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WHAT ARE YOUR DISCLOSURE OBLIGATIONS AFTER CONCLUDING A CONTRACT ON LINE?

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Abstract

This is the last article, in a four-part series. Its aim is to explain disclosure obligations after conclusion of an on line contract. Teresa Rodríguez de las Heras Ballell clarifies the service provider obligations after the contracting procedure has been completed and suggests some practices to optimum fulfillment of the need to confirm receipt of the order. The right of cancellation and the implications of breach are also explained in this valuable text. Teresa is an Associate Professor in Commercial Law at the Carlos III University of Madrid, Spain and the author of the book on legal aspects of E-Marketplaces *El régimen jurídico de los Mercados Electrónicos Cerrados (e-Marketplace)*.

Disclosure obligations after conclusion of an on line contract

After the contracting procedure has been completed, the service provider is obliged to confirm receipt of the order, either by means of an acknowledgement of receipt via electronic mail or equivalent communication, without undue delay or by means of confirmation on the website itself immediately upon conclusion of the process.

For optimum fulfillment of this obligation, the following practices are suggested:

- a. **The party who must acknowledge receipt.** The offeror (who sends the offer and expects to receive the acceptance) is the party who should acknowledge receipt. For this reason, it is advisable that the service provider at all times act as offeror, initiating the negotiation process by sending (or publishing) the offer. Otherwise, the service provider would still have an obligation to provide the user (the other party in the contractual relationship) who must acknowledge receipt a system for confirming receipt of his acceptance.
- b. **Two confirmation techniques.** Although the law appears to present two techniques as alternative methods, we recommend that both techniques be used together: immediate confirmation on the website, as this gives the user ease of mind that the process has been concluded correctly, and an electronic mail message, as this permits subsequent access and provides some certainty of storage, as well as permitting a relaxed reading of the information. The possibility of an SMS message to the mobile phone should not be ruled out either provided it has been previously requested. Obviously, such a message cannot be complete, but it can serve as an alert that the contract has been successfully concluded and contain a reference to the complete text that will be sent by e-mail. Specifically, it may be a good idea to include information such as the transfer number in the SMS message.
- c. **Content of the acknowledgement of receipt.** While the immediate confirmation must comply with the strict function of confirming successful conclusion of the procedure and the essential content of the contract, the e-mail acknowledgement of receipt should be used to include other, fuller and more detailed information. In all events, the introduction of new or unknown data, or surprises or unexpected conditions must be avoided.

The obligation to inform on the points indicated in subparagraphs a) to f), referenced in Article 3 "[Disclosure obligations prior to concluding a contract on line](#)" (previously published on eMS) will not apply when so agreed by the clients or consumers or when the contract is concluded exclusively by exchange of electronic mail or other equivalent individual communications.

Mandatory information for contracts concluded exclusively by electronic mail or some equivalent method

Contracts concluded exclusively by electronic mail will not be subject to the disclosure obligations mentioned in subparagraphs a) to f) referenced in Article 3 "[Disclosure obligations prior to concluding a contract on line](#)" (previously published on eMS) or to the obligation to acknowledge receipt mentioned previously in this article. Therefore, although without prejudice to other obligations that will apply to the transactions, the service provider's only obligation in this regard will be to make available to the recipient the general conditions to which the contract will be subject, where such is the case, so that they can be stored and reproduced by the recipient.

Implications of breach

In accordance with the applicable laws and regulations, failure to perform all or part of the information obligations described here may imply:

- a. **Levying of penalties on the service provider:** these generally consist of fines in amounts determined according to a series of gradation criteria (intent, length of time of the breach, recidivism, nature and amount of harm, profits obtained, volume of turnover affected by the breach).
- b. **Defects of consent due to breach of disclosure duty:** according to the general principles of contracts, breach of the disclosure duty can give rise to a defects of consent that affect the decision adopted and may render the contract null or voidable.
- c. **Conditions for exercise of the right of cancellation,** to the extent the time limit for exercise of this right is conditioned by fulfillment of pre-contract disclosure..

Previous articles in this series:

[Does UE Mandatory Information apply to you?](#)

[What legal information do eMarketplaces have to provide?](#)

[Disclosure obligations prior to concluding a contract on line](#)