

**EUROPEAN COMMISSION**

Internal Market DG

Director-General

Brussels,  
D(2000) 274

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Dear Mrs Cederschiöld,

I wish to thank you for your support for the Directive on electronic commerce, which was adopted without any amendments by the European Parliament on 4 May.

While supporting a rapid adoption of the Directive, you have expressed in contacts with my services concerns about Recital 48 of the Directive, which states that *“the Directive does not affect the possibility for Member States to require service providers, who host information provided by recipient of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities”*.

Because of these concerns you originally tabled an amendment in the Committee on Legal Affairs and the Internal Market aiming at deleting Recital 48.

However, in order to ensure the rapid adoption of the Directive, which was a priority for all major political groups in the European Parliament, this amendment was subsequently withdrawn.

Following the adoption of the directive, I would like to reassure you that recital 48 only aims at explaining the content of Article 15 and its implications for Member States. As a mere recital it cannot limit the scope of the Article and cannot allow Member States to impose any obligations on service providers which are contrary to the clear prohibition on general monitoring obligations for service providers, including the ban on general obligations to actively seek facts or circumstances indicating illegal activity, as provided in Article 15 para1. This prohibition concerns obligations of a general nature and does not concern monitoring obligations in a specific case nor does it affect orders by national authorities in accordance with national legislation, which is explained in recital 47. Furthermore, as explained in recital 48, this prohibition does not concern certain duties of

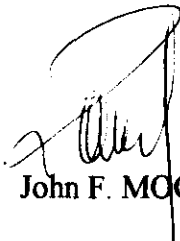
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care which can reasonably be expected from service providers and which are specified by national law. Such duties of care could for instance consist in the making available of complaint-systems or in the operation of notice and take down procedures and hot-lines. By contrast, any general obligation to monitor or supervise data which are transmitted or stored will not be possible under the directive, given the clear wording of Article 15 para1. This was after difficult negotiations eventually accepted by Member States, since given the sheer amount of data which are transmitted or stored any general monitoring obligation would be unreasonable and unrealistic.

As Commissioner Bolkestein emphasised during the debate on the directive in the European Parliament's plenary session on 4 May, the Commission will make all efforts to ensure a proper implementation of the directive in national law. As he made clear, particular attention will be given to the liability section of the directive in this respect in order to maintain the balance between different interests and different policy objectives which has been achieved by the Council and the European Parliament.

I hope this will answer your concern, and I want to thank you again for your constructive approach and contribution to the debate during the second reading of the directive.

Yours sincerely,

  
John F. MOGG

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H. ZOUREK DEPUTY DIRECTOR-GENERAL
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