



Воронежский
государственный
университет



Legal aspects of cross-border online services in the EU (the Finnish experience)

Ilia Zhdanov

**Assistant, Faculty of Law,
Voronezh State University**

Zagreb, March 21-22, 2016

INTEREULAW EAST

European and International Law Master Programme Development in Eastern Europe



Co-funded by the
Tempus Programme
of the European Union

Introduction

- **Cross-border Online Services** form the essential part of a brand-new Digital Single Market concept, which definition was reflected in par. 1 of Communication from the Commission “A Digital Single Market Strategy for Europe” of 6 May 2015
- ***A Digital Single Market is one in which the free movement of goods, persons, **services** and capital is ensured and where individuals and businesses can seamlessly access and **exercise online activities** under conditions of fair competition, and a high level of consumer and personal data protection, **irrespective of their nationality or place of residence.*****

The role of online services

- **The "Single Market Act" of 2011** identified information society services (ISS) or online services, including e-commerce, as one of the measures which can boost economic growth and drive forward the Internal Market of the 21st century.
- They also have a major role to play in achieving the objectives of **smart, sustainable and inclusive growth in Europe by 2020** .
- **The "Digital Agenda for Europe"** sets the objectives of **developing electronic commerce across Europe** and facilitating access to electronic commerce for SMEs engaged in sales and purchasing.

The legal definition of online services

- The term “**Information society services (ISS)**” or “**online services**” defined as those **services provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.**

(Article 1(b) of the Directive (EU) 2015/1535 of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services)

- It covers not only e-commerce in goods (including cultural goods and pharmaceutical products) and services (including online gambling) but also social networks, vocational training by distance learning, online services provided by public administrative bodies, etc.

(Commission Communication “A coherent framework for building trust in the Digital Single Market for e-commerce and online services” of 11 January 2012)

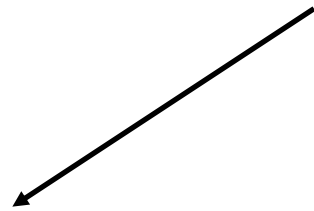
Current EU Legal Framework

- Online services and E-commerce are some of the most significant innovations in the economy in recent decades and have precipitated an evolution in the legal framework for doing business online.
- This framework consists of the E-Commerce Directive and many other pieces of subsequent EU legislation.
- **Directive 2000/31/EC or “The E-Commerce Directive” (ECD) is the main legislative tool dealing with information society services.** Following its adoption in 2000, the Directive has been complemented by other EU legislation, covering various aspects such as data protection and consumer affairs.

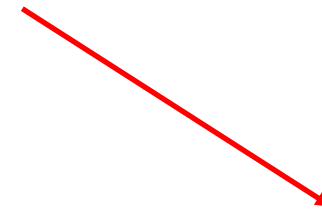
The E-Commerce Directive

The ECD was designed to help remove obstacles to cross-border online services in the Internal Market and to provide legal certainty to administrations, businesses and customers.

The Directive has two vectors
of action



It contains principles which should encourage the functioning of the Internal Market such as the Internal Market clause



it regulates certain legal aspects of online services

The E-Commerce Directive

Regulates such important legal aspects of online services as:

- ✓ ***The Internal Market clause (Articles 3-4 of ECD)***
- ✓ ***Information requirements (Article 5)***
- ✓ ***Commercial communications and regulated professions (Articles 6-8)***
- ✓ ***Electronic contracting (Articles 9-11)***
- ✓ ***Liability of online intermediaries (Articles 12-15)***
- ✓ ***Implementation and application (Articles 16-20)***

EU Legal Framework beyond the ECD

The ECD is complemented by a massive of the EU instruments:

- The need for Member States to notify derogations to the Internal Market clause has diminished due to the operation of the CPC-networks since 2007
- The information requirements laid down in Article 5 ECD have been complemented by specific rules e.g. in the ***Unfair Commercial Practices Directive (2005)***, the ***Regulation on Passenger Rights (2004)***, the ***Services Directive (2006)*** and the new ***Consumer Rights Directive (2011)***

EU Legal Framework beyond the ECD

- In the area of Intellectual Property Rights, the most relevant legislation concerns the ***Copyright Information Society Directive (2001)*** and the ***IPR Enforcement Directive (2004)***
- On electronic contracting, Article 9 of the ECD has been complemented by the ***Electronic Signatures Directive*** which regulates the legal recognition of e-signatures
- ***The E-Privacy Directive (2002 and 2009)*** complements and particularises the ***Data Protection Directive*** with regard to the processing of personal data in the electronic communication sector
- etc.

