

**ELECTRONIC COMMERCE DIRECTIVE (SUPPLEMENTAL  
AND AMENDMENT) INSTRUMENT 2002**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 138 (General rule-making power);
  - (2) section 145 (Financial promotion rules);
  - (3) section 156 (General supplementary provisions); and
  - (4) section 157 (Guidance);
  - (5) regulation 3 of the Electronic Commerce Directive (Financial Services and Markets Act) Regulations 2002 (S.I. 2002/1775);
  - (6) the rule-making powers listed in Schedule 4 to the General Provisions GEN).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 November 2002.

**Amendments to the Handbook**

- D. PRIN, SYSC, COB, TC, SUP, CRED, ECO, ELM, the Glossary and the Reader’s Guide are amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Electronic Commerce Directive (Supplemental and Amendment) Instrument 2002.

By order of the Board  
19 September 2002

## Annex

### Amendments to the Handbook

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Principles for Businesses (PRIN)

PRIN 3.3.2 G *ECO 1.1.6 R has the effect that PRIN does not apply to an incoming ECA provider acting as such.*

#### Senior Management Arrangements, Systems and Controls (SYSC)

SYSC 1.1.11A G *ECO 1.1.6 R has the effect that SYSC does not apply to an incoming ECA provider acting as such.*

SYSC 2.1.6 G Table Frequently asked questions about allocation of functions in SYSC 2.1.3 R  
This table belongs to SYSC 2.1.5 G

	Question	Answer
12	How does the requirement to allocate the functions in SYSC 2.1.3 R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	... See also Questions <u>1</u> and <u>15</u> .
<u>15</u>	<u>What about <i>incoming electronic commerce activities</i>?</u>	<u><i>ECO 1.1.6 R has the effect that SYSC does not apply to an incoming ECA provider acting as such.</i></u>

#### Conduct of Business sourcebook (COB)

COB 1.4.1 R (1) that its application to *electronic commerce activity providers*, and in relation to *electronic commerce communications*, is modified by *ECO*, as explained in *COB 1.9* (Application in relation to electronic commerce activities and communications); and  
...

COB 1.9 (Title) **Application ~~to~~ in relation to electronic commerce activity providers activities and communications**

COB 1.9.1 G (1) *COB 1.9.1 G* and *COB 1.9.2 G* apply to a *firm*:  
  
(a) which is an *electronic commerce activity provider*; that is, any firm which carries on an *electronic commerce activity*; and  
  
(b) in relation to a *financial promotion* which is an *electronic commerce communication*.

...

### **Modification of COB for ECA providers resulting from the E-Commerce Directive**

COB 1.9.2 G      The modifications made to *COB* in respect of ~~electronic commerce activity providers~~ resulting from the introduction of the *E-Commerce Directive* are of three kinds:

...

(2)      *ECO 2*:

- (a)      modifies *COB* so that, ~~for a firm providing an electronic commerce activity from an establishment in the United Kingdom~~ to a recipient who is elsewhere in the EEA in relation to a financial promotion which is an outgoing electronic commerce communication, *COB 3* has an extended application to cover the whole of the *EEA*;

...

COB 3.3.2 G (2)      The exemptions in *COB 3.2.5 R* (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for *financial promotions* originating outside the *United Kingdom* (section 21(3) of the *Act* (Restrictions on financial promotion)) (see *COB 3.2.5 R* (2) and *AUTH App 1.12.2 G* (Financial promotions to overseas recipients (article 12)), ~~and~~ the exemptions for overseas communicators (see *COB 3.2.5 R* (3) and *AUTH App 1.14.14 G* (Overseas communications (articles 30 to 33))) and the exemption for incoming electronic commerce communications (see *AUTH App 1.12.38 G* (article 20B)).

- (3)      ~~In the context of the provision of an electronic commerce activity to an EEA ECA recipient, the scope of *COB 3* is extended by *ECO 2.2.6 2.2.3 R*. This means that *COB 3* will apply for communications by an outgoing ECA provider to an EEA ECA recipient to cover financial promotions which are outgoing electronic commerce communications, subject to the lifting of rules in the derogations to the *E-Commerce Directive* as set out in *ECO 2*.~~

### **Training and Competence sourcebook (TC)**

TC 1.1.2A G      *ECO 1.1.6 R* has the effect that this chapter does not apply to an incoming ECA provider acting as such.

