

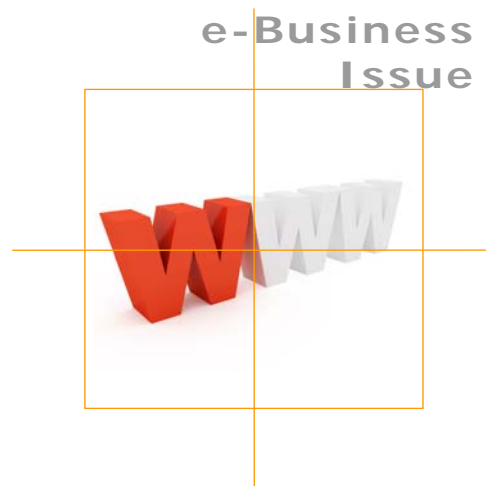
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HOW DO YOU KNOW IF EU MANDATORY INFORMATION REGULATIONS APPLY TO YOU

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Abstract

This is the first article, in a four-part series. Its aim is to explain all the mandatory information that should be displayed on any website. In this report Teresa Rodríguez de las Heras Ballell, Associate Professor in Commercial Law at the Carlos III University of Madrid, Spain, explains as a starting point, the definition of a provider of “information society services” and the basic requirements to qualify within this concept. Teresa is also author of the book on legal aspects of E-Marketplaces “*El régimen jurídico de los Mercados Electrónicos Cerrados (e-Marketplace)*” and her experience and knowledge make this series an essential reading both for new e market places, and for existing e marketplaces as a validation of their current practices.

The European Union rules on electronic commerce¹ impose a series of disclosure obligations on what it terms “information society service” providers. From those provisions a number of pieces of mandatory information are identified that must be posted on websites. To do this it must, first of all, be defined what is meant by an “information society service” provider and, based on that definition, determine which websites must comply with the mandatory disclosure requirements described in the sections that follow.

Concept of provider of “information society services”

The expression “information society services” has been chosen by community lawmakers, and hence by the rest of the lawmakers at the national level, to define the scope of application of what we may term the legislation on electronic commerce (in the case of Spain, see www.lssi.es). The term seeks to take in all activities of economic significance, beyond the mere trading of goods and services, which are carried out at a distance by electronic means. It thus includes, together with pure exchange of goods and services, the supply of information, downloading of files, the services provided by intermediaries such as providing access to communication networks, hosting information, making temporary copies, offering search engines and links. So the concept involves much more than just on-line contracting. In order for such diverse activities to qualify as information society services, they must meet three requirements.

- a. **First of all, the services must be provided for remuneration**, that is, in exchange for some compensation or, in any event, they must represent an economic activity. Therefore, many of the best known Internet services (portals, search engines, directories) that are offered to users free of charge are economic activities nonetheless, because even though they are not remunerated directly, they do obtain money indirectly through advertising,

¹ Basically, as the prime but not sole reference: *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)*.

funds from sponsors, etc. This is why the current legislation does not apply to contracts or communication carried on for purposes unrelated to the economic activity of the participants or, in other words, for personal, family or domestic reasons.

- b. **Second, the service must be provided at a distance and via electronic equipment.** Both of these defining requirements of this type of provision must be present together. Catalogue sales, for example, involves distance selling but not by electronic means and is therefore not an information society service; and reserving an electronic ticket in a travel agency, which is done on-line but with the client present at the office, is not an information society service either. Certainly, there are many technologies that allow the provision of services at a distance. It is up to lawmakers to determine whether or not specific technological techniques come under the regulatory framework or not. European Community lawmakers have been strict and rigorous in their definition of electronic technique and have left services that are provided by voice telephony, fax or telex outside of their notion of information society services. In the international regulatory landscape, however, the United Nations Commission on International Trade Law (UNCITRAL) has adopted a more malleable vision of the technique and decided that the term “electronic communication” should include any electronic, magnetic, optical or similar means, such as, inter alia, electronic data exchange, electronic mail, telegram, telex and fax (www.uncitral.org).
- c. **Third, the service must be provided at the individual request of the recipient.** This requirement necessarily arises from a proper grasp of how the Web functions, with the centre of gravity resting with the user, not with the provider. The user is the one who takes the initiative, who searches, who enters, who places the order, who uses the services. At the same time this requirement separates and distinguishes the Web from other mass communication media, based on massive and general distribution to a passive recipient user. This is why information society services do not include television or radio broadcast services or similar services such as electronic guides to programs offered by television platforms. By contrast, the definition of an information society service does include video-on-demand, as there it is the user who selects the program and the time it will be played or received, thereby qualifying this as a service provided at the prior individual request of the recipient.

The legal concept of information society services thus embraces, inter alia, the on-line contracting of goods and services, the organization or management of on-line auctions or of virtual shopping malls or marketplaces, the management of on-line purchases by groups of persons, the sending of commercial communications, supply of information by telematic means and the distribution of content at the prior individual request of the recipient.

Therefore, the information obligations that will be referred to in the second article to follow will only apply to providers of the services that meet the requirements discussed above. The websites of suppliers or providers who do not qualify as providers of information society services may be bound by other rules and be subject to their own specific disclosure obligations in accordance with their activity, but they do not come within the scope of application of the regulation of electronic commerce.