LSSICE: Regulating or obstructing?
Joaquim Barberà
e-business Center PwC&IESE
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“The creation of an adequate legal basis, by virtue of which intervening actors achieve the necessary confidence in the use of this new environment”. The Law of Information Society Services of Electronic Commerce (known under the acronym LSSICE) was passed some months ago with such a declaration of intentions. However, the resulting effect since it entered into force on October 12th has shown exactly the contrary. Proof of this is the closing –totally or in part- of over 200 Spanish websites during the first week of life of the new law. Equally revealing was the urgent statement made by the Science and Technology Minister, undoubtedly intended to try to appease the overwhelming amount of complaints made by the main industry and user associations in the sector.

The difficulties creating so much restlessness and which those affected by the LSSICE have to face can be divided in three main groups. On the one hand, companies in the sector must abide by a long list of new legal obligations: incorporation in public registers of their domain names, compulsory information on every web site, restrictions to be imposed on services, special requirements for online transactions, data traffic retention, limitations applied to promotional communications, etc.

Moreover, the measures stipulated in case of breach of such obligations are truly strict, with single fines that can go as high as €600,000. Secondly, there is the lack of precision of most of the essential terms and conditions set forth in the LSSICE. In the absence of a regulation that develops the law, the manner in which issues such as the subjects bound by the norm, which emails should be deemed promotional, or which government agencies are competent to administer the law, remains totally unclear.

Finally, individuals and companies to whom the new law applies must assume enormous and unforeseen financial costs: legal audits, the training of personnel, expenses related with data retention, specific insurance, legal fees in case of litigation, etc. Such disbursements –so extreme that they can eventually force a company into bankruptcy - are the logical consequence of the two previous groups of problems. But what must also be borne in mind is that many companies will only make such investments out of fear towards the government’s power to penalize, a fear fully justified, especially if one evaluates the extraordinary zeal of a Data Protection Agency that until now indirectly regulated some of the matters now contemplated by the LSSICE.