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## New EU Regulation Widens Exposure of Online Sellers to Consumer Litigation throughout EU

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A new European Union ("EU") regulation, to be implemented in March 2001, will allow an EU consumer who purchases goods or services online to sue the seller in the consumer's home country, apparently even if the seller has no business operations or employees in that country. This regulation is being implemented over vigorous objections from the international e-commerce community.

The EU [recently endorsed revisions to the 1968 Brussels Convention](#) which, among other things, permit consumers to sue a seller either in the EU country in which the consumer resides or in the EU country in which the seller is physically located. This pro-consumer provision applies to any company, which pursues commercial or professional activities in the EU member country where the consumer lives or which, by any means, directs such activities to that country.

However, in an explanatory note to the Regulation, two key EU bodies have indicated that a passive web site alone (which advertises products but does not allow the consumer to order or download the products online) will not invoke the consumer jurisdiction clause.

The United States has no national jurisdictional law comparable to the pending Brussels Convention provision. Rather, jurisdiction over out-of-state and foreign companies, including online vendors, continues to be determined on a case-by-case basis by individual state and federal courts.

Many e-commerce vendors, particularly U. S. companies, include provisions on their web sites or as part of e-commerce transactions which obligate purchasers to sue the vendor in the vendor's home state. These provisions are generally enforceable in the United States, particularly if a "click-and-accept" is required to signify the purchaser's acceptance. However, the new EU regulation likely will make forum selection clauses unenforceable in the EU for consumer transactions.

Opponents of the measure have predicted that it may lead some non-EU e-commerce companies to decline to sell products or services online to EU consumers. Other businesses are discussing ways to avoid directing their web sites at particular EU countries through disclaimers, avoidance of particular languages or physical online barriers to purchases from those countries. Of course, those measures would frustrate one of the greatest strengths of the Internet — the ability to offer goods and services across national boundaries.

Richard A. Johnston

[richard.johnston@haledorr.com](mailto:richard.johnston@haledorr.com)