[ES] Act on E-Commerce

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In July 2002, the Spanish Parliament approved Act 34/2002 on Information Society Services and E-Commerce. By means of this new Act, which will come into force in October 2002, the Spanish authorities have incorporated EC Directive 2000/31 ("Directive on electronic commerce") into Spanish law.

This new Act applies to "information society services" ("IS services"), which the Annex to the Act defines as those provided for remuneration (even if they are free for the recipient), at a distance, electronically and at the individual request of the user. Services provided by voice telephony, fax, telex, mere exchanges of information via e-mail, television, radio broadcasting or TV teletext are not IS services.

The provision of IS services does not require prior authorisation from the Administration, save for authorisations already required by Telecommunications Law for some services such as data transmission.

Act 34/2002 basically applies to IS service providers or intermediaries established in Spain. Some provisions of the Act apply to providers established in an EU Member State when the recipient of the service is located in Spain and the service relates to certain specific matters (eg. intellectual property rights or the legality of commercial communications). When the provider is not established in the EU and its services are directed at the Spanish market, Act 34/2002 will be applicable in its entirety, unless this conflicts with an international treaty.

The main purpose of this Act is to generate confidence among all the different groups involved in the provision of IS Services. To achieve this aim, the Act obliges IS service providers to provide the recipients or users of their services with all of the data needed to permit their identification, such as name or company name, address, public registers in which they are registered, tax identification number, information about the cost of the products or services offered, etc. To comply with this duty to provide information, it is enough for the IS service providers to include this information clearly on their websites.

As regards IS services intermediaries (i.e., natural persons or legal entities providing services consisting of transmission, network access, data hosting, creation of temporary copies to facilitate transmission, or locating and linking to third-party content), they shall not be responsible for any loss or damage caused

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by IS service providers, on condition that the former limit their activity to intermediation, and that they are not aware of the illegality or damaging nature of the IS service in question. IS service intermediaries are specifically obliged to store data relating to electronic communications connections and traffic for a maximum period of 12 months. These data shall only be used for criminal investigations or to safeguard public security. The use of these data for other purposes shall be considered as a very serious infringement of this Act.

The new Act also addresses commercial communications, defined as the direct or indirect promotion of the goods and services or image of a company, organisation or persons carrying out a commercial, industrial or professional activity. Commercial communications must be clearly identifiable as such, as must also the person that performs them. When a commercial communication is sent via e-mail or similar electronic communication means, the word "publicidad" (advertising) has to appear at the beginning of the message. The Act expressly forbids sending these commercial communications unless they have been previously requested or expressly authorised by the recipient.

Other Chapters of Act 34/2002 deal with electronic contracts (the conditions applicable to these contracts, the moment and location of the conclusion of the contract, etc.), and with the applicable sanctions in case of breach of the provisions of this Act. Sanctions range from up to EUR 30,000 for minor infringements to up to EUR 600,000 for very serious infringements.

Finally, some Additional and Final Provisions of Act 34/2002 deal with matters relating to electronic communications, such as the assignment of domain names under the Country-Code top-Level Domain (ccTLD), ".es", or the amendment of the concept of "universal service obligations" of the Telecommunications Act, which will now include the provision of Internet services.

Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico

http://www.igsap.map.es/cia/dispo/l34-02.htm

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