

# Chapter XVII

## The Legal Framework for Data and Consumer Protection in Europe

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### **ABSTRACT**

*This chapter will discuss the legal framework for consumer and data protection in Europe. Central to this discussion will be the law of the European Union (EU) on data and consumer protection.<sup>3</sup> Recent years have seen the creation of legal frameworks in Europe which seek to secure the protection of consumers while simultaneously facilitating economic growth in the European Union. This chapter will outline the main sources of law which protect consumers and their privacy. This chapter will outline the important provisions in these sources of law and critically analyse them. The chapter will also point up the gaps and deficiencies in the consumer and data protection legal structures.*

### **CONSUMER PROTECTION**

There is a need for commercial law to respond to the challenges posed by technology and the means

by which technology has affected commerce. There is a specific need for law to respond to the challenges posed by e-commerce. The proliferation of the Internet and the expansion in the use

of e-mail has become increasingly important for business in terms of the sale of goods and services and also in terms of marketing.

It is well recognised that e-commerce has the possibility of bringing major benefits to consumers. In particular, e-commerce has the potential to promote competition among suppliers of goods and services. It also has the possibility of permitting businesses to build up new mutually beneficial relationships with consumers. From a European perspective, there is a possibility for consumers and service providers to benefit from an internal market and cross border business transactions.

Despite these beneficial possibilities, new challenges and risks for consumer exist. In particular, there is a concern with protecting consumers who are increasingly engaged in cross-border business transactions. The law must endeavour to adapt to a medium which is not limited by frontiers. This throws up many problems such as the choice of jurisdiction in the case of an online consumer contract between two countries.

Another challenge identified by the European Commission for e-commerce is that there is a trust issue faced in achieving brand recognition by consumers and a problem for businesses becoming commercially viable and sustainable.<sup>4</sup> The onward march of globalisation and new markets has left political and legal systems both at a national and international level struggling to adapt their laws to them. The new regulatory framework established by the EU for e-commerce is an important step at a regional level to ensure that the law keeps apace with these developments (Wahab, 2004).

## **THE EUROPEAN UNION AND LEGISLATIVE INITIATIVE**

The European Union (EU) has become the driving force for the initiation of policy development in many diverse areas for its member states. Data and consumer protection are cogent examples of this. The concept of European Union can be con-

fusing, therefore it is perhaps best at this point to describe the method by which the EU can direct this change.

The EU was created as recently as 1993 by the Treaty on European Union. The EU is an overarching entity which contains three-pillars, the pre-existing European community (EC) pillar, the justice and home affairs pillar and the common foreign policy and security policy pillar.<sup>5</sup> The concept of a common market is a fundamental aim of the European Union and its policies have been heavily influenced by this. Under Article 211 EC, the European Commission has been given extensive powers such as its right of legislative initiative to ensure the proper functioning and development of the common market. There are three modes of community lawmaking employed by the commission: regulations, directives, and decisions for a more lengthy discussion on community law-making (Craig & de Búrca, 2003).

Regulations are binding upon and are directly applicable in all member states. Directives may not be applicable to all member states and are binding only on the end to be achieved and leave flexibility with the member states on the mode by which this “end” is achieved. Decisions are binding in their entirety on those to whom they are addressed under Article 249 (ex Article 189) EC.

The European Union has provided a legal framework for e-commerce. The creation of this framework through a series of directives tied in with the goal of creating a European single market (Directive 2000/31/EC [2000] O.J. L178/1 and Directive 1999/93/EC [1999] O.J. L13/12). The rationale of the European Commission in bringing forward these directives was to inspire confidence in e-commerce. These directives were introduced to facilitate the development and expansion of e-commerce and the content of these directives do not limit or restrict e-commerce (Keller & Murray, 1999; Anassutzi, 2002).

These directives primarily dealt with the following issues:

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