其是否特別係資訊社會服務

rectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not in themselves constitute commercial communications:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address,
 - communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration;
- (g) "regulated profession": any profession within the meaning of either Article 1(d) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three-years' duration(26) or of Article 1(f) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC(27);
- (h) "coordinated field": requirements laid down in Member States' legal systems applicable to information society service providers or information society services, regardless of whether they are of a

而定。

(i) 在協調領域中，服務提供者必須遵從之要件：

- 資訊社會服務活動之發生，例如關於資格，授權及通知之要件，
- 資訊社會服務活動之實行，例如服務提供者的活動狀態，適用廣告及契約的服務之內容及品質，及服務提供者責任之要件；

(ii) 協調領域不包含以下規定：

- 適用於商品本身之要件，
- 適用於商品交付之要件，
- 適用於非以電子方式為服務提供之要件，

第三條 內部市場

1. 每一會員國應確保設立於其領域內之服務提供者所提供之資訊社會服務，符合適用於系爭會員國，屬於協調領

general nature or specifically designed for them.

(i) The coordinated field concerns requirements with which the service provider has to comply in respect of:

- the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification,
- the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service including those applicable to advertising and contracts, or requirements concerning the liability of the service provider;

(ii) The coordinated field does not cover requirements such as:

- requirements applicable to goods as such,
- requirements applicable to the delivery of goods,
- requirements applicable to services not provided by electronic means.

Article 3 Internal market

1. Each Member State shall ensure that the information society services provided by a service provider estab-

域之內國規定。

2. 會員國不得以其屬於協調領域範圍內為由，而限制資訊社會服務之提供在會員國間之自由流通。
3. 第一項及第二項不應適用附件所提及之領域。
4. 若滿足下列之要件，則會員國得採取措施就特定之資訊社會服務免除第二項規定之適用：

(a) 應採取之措施：

(i) 必須係基於下列理由之一者：

- 公共政策，特別是防止、調查、偵察、起訴犯罪行為，包含弱勢族群保護及對抗任何鼓勵種族、性別、宗教或國籍之仇視，及對個人人性尊嚴之暴力侵害。

- 公共衛生之保護，
- 公共安全，包括國家安全之保護與防備，

- 消費者保護，包括投資者：

(ii) 違反特定的資訊社會服務會損害第(1)點中所提及之立法目的，對該目的造成嚴重而重大的危

lished on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.

2. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State.
3. Paragraphs 1 and 2 shall not apply to the fields referred to in the Annex.
4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled:

(a) the measures shall be:

(i) necessary for one of the following reasons:

- public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,
- the protection of public health,
- public security, including the safeguarding of national security and defence,
- the protection of consumers, including investors;

(ii) taken against a given information society service which prejudices the objectives referred to

害；

(iii) 與立法目的需符合比例原則；

(b) 在採取系爭措施前，且不損及訴訟程序下，包括預備程序及犯罪調查架構下之所採取之行為，會員國應

- 要求第一段之會員國採取措施，或於不適當時不得採取該措施，
- 會員國要採取此措施時，應通知執委會及第一項所提之其他會員國其採取此措施之意圖。

5. 會員國得在緊急情況下，免除第四(b)條所定之條件。在此情形下，應盡可能在最短時間內通知執委會及第一項所提之其他會員國，表明其所考慮之原因及急迫情形。

6. 在不損及會員國繼續進行系爭措施之可能性下，執委會應盡可能於最短時間內檢查該會員國所通知之措施是否符合歐體法之規定；當其結論為該措施不符合歐體法時，執委會應要求系爭會員國避免採取任何擬用措施或緊急地終止該措施。

in point (i) or which presents a serious and grave risk of prejudice to those objectives;

(iii) proportionate to those objectives;

(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:

- asked the Member State referred to in paragraph 1 to take measures and the latter did not take such measures, or they were inadequate,
- notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures.

5. Member States may, in the case of urgency, derogate from the conditions stipulated in paragraph 4(b). Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State referred to in paragraph 1, indicating the reasons for which the Member State considers that there is urgency.

