



## Spain – Law 34/2002 on Information Society Services and Electronic Commerce.



**Full title:** Law 34/2002 of 11 July, on information society services and electronic commerce. ("BOE" No. 166 of 12/07/2002). Entry into force: 12/10/2002 (*Ley de servicios de la sociedad de la información y de comercio electrónico* – (abbrev. LSSI)

**Relevant Amendments** Law 32/2003 (General Telecommunications Act 32/2003) (since been repealed and replaced by new General telecommunications Law 9/2014) – amended Arts 21 and 22.  
 Royal Decree-Law 13/2012 of 30<sup>th</sup> March – amended Art 21 and 22  
 Electronic Signature Act 59/2003 added Art 10(3) and Law 56/2007 of 28 December on Measures to promote the information society – amended Art 10(1b and 1f)  
 General Telecommunications Law 9/2014 Entry into force: 11/05/2014 Amends: Art 10(1f); 18(1); 20(1) and 20(3); 21(2); 22; 38(3c), 38(3j), 38(4g)

**Title of relevant sections:**

- ANNEX: Definitions
- Title II: Provision of Information Society
- Title III: Electronic Commercial Communications
- Title IV: Contracts by electronic means
- Title VII: Offences and Penalties

### ANNEX: Definitions

a) "Information Society Services" or "Services": means any service normally provided for remuneration, at a distance, by electronic means and at the individual request of the recipient.

Information society services also include unpaid services by recipients, as far as it represents an economic activity for the service provider.

The following, inter alia, are information society services, provided that they represent an economic activity:

- The procurement of goods or services electronically.
- The organization and management/ administration of electronic auctions or virtual shopping malls and markets.
- The management of purchases on the network by groups of persons
- Sending commercial communications.
- Providing information online.

Services which will not be considered information society services are those which do not meet the characteristics indicated in the first paragraph of this section, and in particular the following:

1. The services provided via voice telephony, fax or telex.

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2.	Information exchange by electronic mail or other equivalent means of electronic communication for purposes which are outside the business activity of those who use it.
3.	Television broadcasting services (including near-video on-demand services) covered in Art. 3(a) <sup>1</sup> of Law 25/1994 of 12 <sup>th</sup> July (since repealed) which incorporates into Spanish legislation the Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, or any other that replaces it <sup>2</sup> .
4.	Radio broadcasting services, and
5.	The television teletext and other equivalent services such as electronic programme guides offered through television platforms

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d)	"Recipient of the service" or "recipient"  Means a natural or legal person who uses, whether or not for professional reasons, an information society service.
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e)	"Consumer"  Means a natural or legal person in the terms set out in Article 1 of General Law 26/1984, of 19 July, for the Protection of Consumers and Users
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f)	"Commercial Communications"  Means any form of communication designed to promote, directly or indirectly, the goods or services or image of a company, organisation or person engaged in commercial, industrial, craft or professional activity.  For the purposes of this Act, information allowing direct access to the activity of the company, organisation or person will not be deemed a commercial communication, such as the domain name or email address, neither communications relating to the goods, services or image that are offered when they are compiled by a third party and without economic consideration.
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Title II	Provision of Information Society  Chapter II: Obligations and liability regime for information society service providers Section 1a: Obligations
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Article 10	<b>General Information</b>  1. Notwithstanding the information requirements set out in the current laws and regulations, the information society service provider shall be obliged to have means in place to ensure that recipients of the service and the competent bodies may have easy, direct and permanent access to the following information, by electronic means, free of charge:  a) Provider's name or company name; residence or domicile/home or, failing that, the address of one of its permanent establishments in Spain; Its email address and
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<sup>1</sup> "television broadcasting" means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.

<sup>2</sup> General Law on Audiovisual Communication 7/2010 of 31<sup>st</sup> March.