TC 2.1.2A G      *ECO 1.1.6 R* has the effect that this chapter does not apply to an incoming ECA provider acting as such.

## Supervision manual (SUP)

- SUP 15.1.5 G      *Firms* are reminded that  $\gamma$ ;
- (1) unless expressly stated otherwise, where a *rule* or *guidance* includes a reference to a '*firm*' this includes all *UK* and overseas branches and representative offices of that *firm*, whether or not those branches or offices carry on any *regulated activities*; and
  - (2) *ECO 1.1.6 R* has the effect that this chapter does not apply to an incoming *ECA provider* acting as such.

SUP 17.1.4 G      *ECO 1.1.6 R* has the effect that this chapter does not apply to an incoming *ECA provider* acting as such.

## Credit unions sourcebook (CRED)

CRED 11(Title)      Conduct of business and electronic commerce activities

### Conduct of business

CRED 11.1.1 G      The Conduct of Business sourcebook (*COB*) sets out...

CRED 11.1.2 G      The rules and guidance set out in *COB* mainly apply to *designated investment businesses* and, as stated in *COB 1.3.2 G* (2), have limited application to *deposits*. The only part of *COB* that sets out *rules and guidance on deposits*, other than a *cash deposit ISA*, is that relating to *financial promotion* in *COB 3*. These are summarised in *CRED 11.2* (*Financial promotion*).

CRED 11.1.3 G      [Reserved for guidance consulted on in CP 138]

CRED 11.1.4 G      [Reserved for guidance consulted on in CP 138]

### Electronic commerce activities

CRED 11.1.5 G      The E-Commerce Directive sourcebook (*ECO*) contains *rules and guidance applicable to a credit union which carries on an electronic commerce activity*; that is, a *credit union which accepts deposits, or carries on certain other activities, by way of an information society service*. An *information society service* is, generally speaking and subject to certain exclusions, a service that:

(1) is normally provided for remuneration;

(2) is provided at a distance;

(3) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; and

(4) is so provided at the individual request of a recipient of the service.

CRED 11.1.6 G In particular, a *credit union* which carries on an *electronic commerce activity* needs to be aware of the minimum information requirements in *ECO 3.2 (Minimum information requirements)*.

CRED App 1.1.1 Table

	Sourcebook or manual	Reference code
... Specialist sourcebooks	... Credit Unions <u>E-Commerce Directive</u> ...	... CRED <u>ECO</u> ...

### E-Commerce Directive sourcebook (ECO)

ECO TP1 Transitional Provisions  
1 Table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Every <i>rule</i> (including <i>evidential provision</i> ) in <i>ECO</i>	R	Until 20 November 2002, an <i>electronic commerce activity service provider</i> , and <u>any firm in relation to an outgoing electronic commerce communication</u> , will not contravene any provision in <i>ECO</i> to the extent that it has taken reasonable steps to comply with that provision.	21 August 2002 until 20 November 2002	21 August 2002

ECO 1.1.6 R Except for the provisions set out in *ECO 1.1.10 R*, the *Handbook* does not apply to an *incoming ECA provider* ~~with respect to the carrying on of incoming electronic services activities~~ acting as such.

ECO 1.2.4 R (1) *ECO 1.2.1 R* does not apply to an *incoming ECA provider* with respect to an *electronic commerce activity* relating to:

(a) a *deposit* (other than a *cash deposit ISA*); or

(b) (if *ECO 1.2.3 R* does not apply) a *general insurance contract, pure protection contract* or reinsurance contract;

but, instead, the *incoming service ECA provider* must comply with (2).

ECO 1.2.6 E (1) In order to comply with *ECO 1.2.1 R*, before entering into a contract with a *UK ECA recipient* who is a *consumer*, an *incoming ECA provider* should comply with the following UK requirements:

(a) ...

(b) when it *communicates* a *specific non-real time financial promotion which is an incoming electronic commerce communication*, *ECO 1.2.10 E* and *ECO 1.2.11 E* (Essential information: specific non-real time financial promotions which are incoming electronic commerce communications);

(c) when it *communicates* a *direct offer financial promotion which is an incoming electronic commerce communication*, provide the information identified in the *rules* listed in *ECO 1.2.12 E*; and

(d) ...