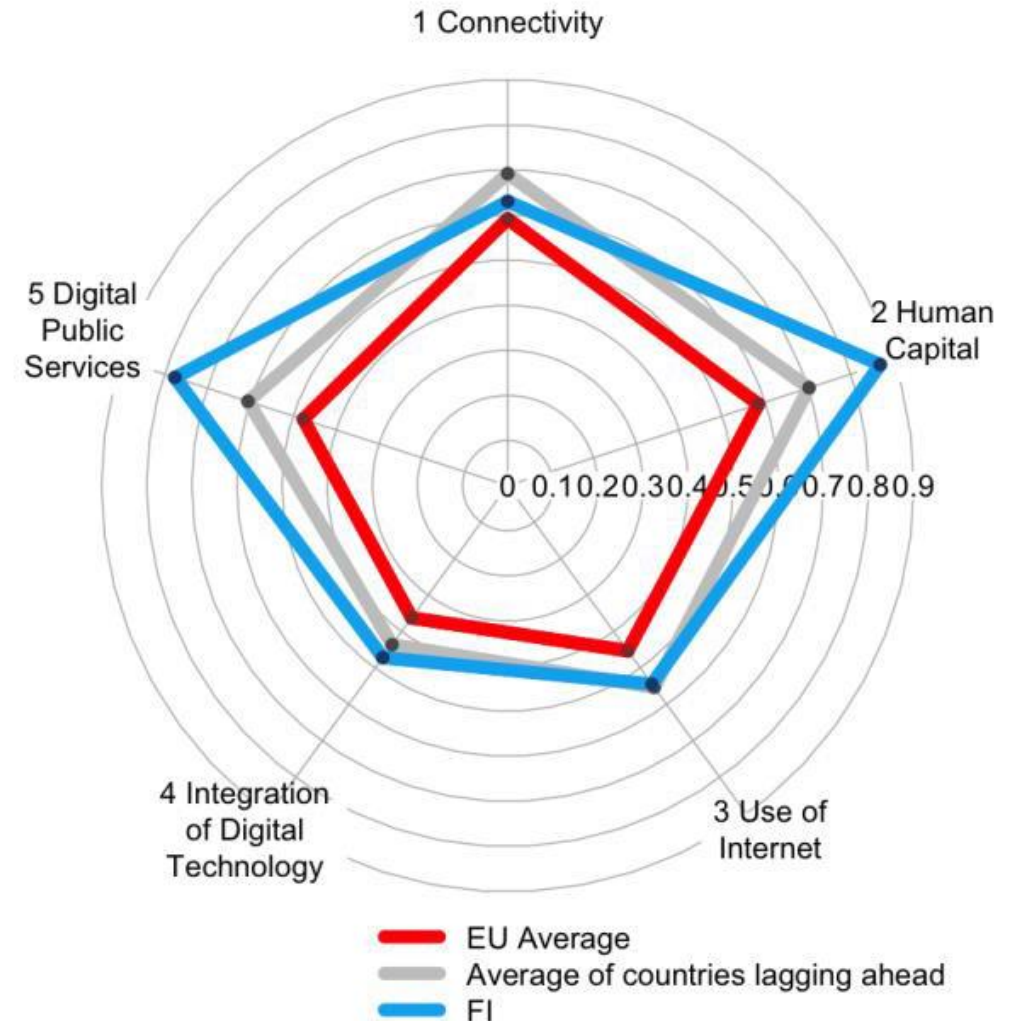
EU Legal Framework beyond the ECD

Moreover, the following initiatives can also be mentioned:

- The ban on discrimination in Article 20 Services Directive
- Various new developments in the area of payment services
- New rules on the application of VAT to digital services
- Developments in private international law and dispute resolution

FINLAND

- In Digital Economy and Society Index 2016 (DESI) **Finland ranks 4th out of the 28 EU Member States**, that's an excellent result for such a small EU-country.
- Whilst Finland is generally among the more advanced countries, it is outstanding as far as "human capital" is concerned: 91% of the population are regular internet users and the Finish workforce has by far the highest proportion of ICT specialists in the EU (6.7%).
- Finland is also very good at using digital technologies (for instance, online public services).
- However, even in Finland only 15% of SMEs sell online, below EU average, despite their citizens' propensity for eCommerce.