6. Without prejudice to the Member State's possibility of proceeding with the measures in question, the Commission shall examine the compatibility of the notified measures with Community law in the shortest possible time; where it comes to the conclusion that the measure is incompatible with Community law, the Commission

第二節 原則

第一部份：設立及資訊之要件

第四條 排除事前授權之原則

1. 會員國應確保資訊社會服務提供者活動的開始及執行不受任何事前授權或任何具有類似效力之規定所拘束。
2. 第一項之規定不應損及非特別地或排他地針對資訊社會服務之授權機制或歐洲議會及部長理事會 1997 年 4 月 10 日第 97/13/EC 號『關於電信服務領域中一般授權與個別核准共同架構』（註 28）指令所涵括之授權機制；

第五條 一般資訊之提供

1. 除歐體法所定之其他資訊要件外，會員國應確保服務提供者至少應簡易地、直接地、永久地提供服務接受者及有權機關可得之以下資訊：

shall ask the Member State in question to refrain from taking any proposed measures or urgently to put an end to the measures in question.

CHAPTER II PRINCIPLES

Section 1 : Establishment and information requirements

Article 4 Principle excluding prior authorization

1. Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect.
2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services, or which are covered by Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services²⁸.

Article 5 General information to be provided

1. In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:

- (a) 服務提供者之名稱；
- (b) 服務提供者設立之地理上住址；
- (c) 服務提供者之詳細資料，使他人能以直接有效的方法迅速與其聯絡，包括電子郵件位址；
- (d) 服務提供者以商業註冊或其他相似之公共註冊所為之註冊，及其註冊號碼，或其他類似表彰該註冊者之資訊。
- (e) 當其活動應經核准時，相關監督機關之詳細資料；
- (f) 涉及受管制之專門職業者：
 - 任何服務提供者所登記之職業團體或類似之機構，
 - 專門職業名稱及授予之會員國，
 - 關於在該會員國設立專門職業之適用法規及取得資格之方式之參考資料；
- (g) 服務提供者進行受 VAT 拘束之活動時，1977 年 5 月 17 日第六次部長理事會第 77/388/EEC 號『協調會員國關於營業稅之法律--加值稅共同體系：統一之估價基準』指令(註 29)第 22(1)條中所提之識別號碼。

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- (d) where the service provider is registered in a trade or similar public register, the trade register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
- (e) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
- (f) as concerns the regulated professions:
 - any professional body or similar institution with which the service provider is registered,
 - the professional title and the Member State where it has been granted,
 - a reference to the applicable professional rules in the Member State of establishment and the means to access them;
- (g) where the service provider undertakes an activity that is subject to VAT, the identification number referred to in Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisa-

2. 除歐體法所定之資訊要件外，會員國至少應確保資訊社會服務清楚而明確地標示價格，特別係，必須指明該價格是否包括稅金及運送成本。

第二部分：商業訊息傳遞

第六條 提供之資訊

除歐體法所定之資訊要件外，會員國應確保商業資訊為資訊社會服務之一部分或構成資訊社會服務，至少包含以下要件：

- (a) 商業資訊本身能清楚被識別；
- (b) 發出該商業訊息之自然人或法人能清楚被識別；
- (c) 服務提供者設立地點之會員國所許可之服務提供的促銷行為，如折扣、獎金及贈品，其本身應能清楚被識別，應使其容易被接取及清楚而明確的呈現以滿足此條件；

tion of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment²⁹.

2. In addition to other information requirements established by Community law, Member States shall at least ensure that, where information society services refer to prices, these are to be indicated clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs.

Section 2 : Commercial communications

Article 6 Information to be provided

In addition to other information requirements established by Community law, Member States shall ensure that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions:

- (a) the commercial communication shall be clearly identifiable as such;
- (b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable;
- (c) promotional offers, such as discounts, premiums and gifts, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be eas-

- (d) 服務提供者建立地點之會員國許可之促銷性競賽或遊戲，其本身應清楚被識別，參與的條件是，應使其能容易被接取及清楚而明確的呈現。

第七條 主動提供的之商業訊息

1. 除歐體法所定之其他資訊要件外，核准得以電子郵件主動提供商業訊息之會員國應確保於其領域內設立之服務提供者，其所發出之商業訊息應於接受者接收當時得立即清楚明白地加以辨識。
2. 在不損及第 97/7/EC 指令及第 97/66/EC 指令下，會員國應採取措施以確保以電子郵件傳送商業訊息的服務提供者，定期詢問並尊重不願收到該商業訊息之自然人得自行登錄之取消機制。

第八條 受管制之專門職業

1. 會員國應確保特殊專門職業使用資訊社會服務之一部分--商業訊息傳遞時，受到相關之職業規則之規範，特別

ily accessible and be presented clearly and unambiguously;

- (d) promotional competitions or games, where permitted in the Member State where the service provider is established, shall be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.