ECO 1.2.6 E (3) The requirements in (1)(b) apply subject to the exemptions in *COB 3.2.5R* (exemptions) (but disregarding any exemption which applies purely because the promotion is an incoming electronic commerce communication).

**Provision of essential information to consumers: specific non-real time financial promotions which are incoming electronic commerce communications**

ECO 1.2.10 E An *incoming ECA provider* should ensure, when it *communicates* a *specific non-real time financial promotion which is an incoming electronic commerce communication* to a *UK ECA recipient* who is a *consumer*, that the *financial promotion* includes:

...

ECO 1.2.11 E An *incoming ECA provider* should ensure, when it *communicates* a *specific non-real time financial promotion which is an incoming electronic commerce communication* to a *UK ECA recipient* who is a *consumer*, that any *essential information* provided to the *consumer* about the past performance of *specified investments* or of a *firm* includes, where relevant to the contract, a statement to the effect that past performance should not be seen as an indication of future performance.

ECO 1.2.13 E (1) *An incoming ECA provider should ensure, when it communicates a direct offer financial promotion which is an incoming electronic commerce communication relating to:*

...

ECO 2.1.1 R *ECO 2 applies to:*

- (1) *an outgoing ECA provider; and*
- (2) *every firm in relation to a financial promotion which is an outgoing electronic commerce communication.*

ECO 2.1.2 G (2) *The purpose of ECO 2.2 (Modification of the content and territorial scope of COB) is to ensure that:*

- (a) *an outgoing ECA provider; and*
- (b) *a firm, in relation to a financial promotion which is an outgoing electronic commerce communication;*

*in complying with COB, is able to disregard any provision of COB which is included in the 'consumer contract derogation' or 'insurance derogation' (set out in the Annex to the E-Commerce Directive), when dealing with ~~an EEA ECA recipient who is a consumer~~ in another EEA State.*

- (3) *ECO 2.2 also extends the territorial scope of COB 3 (Financial promotion) ~~to communications made by an outgoing ECA provider to an EEA ECA recipient~~ in relation to a financial promotion which is an outgoing electronic commerce communication, whether or not the recipient is a consumer.*

ECO 2.2.1 R *In relation to:*

- (1) *an electronic commerce activity carried on from an establishment in the United Kingdom with or for an EEA ECA recipient who is a consumer; and*
- (2) *a financial promotion which is an outgoing electronic commerce communication made to or directed at a consumer;*

*~~an outgoing ECA provider a firm~~ is not required to comply with any of the provisions mentioned in ECO 1.2.6 E 1(a) and 1(c) (essential information) or, if it is an insurer carrying on insurance business falling within the scope of the Insurance Directives, ECO 1.3.3 R.*

ECO 2.2.2 G *The provisions mentioned in ECO 1.2.6 E 1(a) and 1(c) and ECO 1.3.3 R are those that the United Kingdom, as a Host State, applies to incoming ECA*

*providers* under the 'consumer contract derogation' and 'insurance derogation' respectively. A corollary of this approach is that these provisions are disapplied to:

- (1) an outgoing ECA provider when it provides *electronic commerce activities* to an *EEA ECA recipient* who is a *consumer*; and
- (2) a firm, in relation to a financial promotion which is an outgoing electronic commerce communication made to or directed at a consumer;

The provisions at *ECO* 1.2.6 E (1)(b) and (1)(d) do not apply to ~~an outgoing ECA provider~~ in these situations in any event.

*ECO* 2.2.3 R (1) ~~An outgoing ECA provider~~ In relation to a financial promotion which is an outgoing electronic commerce communication, a firm must comply with *COB* 3 (Financial promotion) as if ~~every EEA ECA recipient were a UK ECA recipient~~ the person to whom the communication is made or directed was in the United Kingdom.

*ECO* 2.2.4 G The effect of *ECO* 2.2.3 R is to apply the whole of *COB* 3, where relevant, to ~~communications~~ outgoing electronic commerce communications made by an outgoing ECA provider to an EEA ECA recipient, except those provisions of *COB* 3 identified in *ECO* 2.2.1 R. (See *ECO* 2.2.2 G for an explanation of this approach.)

