
EU Directive Requires Removal of Legal Formalities Blocking Use of Electronic Contracts

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The EU's new E-commerce Directive, which requires the removal of legal impediments to the enforceability of electronic contracts, represents an important milestone in the acceptance of electronic contracts. However, as discussed below, the new Directive does not eliminate the need for electronic contracts to comply with various substantive laws, including European consumer protection laws.

According to the European Union's new E-commerce Directive, each EU Member State has until January 17, 2002 to remove legal formalities which act as obstacles to the use of electronic contracts. The E-commerce Directive was adopted by the EU Commission on June 8, 2000, was discussed in our [March 14, 2000 Internet Alert](#). The E-commerce Directive can be viewed by clicking [here](#).

The legal effect of electronic signatures in the European Union is dealt with separately by [Directive 1999/93/EC](#) of the European Parliament and of the Council of 13 December 1999.

The E-commerce Directive permits EU Member States to maintain restrictions on the use of electronic contracts only with regard to certain contracts requiring by law the involvement of courts, public authorities, or professions exercising public authority.

The E-commerce Directive resolves the long disputed question as to the

enforceability of "click-through" agreements in the various EU Member States. The Directive makes clear that such agreements are enforceable, and mandates changes to national laws of any EU Member States to the contrary. We discussed the enforceability of "click-through" agreements in the United States and other countries in our [March 22, 2000 Internet Alert](#).

However, electronic contracts must still satisfy the same substantive legal requirements imposed on traditional written contracts. European consumer protection laws often require special provisions in consumer transactions, and those requirements will continue to apply to electronic contracts. U.S. companies should carefully review their existing online contracting procedures in order to evaluate whether their procedures comply with European consumer protection law. In particular, as discussed in our [August 10, 2000 Internet Alert](#), under both the EU's Distance Sales Directive and this E-commerce Directive, online suppliers should inform consumers about their product, contract terms, rights of withdrawal and other contract-related information.

Legal counsel in most EU Member States also recommend that the terms of the electronic contracts appear in the local language, particularly when consumers are involved, in order to avoid any arguments that the consumer did not realize that, by clicking-through, he was entering into a legally-binding agreement.

The EU's E-commerce Directive represents an important milestone in the acceptance of online electronic contracts, but not the end of the story.

Companies should be encouraged to rely on electronic contracts when providing goods and services online, so long as other substantive, legal and language requirements affecting those contracts are identified and addressed. Companies should, however, bear in mind that, until Member States have adopted enacting legislation for the E-commerce Directive, the current issues surrounding enforceability of electronic contracts that exist in many Member States will remain.