Article 7 Unsolicited commercial communication

1. In addition to other requirements established by Community law, Member States which permit unsolicited commercial communication by electronic mail shall ensure that such commercial communication by a service provider established in their territory shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient.
2. Without prejudice to Directive 97/7/EC and Directive 97/66/EC, Member States shall take measures to ensure that service providers undertaking unsolicited commercial communications by electronic mail consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves.

Article 8 Regulated professions

1. Member States shall ensure that the use of commercial communications which are part of, or constitute, an in-

係，對當事人及其他專門職業之自主性、尊嚴、專業信用、職業保密義務及公正。

2. 在不損及職業團體及協會之自治下，會員國及執委會應鼓勵職業協會及團體在歐體層次建立行為準則，以決定為使商業訊息符合第一項規定之目的，可以提供之資訊類型。
3. 為確保歐體內部市場關於第二項所提資訊適當運作之必要，而草擬之共同體建議方案，執委會應就歐體層次所適用之行為準則給予適當的考量，且應與相關職業團體及協會密切合作
4. 除有關受規制專門職業之進入、運作及活動之歐體指令外，本指令應適用之。

第三部分：以電子方式締結之契約

第九條 契約之處理

formation society service provided by a member of a regulated profession is permitted subject to compliance with the professional rules regarding, in particular, the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession.

2. Without prejudice to the autonomy of professional bodies and associations, Member States and the Commission shall encourage professional associations and bodies to establish codes of conduct at Community level in order to determine the types of information that can be given for the purposes of commercial communication in conformity with the rules referred to in paragraph 1
3. When drawing up proposals for Community initiatives which may become necessary to ensure the proper functioning of the Internal Market with regard to the information referred to in paragraph 2, the Commission shall take due account of codes of conduct applicable at Community level and shall act in close cooperation with the relevant professional associations and bodies.
4. This Directive shall apply in addition to Community Directives concerning access to, and the exercise of, activities of the regulated professions.

Section 3 : Contracts concluded by electronic means

Article 9 Treatment of contracts

1. 會員國應確保其法律體系允許以電子方式締結契約。會員國應特別確保適用於契約程序之法律要件不致阻礙電子契約之使用，亦不因其係藉由電子方式締結之契約而剝奪該契約之有效性與正當性。
2. 會員國得規定本指令第一項不適用以下所有的或若干契約種類：
 - (a) 創設或移轉不動產權利之契約，但租金請求權不在此限；
 - (b) 由法院、政府機關或專門職業團體參與之契約：依法應由法院、政府機關或執行公權力之專門職業團體所參與之契約；
 - (c) 基於自身貿易、商業及職業外之原因，而為之保證契約及附加擔保物契約
 - (d) 親屬法或繼承法所規範之契約。
3. 會員國應向執委會表示不適用第一項規定之第二項契約類型。會員國應每五年呈交一次關於第二項適用情形的報告書給執委會，解釋他們考慮維持第二項(b)提到之種類並不適用於第一項理由。

1. Member States shall ensure that their legal system allows contracts to be concluded by electronic means. Member States shall in particular ensure that 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.
2. Member States may lay down that paragraph 1 shall not apply to all or certain contracts falling into one of the following categories:
 - (a) contracts that create or transfer rights in real estate, except for rental rights;
 - (b) contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
 - (c) contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession;
 - (d) contracts governed by family law or by the law of succession.
3. Member States shall indicate to the Commission the categories referred to in paragraph 2 to which they do not apply paragraph 1. Member States shall submit to the Commission every five years a report on the application of paragraph 2 explaining the reasons why they consider it necessary to maintain the category referred

