

[NO] Partial Implementation of the E-Commerce Directive

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The Norwegian E-commerce Act entered into force on 1 July 2003. The Act fulfills some of Norway's obligations in relation to the EEA (European Economic Area), implementing parts of the E-Commerce Directive (Directive 2000/31/EC see IRIS 2000-5: 3). The current Act implements all aspects of the E-Commerce Directive apart from the provisions regarding the liability of intermediary service providers.

The Act covers mainly the implementation of the provisions regarding the internal market (Articles 1-3), enabling Norwegian citizens and providers, together with the rest of the European Union, to take advantage of the opportunities afforded by electronic commerce without consideration of borders. Furthermore, the Act covers regulation regarding establishment and information requirements (Articles 4-5), commercial communications (Articles 6-8) and contracts concluded by electronic means (Articles 9-11).

As for the implementation of the provisions regarding the liability of intermediary service providers, the Norwegian Ministry of Trade and Commerce issued a white paper on 3 October 2003 (Ot. prp. nr. 4 (2003-2004)). The aim of the white paper is to implement Articles 12-15 of the Directive.

The white paper proposes regulation of intermediaries whereby an intermediary is considered anyone that provides a service that consists of the transmission on a communication network of information or the access to a communication network. According to the white paper, an intermediary will not be liable for any transmission, access to or storing of any illegal information or be liable for any assistance in storing another's information. This is provided the intermediary does not interact in any way, as indicated in the Directive. As for hosting (Article 14 of the Directive), the intermediary can only be held liable in relation to criminal liability if the hosting of the illegal information is being done intentionally. In relation to civil liability, the intermediary can only be held liable if he acts intentionally or with gross negligence. However, even if the intermediary is not covered by the "freedom from liability", as this provision is referred to, the intermediary will not be automatically liable. The liability of the intermediary must be determined according to specific legislation, such as the Norwegian Criminal Code or the Norwegian Copyright Act.

The liability of intermediary service providers is according to the Directive considered to be a minimum set of rules. The Ministry has not applied the possibility to go further than the Directive by giving more "freedom from liability". The Articles 12 ("mere conduit"), 13 ("caching") and 15 ("No obligation to monitor") are implemented almost literally. Only Article 14 ("hosting") has been implemented by way of national adjustments. The implementation is expected to come into force by the end of 2003.

Lov 2003-05-23 nr 35: Lov om visse sider av elektronisk handel og andre informasjonssamfunnstjenester (ehandelsloven)

<http://www.lovddata.no/all/hl-20030523-035.html>

E- commerce Act, 23 May 2003