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any other information making it possible to communicate with the provider directly and effectively.

b) Information on the providers registration/entry with the Trade/Commercial Register in which, where appropriate, they are registered or from another public register in which they are in for the acquisition of legal status or for the sole purpose of advertising.

c) In the event that the provider's activity is subject to a system of prior administrative authorization, the information relating to that authorization and the particulars of the competent supervisory body.

d) If the provider engages in a regulated profession, he must indicate:

1. Information on the professional association to which he belongs, if applicable, and his registration number in that association.

2. The official academic or professional title that he holds.

3. The Member State of the European Union or the European Economic Area in which the title was granted and, if applicable, the corresponding homologation (certification/ specification) or recognition.

4. The professional rules and regulations applicable to the practice of his profession and the means whereby they may be known/consulted, including via electronic means.

e) The provider's tax identification number.

f) Where the information society service refers to prices, clear and accurate information about the price of the product or service shall be provided, indicating whether or not it includes applicable taxes, and where appropriate, shipping fees (*forwarding charges/postage*)

g) Any codes of conduct to which the provider subscribes, and the electronic means whereby they may be consulted.

2. The obligation to provide this information shall be deemed to have been fulfilled if the supplier posts the information in question on its webpage or at its Internet site in accordance with paragraph 1.

3. When a telephone number range has been allocated to premium rate services in which access to the information society services is allowed and use on the part of the service provider is required, this use and download of computer programs/ software which effect/bring about dialling features/ functions, must be carried out with the prior, informed and express consent of the user.

To this end, the service provider must provide at least the following information:

a) The characteristics of the service to be provided.

b) The functions that will be brought about by the downloaded computer program/ software, including the telephone number that will be dialled.

c) The procedure to end connection with premium rate, including an explanation of the specific time in which such a conclusion will be reached, and

d) The procedure necessary to reset the connection number prior to the connection to premium rates.

The above information must be available in a clearly visible (prominent) and identifiable manner.

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The provisions of this paragraph shall be without prejudice to the rules of telecommunications, particularly in relation to the applicable requirements for access by users to the telephone number ranges, where appropriate, attributable to premium rate services.

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**Title III****COMMERCIAL COMMUNICATIONS BY ELECTRONIC MEANS**

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**Article 19****Legal Regime**

1. Commercial communications and promotional offers shall be governed by this Act, as well as by their own laws and regulations and the applicable laws and regulations pertaining to commerce and advertising.

2. In any case, the General Act on the Protection of Personal Information (Act 15/1999, of 13 December 1999) and the implementing regulations established pursuant to it shall apply, with particular reference to obtaining personal data, informing the parties concerned and establishing and maintaining personal data files.

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**Article 20****Information required in connection with commercial communications, promotional offers and contests**

1. Commercial communications must be identifiable as such and the entity or person on behalf of which they are made must also be clearly identifiable.

2. In cases involving promotional offers, such as discounts, premiums and gifts, or promotional contests or games, the necessary prior authorization must be obtained and steps must be taken to ensure not only that the requirements laid down in the foregoing paragraph are met together with those of the applicable commercial laws and regulations, but also that they are clearly identifiable as such, and the conditions of access/ entry (*in case of promotional offers*) or, where appropriate, participation (*contests / games*) must be easily accessible and must be presented clearly and unambiguously.

3. The provisions of the preceding paragraphs shall be without prejudice to the provision of regulations issued by the Autonomous Communities, with exclusive jurisdiction/powers over uptake (input).

4. In any event, the practice of sending commercial communications which disguise or conceal the identity of the sender on whose behalf the communication is made, or contravene the provisions of this Article, as well as those which encourage recipients to visit websites that contravene the provisions in this Article, shall be prohibited.

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**Article 21****Prohibition of commercial communications by electronic mail or equivalent means of electronic communication**

1. It is prohibited to send advertising or promotional communications by electronic mail or another equivalent means of electronic communication when it has not been requested (solicited) or expressly authorised in advance by the recipient of such communications.