第十條 提供之資訊

1. 除歐體法所定之其他資訊要件之外，會員國應確保，除當事人非消費者且另有合意外，在服務接受者簽發訂單前，服務提供者至少應清楚地、可理解地、明確地提供以下之資訊：
 - (a) 契約締結後之不同技術步驟；
 - (b) 該被締約之契約是否會被服務提供者存檔及該資訊是否可以取得；
 - (c) 在簽發訂單前之識別及更正輸入錯誤之技術方法
 - (d) 可供締約之語言版本。
2. 除當事人非消費者且另有合意外，會員國應確保，服務提供者應對訂閱者指明相關之行為規範及可藉由電子方式參考該等規範之資訊。
3. 提供給服務接受者之契約條款，應使服務接受者得儲存及重製。

to in paragraph 2(b) to which they do not apply paragraph 1.

Article 10 Information to be provided

1. In addition to other information requirements established by Community law, Member States shall ensure, except when otherwise agreed by parties who are not consumers, that at least the following information is given by the service provider clearly, comprehensibly and unambiguously and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order;
 - (d) the languages offered for the conclusion of the contract.
2. Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider indicates any relevant codes of conduct to which he subscribes and information on how those codes can be consulted electronically.
3. Contract terms and general conditions provided to the recipient must be made available in a way that allows

4. 第一項及第二項不適用於專門以電子郵件交換其他類似的個別通訊方式所締結之契約。

第十一條 簽發訂單

1. 除當事人非消費者且另有合意外，會員國應確保，若服務接受者以技術方式簽發訂單，應適用下列原則：
 - 服務提供者應以電子方式立即確認收到服務收受者之訂單，
 - 訂單與收到訂單之確認通知在收受者得以收取時，即視為送達。
2. 除當事人非消費者且另有合意外，會員國應確保服務提供者建立一套適當的、有效的及可接觸的技術方式予服務接受者，使其在下訂單前能識別及更正輸入錯誤。
3. 第一項第一段縮排及第二項之規定不適用於專門以電子郵件交換或類似之個別通訊方式所訂定之契約。

him to store and reproduce them.

4. Paragraphs 1 and 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Article 11 Placing of the order

1. Member States shall ensure, except when otherwise agreed by parties who are not consumers, that in cases where the recipient of the service places his order through technological means, the following principles apply:
 - the service provider has to acknowledge the receipt of the recipient's order without undue delay and by electronic means,
 - the order and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.
2. Member States shall ensure that, except when otherwise agreed by parties who are not consumers, the service provider makes available to the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input errors, prior to the placing of the order.
3. Paragraph 1, first indent, and paragraph 2 shall not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

第 4 部分：媒介服務提供者之責任

第十二條 「單純傳輸條款」

1. 若資訊社會服務所提供之內容係就服務接受者所提供之資訊，在通訊網路上進行傳輸，或提供進入通訊網路時，會員國應確保只要服務提供者符合下列規定，即不需就該傳輸資訊負責：
 - (a) 未主動發起該項傳輸者；
 - (b) 未選擇該傳輸之之收受者；及
 - (c) 未選擇或修改該傳輸之資訊內容者。
2. 在第一項所提到之傳輸的活動或連線的提供，包括在通訊網路中，以傳輸為單一目的之範圍內，自動地、居間地及短暫地儲存執行該傳輸的資訊內容，且若該儲存未超過傳輸所必需的合理期間。
3. 本條款不影響法院或行政機關依據會員國之法律規定，要求服務提供者終止或防止損害之可能性。

Section 4 : Liability of intermediary service providers

Article 12 "Mere conduit"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:
 - (a) does not initiate the transmission;
 - (b) does not select the receiver of the transmission; and
 - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

