
Will Making It Easier for Consumers to Sue Help or Hurt E-Commerce in the European Union?

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The Council of Ministers of the European Union has recently adopted a new regulation intended to protect consumers in online business-to-consumer ("B2C") transactions. This regulation may also affect some US businesses selling to consumers in the European Union ("EU"). The new regulation has somewhat narrowed the Commission's earlier position, discussed in our [January 24, 2001 Internet Alert](#), that proposed amendments to the 1968 Brussels Convention in order to subject B2C sellers to the jurisdiction of all 15 EU countries into which they sell goods or services online to consumers.

Article 15.1(c) of [EU Council Regulation 44/2001](#) (the "Jurisdiction Regulation"), provides that when a company concludes a contract with an EU consumer and the company either pursues commercial activities in that consumer's country "or by any means directs such activities to that country," the consumer may sue the company in the courts of that country. The Jurisdiction Regulation will go into effect on March 1, 2002 in all EU countries except Denmark. This contrasts to the Commission's earlier position that a consumer may sue a B2C seller in the consumer's local courts, whether or not the seller intentionally pursued or directed commercial activities to that country.

The Jurisdiction Regulation falls short of defining when the seller is deemed to "direct" its activities to an EU country. The Council of the European Union recently declared that the mere fact that an Internet site is accessible in a given country, or that the site uses the language or currency of that country, does not trigger the application of Article 15.1(c). Whether a particular transaction falls within the scope of the Jurisdiction Regulation will be determined by European courts on a case-by-case basis. In making these determinations, European courts will likely be guided by case law from other countries, including the United States (for example, our [September 7, 2001 Internet Alert](#) discussed how a U.S. federal court dealt with similar issues in [Toys "R" Us v. Step Two](#)).

The Jurisdiction Regulation, however, only applies when the seller is domiciled (e.g., its jurisdiction of incorporation or its principal place of business) in the EU, or when the dispute arises from the operations of the seller's branch, agency or establishment in the EU. For U.S. corporations which operate their online e-commerce businesses directly from the United States, jurisdiction will not be

determined by the Jurisdiction Regulation, but rather by the laws of the individual EU countries, on a country-by-country basis. Most of those countries have provisions allowing their residents to take legal action against non-EU defendants.

European authorities assert that offering clear and effective protection to consumers is the only means for creating consumer confidence in online transactions in the EU. On the other hand, the EU Council of Ministers recognizes that making it easier to sue B2C sellers may discourage sellers, and thus discourage B2C commerce generally. The Jurisdiction Regulation requires the European Commission to reevaluate that regulation after five years.

The Jurisdiction Regulation addresses where B2C sellers can be sued, but does not alter their substantive responsibilities under EU law. For a discussion of other EU laws and regulations affecting e-commerce, see our prior Internet Alerts of: (i) [March 14, 2000](#) and [December 11, 2000](#) concerning long-distance selling and e-commerce generally; (ii) [June 24, 1999](#), [April 18, 2000](#) and [February 14, 2001](#) concerning privacy; (iii) [August 10, 2000](#) and [October 5, 2000](#) concerning the use of electronic contracts; and (iv) [April 28, 2000](#) concerning Internet service provider liability.

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