2. The provisions of the previous paragraph (i.e.21.1) shall not apply where there is a prior contractual relationship, provided that the provider had legally obtained the contact details of the recipient and used them to send commercial communications referring to products or services of its company that are similar to those that were initially the subject of procurement with the customer.

In any event, the provider must offer the recipient the opportunity to object, free of charge and in an easy manner, to the processing of his data for promotional purposes, both at the

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time of collecting the data and on the occasion of each commercial message addressed to the recipient.

When communications have been sent by email, this form (of communication) must consist of the inclusion of an email address or other valid e-mail address where this right can be exercised (to object/ opt-out, and it is forbidden to send communications that do not include such an address.

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#### Article 22

##### Rights of service recipients

1. The recipient may revoke at any time his consent to receive commercial communications by merely notifying the sender of his wishes.

To this end, service providers must provide service recipients with simple means free of charge whereby they can revoke the consent that they have provided. When communications have been sent by electronic mail, they must include an e-mail address or other valid e-mail address where one can exercise this right – it is prohibited to send communications that do not include such an address.

They must also provide information available electronically on such procedures / methods.

2. Service providers can use data storage and recovery mechanisms in the terminal equipment of recipients, provided that they have given their consent having been provided with clear and comprehensive information on their use, in particular on the purposes of the processing of data in accordance with Law 15/1999 of December 13, on the Protection of Personal Data.

When technically possible and efficient, the consent of the recipient to accept the processing of data can be facilitated by using the appropriate settings of a browser or other applications.

This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network or, in as much as is strictly necessary in order to provide an information society service explicitly requested by the recipient.

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#### Title IV

##### CONCLUDING OF CONTRACTS BY ELECTRONIC MEANS

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#### Article 27

##### Obligations prior to the conclusion of a contract

1. A provider of information society services that carries on activities involving the concluding of contracts by electronic means must comply with the information requirements established under current laws and regulations and, in addition, shall have the obligation to make available to the recipient in a permanent, easy (simple) form and free of charge, before beginning the contracting procedure and by means of techniques appropriate to the medium of communication used, clear, comprehensive and unambiguous information on the following points:

- (a) The different technical steps to be followed in order to conclude the contract;
  - (b) Whether the electronic document constituting the contract will be retained, and whether it will be accessible;
  - (c) The technical means it is providing for identifying and correcting inputting errors; and
  - (d) The language or languages in which the contract may be concluded.
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The obligation to make available to the recipient the information referred to in the preceding paragraph will be fulfilled/ complied with if the provider includes it on their webpage or website under the terms specified in that paragraph.

When a provider specifically designs its electronic contracting services to be accessed by devices which depend on a reduced screen layout, the obligation established under this section will be complied with when it provides in a permanent, easy, direct, and exact manner, the website address in which the aforementioned information is made available to the recipient.

2. The provider shall not be required to provide the information indicated in the foregoing paragraph if:

- (a) The contracting parties so agree, and neither party is a consumer; or
- (b) The contract has been concluded solely by an exchange of electronic mail or by equivalent electronic communication of some other kind.

3. Without prejudice to the provisions of specific legislation in the matter, contract offers or proposals made by electronic means shall be valid during such time period as may be determined by the party making the offer or, in lieu thereof, for so long as recipients of the service continue to have access to them.

4. Before beginning the contracting procedure, the service provider must make available to the recipient the general terms and conditions that will apply to the contract if it is concluded, in such a way that the recipient is able to store them and reproduce them.

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## Title VII

## INFRINGEMENTS AND PENALTIES

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### Article 37

#### Responsible (Liable)

Information society service providers are subject to the penalty/ sanctions system provided in this Title when the current Act is applicable to them.

When the infringements set out in Article 38.3 i) and 38.4 g) are due to the installation of devices for the storage and retrieval of information as a result of the assignment by the information society service provider of their own spaces to display advertising, in addition to the information society service provider (bearing responsibility for the infringement), the advertising agencies or advertising networks who directly manage the placing of advertisements in such spaces with the service provider, will be liable (bear responsibility) for the infringement, where measures have not been taken to demand/ request that the service provider comply with the information requirements and the obtaining of user consent.