第十三條 「快取服務條款」

1. 若資訊社會服務所提供之內容是就服務接受者所提供之資訊，在通訊網路上進行傳輸時，會員國應確保服務提供者於符合下列要件下，只要其行為唯一之目的是應服務接受者之要求，而使對該服務接受者之資訊傳送更有效率，即無庸對資訊自動、媒介及暫時的儲存負責：
 - (a) 提供者未修改資訊內容者；
 - (b) 提供者遵守接取資訊之條件；
 - (c) 提供者遵守企業普遍承認且使用之資訊更新規範；
 - (d) 提供者未干擾妨害經企業普遍承認且使用之合法技術使，以取得該資訊使用中之資料；及，
 - (e) 提供者於實際得知傳輸來源之資訊已從網路上消除，或已無法接觸該資訊，或法院或行政機關已命消除該資訊或使其無法接觸此一事實時，應立即消除該資訊或其無法被接觸。

Article 13 "Caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:
 - (a) the provider does not modify the information;
 - (b) the provider complies with conditions on access to the information;
 - (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
 - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
 - (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disable-

2. 本條款不得影響法院或行政機關依據會員國之法律規定，要求服務提供者終止或防止損害之可能性

第十四條 代管條款

1. 若資訊社會服務所提供之服務係就服務接受者所提供之資訊加以儲存者，會員國應確保服務提供者只要符合下列規定，即不須就應服務接受者之要求而儲存之資訊負責：
 - (a) 提供者對違反活動或資訊實際上並不知情，至於損害賠償之請求並不構成對違法活動或資訊之事實或情況之知情。
 - (b) 服務提供者在知悉或察覺到上述不法情事時，即迅速移除該資訊或使其無法被接觸。
2. 第一項規定不適用於在服務提供者授權下或受其控制之服務收受者之行為。
3. 本條不得影響法院或行政機關依據會員國之法律規定，要求服務提供者終止或防止損害之可能性，亦不影響會員國制定程序規定規範資訊除去及使其無法接觸之可能

ment.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Article 14 Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
 - (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
 - (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to

性。

第十五條 無一般之監視義務

1. 會員國不應對第 12 條、第 13 條、第 14 條之服務提供者，課與其監視該傳輸或儲存之資訊之一般義務，其亦不應課與其積極尋找不法活動之事實或情況之一般義務。
2. 會員國得建立資訊社會服務提供者之義務，要求其迅速告知主管機關服務收受者可疑的不法活動或資訊，或在有關當局之要求下，簽訂儲存協議之服務收受者之資訊，使能辨別該服務收受者之身份。

第三節 執行

第十六條 行為準則

1. 會員國及執委會應鼓勵：
 - (a) 貿易、職業及消費者協會或組織草擬歐體之行為準則，以促使第五條到第十五條之適當執行；

terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.

Article 15 No general obligation to monitor

1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

CHAPTER III IMPLEMENTATION

Article 16 Codes of conduct

1. Member States and the Commission shall encourage:
 - (a) the drawing up of codes of conduct at Community level, by trade, professional and consumer associations or organisations, designed to contribute to the proper implementation of Articles 5 to 15;

- (b) 此行為準則在國內自發性的傳遞或通知歐體執委會；
 - (c) 使用歐體語言及藉由電子方式使該行為準則易於接觸；
 - (d) 貿易、職業及消費者協會或組織就其適用行為準則之評估及對於電子商務之習慣、慣例或實務上的衝擊，與會員國及執委會進行溝通。
- (e) 基於少數族群及人性尊嚴之保護制訂行為準則草案。
2. 會員國及執委會應鼓勵，相關之協會或組織代表消費者參與依第一(a)項起草與完成影響消費者權益之行為準則。在適當的情形，應考量其特定需要，並宜與代表視覺受損及殘障之團體磋商。

第十七條 法庭外之糾紛解決

1. 會員國應確保當資訊社會服務提供者與服務收受者意見不一致時，其內國立法不致妨礙其內國法下可得使用之法庭外機制之使用，包括適宜之電子方式。

- (b) the voluntary transmission of draft codes of conduct at national or Community level to the Commission;
 - (c) the accessibility of these codes of conduct in the Community languages by electronic means;
 - (d) the communication to the Member States and the Commission, by trade, professional and consumer associations or organisations, of their assessment of the application of their codes of conduct and their impact upon practices, habits or customs relating to electronic commerce;
 - (e) the drawing up of codes of conduct regarding the protection of minors and human dignity.
2. Member States and the Commission shall encourage the involvement of associations or organisations representing consumers in the drafting and implementation of codes of conduct affecting their interests and drawn up in accordance with paragraph 1(a). Where appropriate, to take account of their specific needs, associations representing the visually impaired and disabled should be consulted.

