European Commission: Transparency Directive Adopted

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On 29 June, the Council of the European Union adopted the Directive on a Transparency Mechanism for Information Society Services. The Directive's key aim is to safeguard against a fragmentation of the Single Market and to avoid the creation of new regulatory barriers. The Directive, which must be transposed into national law within one year, will require national legislators to notify to the Commission draft national rules that concern Information Society services. After notification there will be an initial "standstill" period of 3 months to allow the Commission, Member States and interested parties to comment on the draft rules and if necessary suggest amendments.

According to the Commission, this nonconfidential system of "structured dialogue" between national administrations and the Commission will allow to anticipate any problems arising from the development of online services and to provide immediate solutions. Service providers themselves will have access to information about new draft rules and so be able to contribute their experience to the drafting process. The new Directive will extend the scope of Directive 83/189 (which covers national rules affecting the free movement of goods) to include rules on Information Society services. The instrument defines "Information Society services" as all existing or new types of services that will be provided at a distance, by electronic means and on the individualised request of a service receiver. This definition covers, for example, on-line professional services, interactive entertainment, on-line information, virtual shopping malls and distance learning services. Financial services offered at a distance or by electronic means will fall within the Directive's scope. The definition does not cover television broadcasting and radio services, teletext, non-electronic direct marketing services, automatic bank tellers, and electronic games (including voice telephony services). The Directive adopts the country of origin principle as the jurisdictional basis. Thus, it allows regulatory authorities and courts that have jurisdiction over the offending supplier, and can therefore exercise power most effectively, to redress fraudulent or misleading Information Society services.

The Commission is now preparing a users guide concerning the scope of application and the functioning of the Directive. Furthermore, the Commission seeks to support the development of a complementary system of information and dialogue on future draft laws concerning on-line services at the international level, through a legal instrument complementary to the Directive.

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Directive on a transparency mechanism for Information Society services.

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