



## LITIGATION, ADR & CONTRACTS PRACTICE GROUP

Sat. 15 October 2016 / 9:00am-1:00pm

### **Internet contract disputes**

By P. BEMBO (STUDIO LEGALE BEMBO, Italy)

From a legal point of view, there is no global definition for e-commerce and neither exist a global rule even if Internet enables access to a much wider, even a worldwide, audience.

Some EU directives define the boundaries of the rules concerning some activities, such as commercialization of goods and services, online distribution of products in digital format, carrying out financial transaction and stock exchange, execution of public procurement and implementation of procedures (Directive 2000/31/EC).

In Italy the EU Directive has been implemented by the Decree 70/2003.

These rules do not affect the applicable rules to solve international conflicts of laws or jurisdiction, but the immaterial world of internet may change their application.

The Directive 2000/31/EC recognizes that the provisions of the applicable law under the rules of private international law must not restrict the freedom to provide information society services (art. 3 c.2 Directive). The purpose of the Directive is to allow the free circulation and fix what means an establishment of a provider of internet service: the place where the seat of the provider are set and not the place where technologies are placed.

The Directive while distinguishing between professional trade (B2B) and trade for consumers (B2C), however, takes into account especially the weaker party and establishes procedures and prescriptions in the contents that the seller has to follow to submit a lawful and permissible bid that means an offer capable of producing a valid contract.

The member States have to ensure that the legal requirement for civil contracts does not hamper the effective use of electronic contracts and deprive them of legal effectiveness and validity on the grounds of having been made by electronic means.

Consequently the parties may choose the applicable law also through the use of internet.

Nowadays a click is enough to derogate to the applicable law or jurisdiction even with some exception.

Here below a scheme of the possible situations to solve conflicts for the applicable law and jurisdiction.

	<b>Applicable Law with choice by Parties</b>	<b>without choice by Parties</b>
<b>B2B</b>		
<u>Provider</u> <u>Established</u>	valid choice by click	- Conv. Vienna 1980 or - Reg. UE 93/08 Rome I : Vendor's Law (presumption of proximity)or - law of the place of the address of the executor of the main obligation or - law of the place with the closest connection with the execution of the main obligation of the contract (Reg. UE Roma I 593/08 art.4)
<u>Provider</u> <u>No Established</u> <u>Extra UE</u>	valid choice	Conv. Vienna 1980 or Conv. Roma 1980: law of the place with the closest connection with the execution of the main obligation of the contract (Conv. Roma 1980 art.3)
	<b>Applicable Law with choice by Parties</b>	<b>without choice by Parties</b>
<b>B2C</b>		
<u>Provider</u> <u>Established</u>	valid choice if it does not derogate to Consumers warranties (Reg. Roma 1 UE 593/08 art.3)	Conv. Vienna 1980 if the vendor doesn't know to sell to a consumer or Reg. Roma 1 UE 593/08 art.3 : Consumer's Law if the professional: a) operates in the countries where the consumers lives

b) directs his activity towards consumer's country  
 c) safe in case the execution of the contract has to be made in the country which is not that one of the consumer  
 (Reg. UE Roma I 593/08 art.4)  
 Otherwise the rules of B2B

In any case the substantial rules of the UE Directive 2011/83 have to be applied

Provider

No Established

valid choice  
 if not derogates to imperative rules

Conv. Vienna 1980 if the vendor doesn't know to sell to a consumer

Extra UE

and if the professional:  
 a) operates in the countries where the consumer lives  
 b) directs his activity towards consumer's country  
 c) safe in case the execution of the contract has to be made in the country which is not that one of the consumer  
 Conv. Roma 1980 art.5 c.2

or Conv. Roma 1980 art.5 c.3:  
 with the same conditions as in case of choice (art.c.2)

**Jurisdiction with choice by Parties**

**without choice by Parties**

**B2B**

Provider

valid choice

Reg. Ue 125/12 art.7

Established

Jurisdiction of the place of execution

Provider

No Established

valid choice

Conv. BXL 1968

Extra UE

Jurisdiction of the place of the defendant

**with choice by Parties**

**without choice by Parties**

**B2C**

Provider

valid choice  
 (Reg.1215/12)

Reg. Ue 1215/12 (artt.17-19)

Established

Jurisdiction of the place of the Consumer  
 or Jurisdiction of the place of the professional only in case he is the defendant as sued by the consumer  
 Jurisdiction of the place of consumer is applied only if:  
 – professional has directed advertising to the consumer's country  
 – or acts in the consumer's country (art.17)

Provider

valid choice

Conv. Bxl '68 art.13 and 14

No Established

if doesn't derogate to imperative rule  
 Conv. BXL

Jurisdiction of the place of the Consumer  
 or Jurisdiction of the place of the professional only in case he is the defendant as sued by the consumer  
 Jurisdiction of the place of consumer is applied only if:

Extra UE

in

- professional has directed advertising to the consumer's country
- or acts in the consumer's country (art.13)

Full report available upon request.