

## Information Technology - Switzerland

Company information on websites soon to become mandatory

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### Introduction

In the course of the revision of the Federal Act Against Unfair Competition, the new Article 3, Paragraph 1, *litera s* will introduce various transparency requirements. In particular, the new provision specifies that company information must be included on websites by every e-commerce provider that is active in Switzerland. However, according to Article 3, Paragraph 2 of the act, the transparency requirements do not apply to contracts concluded by telephone, exclusively by email or by comparable personal communication. Previously, corresponding regulations already existed in the EU E-commerce Directive (2000/31/EC); this has now gone one step further towards safeguarding consumer protection with the recently adopted EU Consumers Rights Directive (IP/08/1474) in the case of distance selling.

Article 3, Paragraph 1, *litera s* reads as follows:

*"Shall be deemed to have committed an act of unfair competition anyone who, in particular, offers goods, works or services in electronic commerce, and in this connection omits:*

- 1. to give clear and complete particulars of his identity and his contact address, including that of electronic mail,*
- 2. to point out the individual technical steps leading to the conclusion of a contract,*
- 3. to make adequate technical means available with which input errors can be recognised and corrected before placing the order,*
- 4. to confirm the customer's order immediately by electronic means."*

### Revised law in detail

#### Subsection 1

Within the context of the obligation regarding company information on websites pursuant to Article 3, Paragraph 1, *litera s*, Subsection 1, care must be taken to ensure that the correct and existing legal person is listed and the coordinates stated are in fact also served.

The provision does not specify where exactly on the website the particulars must be listed. With a view to the EU directive, these particulars should also be made easily, directly and permanently available (ie, they must be detectable without problem).

#### Subsection 2

Within the context of Article 3, Paragraph 1, *litera s*, Subsection 2, it must always be made clear to website users what the legal consequences of their clicks will be. For example, they must be able to recognise when they are about to pass the 'point of no return'. The wording of this provision does not specify how this information is to be displayed on the website (eg, represented graphically, with a pop-up acknowledgement or just by text).

#### Subsection 3

According to Article 3, Paragraph 1, *litera s*, Subsection 3, it must be possible for users to recognise and correct input errors before placing an order. Here, the wording again does not specify whether the identifiability of input errors by the user is sufficient or whether the website must itself detect inputs that diverge from the standard (eg, multiple orders) within the context of a plausibility check. Owing to the parallel provision

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in the EU directive, it may be assumed that the possibility of verification by the user before activating the order is sufficient.

#### **Subsection 4**

Article 3, Paragraph 1, *litera s*, Subsection 4 is particularly problematic. For the protection of the provider, the dispatch of tariffs, price lists and the like is not – in principle – regarded as binding offer (which can be accepted immediately), but merely as an invitation to submit an offer. The same must thus apply in e-commerce. Therefore, what is legally binding is not what is displayed on the provider's website but only the 'order' that is placed by the user – although the provider also retains the right to refuse an order (eg, due to lack of availability). When drafting the confirmation in accordance with Subsection 4, attention must thus be paid as to whether this is merely intended to acknowledge receipt of the order or to confirm the conclusion of the contract.

#### **Comment**

The new requirements for e-commerce websites can be implemented simply and with reasonable resources. Non-compliance may not only damage a provider's reputation, but can also trigger civil and criminal law penalties (eg, contracts that have already been concluded can subsequently be declared void by the courts).

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