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New European Ruling on Website Disclosure Requirements

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In all Member States of the European Union, e-commerce service providers are obliged to provide contact details to the recipients of their services. At present, many providers comply with this requirement simply by posting an e-mail address on their website. In a recent case, the European Court of Justice ruled that an e-mail address on its own is not sufficient, and that another rapid, direct and effective means of contact must also be offered, including online enquiry forms. In addition, traditional communication channels, such as telephone, fax, or a manned enquiry desk, must be made available to users upon request.

What is the case?

The original action was taken by a German consumer association, the Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV (“**BV**”), against the automobile insurance provider Deutsche Internet Versicherung AG (“**DIV**”).

BV sought an order from a regional court requiring DIV to cease advertising its services via the Internet, unless it provided a telephone number on its webpage in accordance with the requirements of the European e-Commerce Directive 2000/31/EC of 8 June 2000 (the “**E-Commerce Directive**”). The E-Commerce Directive obliges Internet-based service providers to provide details which allow those service providers to be “contacted rapidly and communicated with in a direct and effective manner”.

The case was eventually referred to the European Court of Justice (“**ECJ**”).

Why is this case important?

As one of the few cases to shed light on the interpretation of the E-Commerce Directive, this case provides valuable clarification of the scope of the Directive’s disclosure obligation.

This case makes clear beyond any shadow of doubt that any business operating an e-commerce website must, in addition to providing its e-mail address, offer its customers other rapid, direct and effective means of contacting the operator before entering into a contract. In other words, offering contact details by e-mail insufficiently complies with the E-Commerce Directive’s disclosure requirements.

The additional means of communication need not necessarily be a telephone number, but it still must be rapid, direct and effective. Also, when recipients request a non-electronic means of communication due to a lack of access to an electronic network, the provider is required to offer those means (such as a telephone number).

What is the legal background?

The E-Commerce Directive, implemented in the Member States of the EU through national legislation, applies to virtually every commercial website operator and to other providers of an “information society service”, which is defined as “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services”.

Article 5 of the E-Commerce Directive stipulates that information society service providers must make available certain information “in a form and manner that is easily, directly and permanently accessible”, including:

- the name and geographic address at which the organization is established;
- contact details for the organization, including e-mail address, enabling the organization to be contacted “rapidly” and “in a direct and effective manner”;
- for organizations undertaking activities subject to VAT, the VAT number;
- for organizations registered in a trade or similar publicly-available register, details of the register, including the registration number;
- where the provision of the service is subject to an authorization scheme, the particulars of the relevant supervisory authority;
- for organizations operating in regulated professions, the details of any professional body or similar institution with which the organization is registered, details on the professional title, as well as a reference to the professional rules applicable to the organization; and
- when making reference to prices, these must be indicated clearly and unambiguously and, in particular, must specify whether they include tax and delivery costs.

The E-Commerce Directive does not prescribe how the requirement to make information “easily, directly and permanently accessible” should be met, but it is generally envisaged that including the information on the organization’s website – e.g. showing it on a webpage that is accessible from every other page of the website – should sufficiently meet the above criteria.

As for territorial scope, the requirements of the E-Commerce Directive, as implemented in the Member States, generally apply to providers established within the European Union, either directly or through subsidiaries or branch offices. The question of whether these requirements apply to inbound services offered by providers established outside the EEA is a matter of national conflict of law rules, and one which is very much in flux. Many Member States courts, however, consider websites that ‘target’ local consumers to be within the realm of the national law implementing the E-Commerce Directive. For this, local domain names, language, currency, look and feel, country-specific content, etc. may be taken into account. Providers with a strong user presence in the EU would therefore be well advised to consider the new ruling for their Internet presence.

The disclosure obligations imposed under the E-Commerce Directive overlap somewhat with the disclosure obligations imposed under Article 4 of Directive 68/151/EEC (the “**Companies Law Directive**”), which require all companies in the EU to specify their registered address, details of the relevant register, and the legal form of the company, on their websites, letters, order forms, etc.

What happened in this case?

DIV is an insurance company which operates exclusively on the Internet and offers automobile insurance services to consumers. DIV provided its postal address and e-mail address on its website, but it did not openly provide its telephone number to all visitors to its website. Telephone numbers were given only to customers with whom DIV concluded insurance contracts. Instead of providing its telephone number to all visitors on its website, DIV provided an online enquiry form which could be filled in online by visitors, who in turn received a reply via e-mail. There was evidence to show that such online enquiries were answered within 30 to 60 minutes.

As a consumer body, BV took the view that the only way to meet the requirement to disclose contact details under Article 5(1)(c) of the E-Commerce Directive was to provide a telephone number. It argued that a telephone conversation was the only means by which direct and effective communication could take place, since such communication implied direct human contact between the service provider and the consumer. Accordingly, BV brought proceedings against DIV seeking an injunction to force DIV to cease advertising its service on the Internet unless it provided telephone contact details on its website.

The case eventually reached the ECJ, which held that:

- Article 5(1)(c) obliges a service provider to provide consumers, in addition to its e-mail address, with a means of communication which would enable consumers to contact the service provider in the prescribed manner (i.e., rapidly, effectively and directly) before entering into a contract, but such secondary means of communication do not necessarily have to be by telephone; and
- an online enquiry form which consumers can submit, and to which the service provider replies by e-mail, satisfies the requirements of Article 5(1)(c) for a secondary means of communication, except in situations where consumers who are deprived of Internet access make a request for non-electronic means of communication.

In reaching these conclusions, the ECJ held that the requirement for a means of direct communication does not require that an actual dialogue must take place; rather, it is sufficient for the contact to simply 'not rely' on an intermediary. Similarly, the ECJ held that the requirement for an effective means of communication does not mean that an instantaneous response must be given, as communication ought to be regarded as effective if consumers can obtain information that adequately meet their needs and legitimate expectations.

As a result of the ruling, any e-commerce provider who adopts a business model that dispenses with the telephone as its primary means of contact may rely on a combination of e-mails and online enquiry forms in order to manage its communication with its customers before entering into a contract with them. However, the provider must ensure that it is in a position to offer additional, non-electronic means of communication to its customers, in case a customer who has no access to the Internet requests this option.

Therefore, even where an e-commerce operator is satisfied that it can maintain very high levels of availability, both on its website and via the communication channels it offers to its customers through its website, it is still advisable to maintain a traditional communication channel, such as telephone, fax or a manned enquiry desk.