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### Article 38

#### Infringements (*offences*)

1. Infringements of the provisions of this Act shall be classified as very serious, serious and minor.

2. These are very serious infringements/ offences:

- a) The failure to suspend transmission, data hosting, access to the network or the provision of any other equivalent intermediary service, when ordered by the competent administrative body, under the provisions of Article 11 .

3. These are serious infringements/ offences:

- b) The significant breach of the provisions in paragraphs a) and f) of Article 10.1.
  - c) The mass sending of commercial communications by electronic mail or another equivalent means of electronic communication o persistent or systematic sending/
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URL of source: <http://www.boe.es/buscar/act.php?id=BOE-A-2002-13758&tn=1&vd=&p=20140510>

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forwarding to one and the same recipient of the service when such delivery will not comply with the requirements laid down in Article 21.

d) The significant breach of the obligation of the service provider under paragraph 1 of Article 22, concerning the procedures to revoke the consent given by recipients.

e) Not making available to the recipient of the service, the general conditions, if appropriate, attached to the contract, as provided in Article 27.

f) Repeatedly committing the minor infringement provided for in paragraph 4(g) where this has been declared by final judgment issued in the three years immediately prior to the initiation of sanctioning proceedings.

4. These are minor infringements:

b) Failure to report in the manner prescribed by Article 10.1, the points raised in paragraphs b), c), d), e) and g) thereof, or in paragraphs a) and f) when not constituting a serious infringement.

c) Failure to comply with the provisions of Article 20 for commercial communications, special offers and competitions.

d) The sending of commercial communications by electronic mail or other means of electronic communication when such submissions/ deliver contravenes the requirements of Article 21 and does not constitute a serious infringement.

e) Failure to provide the information referred to in Article 27.1, when the parties have not agreed to their exclusion or recipient is a consumer.

g) The use of devices for storage and recovery of information when the information has not been provided or the consent obtained of the service recipient under the terms required by Article 22.2.

h) Breach of the obligation of the service provider established in article 22.1, in relationship with the procedures for revoking consent given by recipients when the breach does not constitute a serious infraction.

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Article 39

Sanctions

1. For committing infringements under the preceding article, the following sanctions shall be imposed:

a) For committing very serious infringements, a fine of 150,001 to 600,000 euros.

b) For committing serious infringements, a fine of 30,001 to 150,000 euros

c) For committing minor offenses, a fine of up to 30,000 euros.

2. Serious and very serious infringements may be accompanied by the publication, at the expense of the sanctioned, of the sanction decision in the "BOE" (Official State Gazette), or in the official journal of public administration which, if present, would have imposed penalty; or in two newspapers whose circulation matches the sphere of activity of the cited Public Administration or Homepage of the provider's website, once the decision has become final.

As regards, the imposition of this sanction/ penalty, the social impact of the infringement committed will be considered, by the numbers of users and contracts affected, and the severity of the offence.

3. When infringements under the provisions of this Act have been committed by service providers established in States which are not members of the European Union or the European Economic Area, the body that would have imposed the sanction may order the

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intermediary service providers to take the necessary measures to prevent access from Spain to the services offered by them for a period of two years in the case of very serious infringements, a year of serious offenses, and six months for minor infringements.

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#### Article 43

##### Sanctioning Competence

1. The imposition (levy) of sanctions for noncompliance with the provisions of this Act shall correspond, in the case of very serious infringements, to the Minister of Industry, Energy and Tourism, and in the case of the serious and minor infringements, to the Secretary of State for Telecommunications and Information Society.

Notwithstanding the above...

Furthermore it shall be the task of the Agencia de Protección de Datos (Data Protection Agency) to impose sanctions for the commission of the infringements listed in articles 38.3 c), d) and i) and 38.4 d), g) and h) of this Act.

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