*ECO* 3.2.2 G *ECO* 3 Ann 1 R implements provisions contained in the *E-Commerce Directive* as follows:

*ECO* 3 Annex 1 R

1 Information about the ECA provider and its products or services

- (1) (a) the name of the ~~provider~~ provider;

### **Schedule 1**

#### **Record keeping requirements**

G

1 There are no record keeping requirements in *ECO*.

### **Schedule 2**

#### **Notification requirements**

G

1 There are no requirements in *ECO* to notify or report matters to the *FSA*.

### **Schedule 3**



Fees and other required payments

G

1 There are no requirements for fees or other payments in *ECO*.

**Schedule 4**

Powers exercised

G

1 The following powers and related provisions in or under the *Act* have been exercised by the FSA to make the rules in *ECO*:

(1) the rule-making powers listed in Schedule 4 to the General provisions (*GEN*).

2 The following power in the *Act* has been exercised by the FSA to give the guidance in *ECO*:

(1) section 157(1) (Guidance).

**Schedule 5**

Rights of action for damages

G

1 Table

<u>1</u>	<u>The table below sets out the <i>rules</i> in <i>ECO</i> contravention of which by an <i>authorised person</i> may be actionable under section 150 of the <i>Act</i> (Actions for damages) by a <i>person</i> who suffers loss as a result of the contravention.</u>
<u>2</u>	<u>If a “Yes” appears in the column headed “For private person?”, the <i>rule</i> may be actionable by a “<i>private person</i>” under section 150 (or, in certain circumstances, his fiduciary or representative). A “Yes” in the column headed “Removed?” indicates that the <i>FSA</i> has removed the right of action under section 150(2) of the <i>Act</i>. If so, a reference to the <i>rule</i> in which it is removed is also given.</u>
<u>3</u>	<u>The column headed “For other person?” indicates whether the <i>rule</i> is actionable by a person other than a <i>private person</i> (or his fiduciary or representative). If so, an indication of the type of <i>person</i> by whom the <i>rule</i> is actionable is given.</u>

2 Table Actions for damages: E-Commerce Directive sourcebook

<u>Chapter/ Appendix</u>	<u>Section/Annex</u>	<u>Paragraph</u>	<u>Rights of action under section 150</u>		
			<u>For private person?</u>	<u>Removed?</u>	<u>For other person?</u>
<u>All <i>rules</i> in <i>ECO</i> with the status letter “E”</u>			<u>No</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>2</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>2</u>	<u>4(2)</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>3</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>
<u>1</u>	<u>3</u>	<u>3</u>	<u>Yes</u>	<u>No</u>	<u>No</u>

<u>1</u>	<u>3</u>	<u>5</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>2</u>	<u>2</u>	<u>3</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>2</u>	<u>3</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>3</u>	<u>2</u>	<u>1</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>3</u>	<u>Annex 1</u>		<u>Yes</u>	<u>No</u>	<u>No</u>	
<u>All other rules in ECO</u>			<u>No</u>	<u>No</u>	<u>No</u>	

**Schedule 6**

Rules that can be waived

G

The rules in *ECO* can be waived by the *FSA* under section 148 of the *Act* (Modification or waiver of rules). Certain conditions apply before the *FSA* can give a waiver (see *SUP* 8.3 (Applying for a waiver)).

**Electronic Money sourcebook (ELM)**

ELM 1.5.2 G Table Application of other parts of the Handbook to ELMIs

Block	Module	Application
Block 5 (Specialist sourcebooks other than ELM)	... <u>E-Commerce Directive sourcebook (ECO)</u>	... <u>Applies to every ELM I that carries on electronic commerce activities. Also applies to every ELM I in relation to a financial promotion which is an outgoing electronic commerce communication.</u>

**Glossary**

<i>establishment</i>	(in relation to an <i>information society service</i> ) <del>(in accordance with section 417(4) of the Act (Definitions))</del> the place at which the provider of the service effectively pursues an economic activity for an indefinite period; ...
----------------------	--

**Reader's Guide**

Specialist sourcebooks	...	...
	Credit Unions	CRED
	<u>E-Commerce Directive</u>	<u>ECO</u>
	...	...