

SUMMARY OF THE POSITION OF THE CONSEIL DES VENTES VOLONTAIRES DE MEUBLES AUX ENCHERES PUBLIQUES

Sales at electronic auctions

Revision of the directives 1997/7/CE and 2000/31/CE



Sales at electronic auctions Directives 1997/7/CE and 2000/31/CE

1. Preamble

This summary takes note of current technical realities relating to auctions. It notes that various auction sales operators (physical and electronic) are present in the same market and carry out identical operations.

For this reason, at the European legislative level, auction sales operators must be subjected to an identical regulation enabling an equal treatment.

Also, a joint definition of auction must correspond to them.

2. Summary

- A. The French State auction regulation authority (CVV) considers that **it must establish equality of economic competition and equal consumer protection between online and “off-line” auctions.**
- B. Some online auction sites realise themselves the technical part (storage of information provided by a recipient of the services) necessary to their economic activity. **The CVV considers that this technical part complies with the definition of Internet brokers established by the directive 2000/31/CE.** However, the CVV considers that **it is unfair that some online auction vendors hide their economic activity behind the underlying technical aspect.**
- C. The CVV **therefore** considers that it must distinguish **the legislative contents** corresponding to the **activities**.
 - 1. The activity of **pure technical hosting** must correspond to the provisions enshrined in Directive 2000/31/CE.
 - 2. Concerning the activity of **online auctions**, the CVV considers that **the same guarantees must be able to be provided to online and “off-line” buyers, and that the same duties must apply to the operators.** Consequently, the CVV recommends **equality of treatment between auction sales operators with regard to obligations and guarantees** currently imposed on the operators of physical auction sales.
- D. Consequently, within the framework of a revision to the **directives 1997/7/CE and 2000/31/CE**, the CVV recommends harmonising the status of physical and electronic auctions:

1. **Either** by the adoption of an additional ad-hoc **sector directive** taking account of the specificities of the auction sales system (online or off-line).
 2. **Or, otherwise**, by the inclusion of a **specific chapter** in a new version of the directive 1997/7/CE containing the rules to which all participants for which the economic model is based, in reality and in practical terms, on the auction sales system must be subject.
 3. **Or, otherwise**, maintaining in the new version of Directive 1997/7/CE the exclusion of the auction sales system after having defined it, in order to avoid any breach of the Law.
- E. **In all cases**, the CVV considers that the **activities of online auction sales cannot be likened to the activity of Internet host provider in the sense of article 14 of the directive 2000/31/CE (except for their purely technical function, where this exists)**.
- F. **In all cases**, the CVV considers that **electronic auctions cannot be compared to distance selling**.
- G. **In all cases**, the CVV recommends **ruling out the right of retraction** from the auction sales process as being incompatible with equality of bidders.

3. European legislative framework subject to revision.

This position falls within the framework of a possible revision of the following directives:

1. **1997/7/CE** of the European Parliament and the Council of 20 May 1997 concerning consumer protection in the case of online contracts.
2. **2000/31/CE** of the European Parliament and the Council of 8 June 2000 relative to certain legal aspects of the services of the information society, and notably electronic commerce, within the domestic market.

4. Sales at online and "off-line" auctions.

The Conseil des ventes volontaires de meubles aux enchères publiques (CVV) is the independent French State authority instituted by the law of 10 July 2000 (article L.321-18 of the Commercial Code) to regulate the sector of goods auctions.

The extent of the jurisdiction of the CVV is limited to **voluntary sales** relating to **second-hand goods** or **new goods produced directly by the vendor if he is not a trader or small business**.

The law of 10 July 2000 does not present **distinctions between the means used to realise the sales** for which the CVV has jurisdiction. **The electronic and online nature of the sale therefore does not in any way influence the qualification of the public auction sales**. The CVV therefore also has jurisdiction for these sales when they are realised by means of an electronic communication system (for example, via the Internet or via mobile telephony).

The CVV considers that **it must establish equality of economic competition and equal consumer protection between online and “off-line” auctions**

5. The regulation of auctions sales operators by the CVV obliges information and guarantees.

The CVV ensures the regulation of *auctions sales operators*. To this end, **the CVV ensures that the said operators present the vendors and consumers with all guarantees of loyalty, equality, confidence and transparency.**

These guarantees are notably expressed by the obligation for the vendor to **inform** the consumers. It arises from this that the operators which, as intermediary (trustworthy third party) are subject to an ethics check, engage their **liability** when the vendor is not paid, or when the consumer does not receive his goods or receive a goods different from the auction.