Article 17 Out-of-court dispute settlement

1. Member States shall ensure that, in the event of disagreement between an information society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, includ-

2. 會員國應鼓勵負責法庭外爭端之機構，特別係提供相關當事人足夠程序保障以處理消費者爭議。
3. 會員國應鼓勵負責法庭外爭端之機構，將其關於資訊社會服務爭議糾紛之重要決議及其他關於電子商務的使用及習慣之任何應用資訊，通知執委會。

第十八條 法院行為

1. 會員國應確保在內國法下，關於資訊社會服務行為可得利用之法院行為，考慮到措施之迅速採用，包括為終止任何被主張之損害，及防止涉及之利益更進一步之損害所為之暫時性措施。
2. 第 98/27/EC 號指令附件補充如下：『11. 歐盟內部市場電子商務資訊社會服務法律觀點指令(簡稱電子商務指令)(參見官方公報第 178 期，2000 年 7 月 17 日，頁 1)』

第十九條 合作

- ing appropriate electronic means.
2. Member States shall encourage bodies responsible for the out-of-court settlement of, in particular, consumer disputes to operate in a way which provides adequate procedural guarantees for the parties concerned.
 3. Member States shall encourage bodies responsible for out-of-court dispute settlement to inform the Commission of the significant decisions they take regarding information society services and to transmit any other information on the practices, usages or customs relating to electronic commerce.

Article 18 Court actions

1. Member States shall ensure that court actions available under national law concerning information society services' activities allow for the rapid adoption of measures, including interim measures, designed to terminate any alleged infringement and to prevent any further impairment of the interests involved.
2. The Annex to Directive 98/27/EC shall be supplemented as follows: "11. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects on information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1)."

Article 19 Cooperation

1. 會員國應有足夠之監督及調查方法以有效執行本指令，且應確保服務提供者提供其必要之資訊。
2. 會員國應與其他會員國合作；為了達成此目的，其應設立一個或數個聯絡點，並告知其他會員國與執委會相關細節。
3. 會員國應盡快且符合內國法的提供其他會員國或執委會所要求之援助及資訊，包括藉適當的電子方式。
4. 會員國應建立一個至少可以藉電子方式接取之聯絡點，使服務提供者及收受者得：
 - (a) 取得契約權利義務之一般資訊及可適用於爭議事件之控訴及賠償機制，包括使用此一機制之實務方面資訊；
 - (b) 取得行政機關、協會或組織所獲得更進一步資訊或實際援助之細節。
5. 會員國應鼓勵就任何與資訊社會服務之爭端有關及與電子商務有關之實施、使用及習慣之行政機關或法院之決定，與執委會進行交流。執委會亦應將該等決定通知其他會員國。

1. Member States shall have adequate means of supervision and investigation necessary to implement this Directive effectively and shall ensure that service providers supply them with the requisite information.
2. Member States shall cooperate with other Member States; they shall, to that end, appoint one or several contact points, whose details they shall communicate to the other Member States and to the Commission.
3. Member States shall, as quickly as possible, and in conformity with national law, provide the assistance and information requested by other Member States or by the Commission, including by appropriate electronic means.
4. Member States shall establish contact points which shall be accessible at least by electronic means and from which recipients and service providers may:
 - (a) obtain general information on contractual rights and obligations as well as on the complaint and redress mechanisms available in the event of disputes, including practical aspects involved in the use of such mechanisms;
 - (b) obtain the details of authorities, associations or organisations from which they may obtain further information or practical assistance.
5. Member States shall encourage the communication to the Commission of any significant administrative or judicial decisions taken in their territory regarding disputes relating to information society services and prac-

第二十條 制裁

會員國應制定有效、符合比例的及勸誡性的制裁，以適用於違反本指令條文之侵害行為，且應採取必要措施確保其執行。

第四節 最終規定（附則）

第二十一條 重新審視

1. 在 2003 年 7 月 17 日以前及其之後的每兩年，執委會應向歐洲議會、部長理事會及經濟暨社會委員會提出適用本指令之報告書，並於必要時附上，在資訊社會服務領域中，針對法律、技術及經濟發展之修正建議書，特別係關於犯罪預防、少數族群保護、消費者保障及內部市場適當運作。
2. 在檢討修正本指令之必要性時，報告書應特別分析關於超連結及搜集工具提供者之責任、通知及紀錄程序及紀錄內容之責任性質等是否有提案之必要。報告亦應分析對於第十二條及第十三條之免責規定，是否有必要依據

tices, usages and customs relating to electronic commerce. The Commission shall communicate these decisions to the other Member States.

