E-Commerce Law

The term e-commerce extends to all areas of electronic business transactions. For this reason all standards which apply outside the internet can also be utilized here, in legal terms. This applies in Germany especially to the laws set out in the “German Civil Code” (BGB) and the “Code of Commercial Law” (HGB). A special consumer protection act is not available in Germany, all articles for the protection of consumers are included in the BGB.

Necessity

Online however there are some special situations which the legislator confronts with specific regulations. These regulations partly serve to encourage e-commerce by simplifying the process and partly to protect the consumer from the dangers of electronic business transactions.

General framework

The basic conditions for the electronic business transactions are characterized by the development of European law. The guidelines for distance selling, digital signatures for electronic business transactions and for financial services provided via the internet are just a few examples. Therefore a European standard for consumer protection regarding internet contracts was created.

Basis for e-commercial regulations

The general basis for implementation in special laws for E-commerce is the European e-commerce directive (guideline for the electronic business transactions).

European e-commerce directive

The European Directive 2000/31/EG of the European Parliament and Council controls certain legal aspects of services provided to the internet community, particularly inner-European market electronic business transactions. It is intended to harmonize electronic business in Europe. Considerable employment opportunities are expected in the course of its development. Consumer protection is highlighted in the directive as a key factor for the success of electronic business. Article 17 (2) thus encourages member states to reach out of court agreements, especially regarding consumer rights.
guaranteeing legal proceedings. The core of the directive dictates that member states must ensure that their legal directives make electronic contracts possible. There are 3 principles of the European e-commerce directive

1. The “country of origin principle” states that internet services are governed by the legal system of the country in which the supplier is situated. Exceptions: Choice of law, consumer contracts, property transactions, admissibility of promotional emails, copyright, electronic money, public policy, public security, public health.
2. The “place of origin principle” dictates that responsibility for the services provide on the internet falls to the place of origin. This however does contain the risk that the location will be fixed to an area with the lowest level of protection, also known as “legal dumping”.
3. The “country of destination principle” states that legal action against a supplier from another member state is possible if his business is directed solely or mainly at the territory of this member state, if the location was chosen to take advantage of the laws of the member state.

Implementation on national level

The deadline for implementation on state level was the 17 January 2002. The e-commerce directive was incorporated into German law at the federal level by the “Electronic Commerce Act”, at the level of the German federal states by the interstate agreement on media services.

Examples of implementation

- Offering products and services in the internet is deemed to be remote service and is thus subject to the “remote service statute” (TDG\(^1\)) and the “remote service data protection law” (TDDSG\(^2\)).
- Suppliers are then liable not only for their own, but also for third party content, if it is technically and reasonably possible to avoid publishing of such content. In the internet there are special regulations for contract law.
- Suppliers are required to fulfil minimum standards of information regarding themselves, their products or services and their terms and conditions.

References

e-commerce law: http://www.wirtschaftslexikon24.net/d/e-commerce-recht/e-commerce-recht.htm

e-commerce directive: http://www.internetrecht-rostock.de/Gesetze/ECR.htm


2) The TDDSG is replaced by the German Teleservices Act (TMG) on March the 1st, 2007.