FINLAND: E-Commerce Directive implementation

- **Act on the Provision of Information Society Services (458/2002)** harmonised Finnish law with the EU E-Commerce Directive (2000/31/EC). The Act was adopted by Parliament on June 5 2002 and came into force on July 1 2002.
- The new act aimed at promoting e-commerce by ensuring the free provision of information society services. It was also designed to reduce the uncertainties relating to electronic contracting and to build up trust towards e-commerce among consumers.
- The act applies to services offered through networks and also covers the offer of goods by electronic means. Consequently the act covers, for example, the electronic marketing of services or goods.

FINLAND:
Act on the Provision of Information Society
Services (458/2002)

Set out:

- **the principle of country of origin in Finnish legislation.** Under this principle a service provider located in Finland may offer its services in the European Economic Area (EEA) without being obliged to take into account requirements relating to its activities as set forth in each EEA member state, provided that the service provider follows the rules of its country of establishment.
- **obligation for providers of services to provide information on themselves and their activities,** as well as on the actual contracting procedure. These obligations are supplementary to other obligations to provide information set out in other legislation.

FINLAND:

Act on the Provision of Information Society Services (458/2002)

Noteworthy that in relation to hosting services (Article 14 of ECD), and especially to the conditions and procedures of taking down material hosted on a server, the Act went further than the directive.

- The new act provides that illegal material or material published or distributed unlawfully can be removed from the server by a court order after providing the service provider and the content provider with the opportunity to be heard in the matter. However, in urgent situations the order may be granted without hearing the parties. Further, when the content of the material is clearly illegal (ie, the material contains illegal pornography or other unlawful material) a service provider must remove the material from the server as soon as it becomes aware of it in order to avoid liability.
- As regards copyright-protected material, the newly proposed notice and take-down procedure gives the copyright holder the right to have infringing material removed from the server by giving a notice fulfilling certain criteria to the intermediary service provider.

FINLAND: The Information Society Code

- A reform of the Finnish regulation on information society - **the Information Society Code ("the Code")** - was approved on Friday 7 November 2014 and took effect on 1 January 2015. The Code updates current regulations on areas such as e-privacy, consumer protection, communications networks and data security.
- **The aim of the Code is**, among other things, to promote consumer protection, data security, simplified procedures for permissions regarding communications services and equal opportunities for service providers in the market.

FINLAND: The Information Society Code

It collects the following laws under one umbrella:

- *the Communications Market Act (393/2003)*
- *the Act on Television and Radio Operations (744/1998)*
- *the Act on Radio Frequencies and Telecommunications Equipment (1015/2001)*
- *the Domain Name Act (228/2003) (will be applicable until 4 September 2016)*
- *the Act on the Provision Of Information Society Services (458/2002) (the so called e-Commerce Act)*
- *the Act on the Protection of Privacy in Electronic Communications (516/2004).*

FINLAND: Key Changes brought by The Information Society Code

- **The territorial scope of the regulation is broader than before**

Certain provisions of the Code concerning confidentiality of communications, e-privacy and data security are extended to cover entities which are established outside of the EU but which maintain or use devices for the transmission of communications in Finland or which provide services online, provided that the user of such services is in Finland and such services are clearly targeted at Finland.

Where the territorial scope of the Finnish e-privacy regulation previously followed logic similar to the Finnish Personal Data Act and the European "Data Protection Directive" 95/46/EC, the extension of the scope to cover certain services abroad resembles the approach of the General Data Protection Regulation currently under consideration in the EU.

FINLAND: Key Changes brought by The Information Society Code

- **Introduction of net neutrality**

The Code introduces a provision on net neutrality. In line with the general European development, the Code provides that internet services may be restricted only under certain specific circumstances. For instance, restrictions may be based on communications services agreements, provided that they do not unreasonably prevent the use of applications or services online or slow down internet traffic. In other words, prioritizing online traffic is permitted to a certain extent for commercial purposes.

FINLAND: Key Changes brought by The Information Society Code

- **The new concept of 'intermediary'**

The definition of an intermediary transmitting communications is rewritten and broadened to include all service providers transmitting electronic communications. In practice, the Code extends the requirement for ensuring the confidentiality of communications and related data security obligations to service providers dealing with communications by means other than public communications networks. For example, the Code will apply to instant messaging applications.

THANK YOU!



Воронежский
государственный
университет



INTEREULAW**EA**§T

European and International Law Master Programme Development in Eastern Europe



Co-funded by the
Tempus Programme
of the European Union