Consequently, the CVV considers that **the same guarantees must be able to be provided to online and “off-line” buyers.**

6. Current online practices

Currently, many websites attribute themselves with the attractive label of “auction site”. **These sites in reality are unregulated sites that do not offer guarantees to consumers and represent unfair competition.** These websites are actually websites outside regulation which do not offer the legal guarantees applied to bidders and represent de facto an unfair competition between operators at the cost of intermediation which do not rely on the same legal obligations (insurances, guarantees, etc).

7. The coexistence of complementary activities of some online participants – unjustified “recovery” of the status of Internet host

The CVV considers that **it is unfair that some online auction sites hide their economic activity behind the underlying technical aspect, unfairly invoking the status of Internet host** according to the definition of article 14 of the directive 2000/31/CE¹.

Generally, this attribution does not correspond to reality. Indeed, the definition of web hosting service provider specifies that this last is a service provider whose activity consists in storing information provided by a recipient of the service. However, these sites have, quite to the contrary, active roles which do not correspond to the only storage of information, such as:

¹ This position is confirmed by Mr McCreevy, on behalf of the Commission, in his response of 03 June 2008 given to the question E-2038/08FR asked by Mrs Mme Janelly Fourtou (ALDE).

“The Commission thus feels that only some of the activities of the managers of electronic auction sites clearly fall within the field of application of article 14 of the directive 2000/31/CE entailing the absence of liability: this is the pure activity of storage of information originating from third parties. The economic activities accompanying this storage of information are not concerned by this exemption from liability.”

The drafting of rules for offering sales up for bid and conclusion of transactions, presentation of the offers (pre-filling of the offer), their communication to the public, the putting forward of offers or sellers, preparation of the categories of products to offer sales for the said products, information of the parties on each stage of the sale, intervention in the transactions between sellers and purchasers by providing the auctions service, the recommendation of an online payment system, the perception of a remuneration, etc...

Also, the CVV considers that **the activities of online auction sales cannot be organised within the current categories of the directive 2000/31/CE.**

8. Rejection of the current status of Internet host for online auction sales sites.

Consequently, within the framework of a review of the directive **2000/31/CE**, the CVV therefore suggests **not including** online auction sales sites among the categories included in the definition of Internet host provider according to article 14 of the said directive.

9. Proposals for a specific regulation of auction sales – affirmation of a status respecting the provisions of the “off-line” auction sales operators.

Sales at public auctions, by whatever means, are expressly excluded from the **directive 1997/7/CE in its actual version.**

1. In fact, **firstly**, the Community definition is implicitly based on the notion of private sale, which sales at public auctions are not and which may be defines as follows:

Auctions means: “the process of a transparent competition of offers which allows the conclusion of a contract based on a good or a service with the author of the best offer at the price suggested by him.

The transparency aims at the possibility for anyone to be informed of the last offer expressed and to carry a new offer.

The process of competition can include the use of distance means of communication”

2. This highly specific selling system **also** imposes the impossibility of offering the buyer a right of retraction. In fact, retraction would radically disturb any form of auction in its principle. In fact, retraction would be unfair towards the others sub-bidders having each time made a fixed offer hoping to thus be the buyer.

For these reasons, it is impossible to devise a revision to the directive 1997/7/CE that succeeds in including auction sales of all types in its field.

Also, within the framework of a revision of the **directive 1997/7/CE**, the CVV recommends:

1. **Either** envisaging the adoption of an additional ad-hoc **sector directive** which would take account of the specificities of the auction sales system and harmonise the guarantees of bidders. This option would avoid the trivialisation of the activity and avoid the appearance of derivative economic models wishing at any price not to bear the consequences of the said model;

2. **Or, otherwise**, by the inclusion in the new version of Directive 1997/7/CE of a **specific chapter** containing the rules to which must be subjected all the actors whose economic model relies actually and concretely, of an auctions system as defined above
3. **Or, otherwise**, maintaining in the new version of Directive 1997/7/CE the exclusion of the auction sales system after having defined it, in order to avoid any breach of the Law.

In all cases, specific regulation at Community level is justified due to the essentially transnational nature of auction sales.

In all cases, since it relates to the same concept, the CVV recommends adopting at Community level flexible regulation of physical and electronic auctions founded on the principles of **transparency of the market, liability and equality of competition of the operators**, and **protection of the users of these services (buyers and sellers)**.

In all cases, the CVV considers **that electronic auctions cannot be compared to distance selling**.

In all cases, the CVV explicitly recommends maintaining the exclusion of the right of retraction from the public auction process.

In all cases, the CVV suggests **extending the same level of obligations and guarantees to consumers** currently imposed on physical auction sales operators to all electronic auction operators.