Article 20 Sanctions

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

CHAPTER IV FINAL PROVISIONS

Article 21 Re-examination

1. Before 17 July 2003, and thereafter every two years, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to legal, technical and economic developments in the field of information society services, in particular with respect to crime prevention, the protection of minors, consumer protection and to the proper functioning of the internal market.
2. In examining the need for an adaptation of this Directive, the report shall in particular analyse the need for proposals concerning the liability of providers of hyperlinks and location tool services, "notice and take down"

科技的發展增加新的要件，及以電子郵件主動提供商業訊息適用內部市場法則之可能性。

第二十二條 轉換

1. 會員國應於本指令通過時起至 2002 年 1 月 17 日前，依據本指令制訂內國法律、規章及行政命令。且應立即通知執委會查照。
2. 當會員國通過第一項之措施時，應包含本指令之註釋，或應於其公布於公報時，附加此註解。附註方式由各會員國自行定之。

第二十三條 生效

本指令應於其公布於歐洲共同體官方公報之日起發生效力。

第二十四條 收件人

本指令應向各會員國寄送之。

二 000 年六月八日於盧森堡作成。

部長理事會主席

procedures and the attribution of liability following the taking down of content. The report shall also analyse the need for additional conditions for the exemption from liability, provided for in Articles 12 and 13, in the light of technical developments, and the possibility of applying the internal market principles to unsolicited commercial communications by electronic mail.

Article 22 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 17 January 2002. They shall forthwith inform the Commission thereof.
2. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by Member States.

Article 23 Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 24 Addressees

This Directive is addressed to the Member States.

Done at Luxemburg, 8 June 2000.

For the European Parliament

附件

第三條之免除

第 3(3)條、第 3(1)條及第 3(2)條之規定不適用於：

- 著作權、鄰接權、第 87/54/EEC(註 1)指令及第 96/9/EC(註 2)指令所提及之權利，工業財產權，
- 由關於會員國之機構發行之電子錢需適用第 2000/46/EC 指令第 8(1)條(註 3)之免除規定，
- 第 85/611/EEC 指令第 44(2)條(註 4)
- 第 92/49/EEC 指令第 30 條及第 4 標題(註 5)，第 92/96/EEC 指令第 4 標題(註 6)，第 88/357/EEC 第 7 條及第 8 條(註 7)及第 90/619/EEC 指令第 4 條(註 8)，
- 當事人於契約上之選法自由，

The President
N. Fontaine
For the Council
The President
G. d'Oliveira Martins
G. d'Oliveira Martins

ANNEX

DEROGATIONS FROM ARTICLE 3

As provided for in Article 3(3), Article 3(1) and (2) do not apply to:

- copyright, neighbouring rights, rights referred to in Directive 87/54/EEC(1) and Directive 96/9/EC(2) as well as industrial property rights,
- the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 8(1) of Directive 2000/46/EC(3),
- Article 44(2) of Directive 85/611/EEC(4),
- Article 30 and Title IV of Directive 92/49/EEC(5), Title IV of Directive 92/96/EEC(6), Articles 7 and 8 of Directive 88/357/EEC(7) and Article 4 of Directive 90/619/EEC(8),
- the freedom of the parties to choose the law applica-

- 關於消費者契約上之契約責任，
- 不動產之契約締結與移轉之形式效力，受到不動產所屬會員國法律強制的形式要件所支配；

- 經允許的主動提供商業訊息電子郵件。

- ble to their contract,
- contractual obligations concerning consumer contacts,
- formal validity of contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the Member State where the real estate is situated,
- the permissibility of unsolicited commercial communications by electronic mail.