

G-Regs™

Spain –General Law for the Protection of Consumers and Users



Full title: Royal Legislative Decree 1/2007, of 16 November, approving the Consolidated Text of the General Consumer and User Protection Act and other complementary laws. ("BOE" no. 287 of 30/11/2007). Entry into force: 01/12/2007.

Relevant Amendments Law 3/2014 of 27th March, which amends the consolidated text of the General Consumer and User Protection Act and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16th November. Entry into force: 29/03/2014.

This Law implemented the Consumer Rights Directive (CRD) 2011/83/EC of 25th October. <http://boe.es/buscar/doc.php?id=BOE-A-2014-3329>

Title of relevant sections: Title III: Contracts concluded at a distance and contracts concluded away from business premises (i.e. *distance and off-premises contracts*); Chapter I: General Provisions; Chapter II: Pre-Contract Information and Contracts.

TITLE III

CHAPTER I – GENERAL PROVISIONS

Article 92 Scope of application.

1. Distance contracts concluded with consumers or users in the context of an organised distance sales or service-provision scheme, without the simultaneous physical presence of the trader and the consumer or user, and where one or more means of distance communication have been used exclusively, up to and including the time at which the contract is concluded, shall be governed by the provisions of this title.

Distance communication techniques are considered, amongst others, to include: postal services, Internet, telephone or fax.

Article 94 Commercial communications and e-contracts.

In commercial communications via E-mail, or other methods of electronic communication, and in distance contracts for goods and services through electronic media, specific regulations on information society services and e-commerce shall apply in addition to the provisions set out in this title.

Where the provisions of this title are in contradiction with the content of the specific regulations on information society services and e-commerce, those regulations shall be preferentially applied, except for the provisions of the second paragraph of article 97.7.

Article 96 Distance Commercial Communications

1. The commercial nature of all distance commercial communications must be clearly stated in those communications.

URL of source: <http://boe.es/buscar/act.php?id=BOE-A-2007-20555>

2. In the case of communications by telephone, at the start of any conversation with the consumer or user, the identity of the trader or, where appropriate, the identity of the person on whose behalf the call is being made, must be explicitly and clearly stated, as well as the commercial purpose of the call. In no event may telephone calls be made before nine o'clock in the morning or after nine o'clock in the evening, neither on public holidays or at weekends.

3. The use by the trader of communication techniques consisting of automated calling systems without human intervention or fax requires the express prior consent of the consumer or user.

The consumer or user is entitled not to receive, without their consent, commercial calls made using systems other than those referred to in the preceding paragraph, where the consumer or user has decided not to appear in electronic communications directories available to the public, exercised the right to prohibit the use of the details that appear in those directories for advertising or marketing purposes, or asked to be included in databases (*i.e. joint exclusion files*) of those who do not wish to receive commercial communications governed by the regulations on personal data protection

4. The consumer or user is entitled to opt out of receiving unsolicited commercial offers by telephone, fax or other equivalent means of communication.

In the context of a pre-existing relationship, the consumer or user is also entitled to opt out of receiving commercial communications by E-mail or any other equivalent means of electronic communication. The consumer or user must be informed in each commercial communication of the simple and free (of charge) means of opting out of receiving them.

5. In cases where an unsolicited commercial offer is made by telephone, the calls must be made from an identifiable telephone number. When users receive the first commercial offer from the issuer, they must be informed of their right both to opt out of receiving new offers and to obtain a reference number for such opting out. At the request of the consumer or user, the trader is obliged to provide the consumer or user with a record (*i.e. proof*) of having opted out, which the trader must send the consumer or user in the shortest possible time frame and in any event within one month.

The issuer is under the obligation to retain data relating to users who have exercised their right to opt out of receiving commercial offers for at least one year, along with the reference number given to each of them, and must make those data available to the competent authorities.

6. In all cases, the provisions in force on the protection of minors and respect for privacy shall be complied with. Where personal data are used to effect commercial communications without the consent of the interested party (*i.e. when data is taken from sources accessible to the public* – Art. 6.2 LOPD¹), the recipient must be provided with the information indicated in article 30.2² of Organic Law 15/1999, of 13 December, on

¹ Ley Orgánica 15/1999 de Protección de Datos de Carácter Personal) (LOPD)

² Article 30 (Processing for the purpose of advertising and market research) Para. 2: "*When the data comes from sources accessible to the public, in accordance with the provisions of the second paragraph of Article 5.5 of this Law, each communication sent to the data subject shall indicate the origin of the data and the identity of the controller, as well as the rights available to the data subject*".

Art. 5.5 (2nd para): "*The provisions of the preceding paragraph (referring to information requirements) shall also not apply where the data comes from sources accessible to the public and are intended for advertising activity or market*

URL of source: <http://boe.es/buscar/act.php?id=BOE-A-2007-20555>

Personal Data Protection, and must be offered the chance to opt out of receiving those communications.³

CHAPTER II – PRE-CONTRACT INFORMATION AND CONTRACTS

Article 97

Pre-contractual information of distance contracts and contracts concluded away from business premises (i.e. *Pre-contract information for distance and off-premises contracts*)

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:

- a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- b) the identity of the trader, such as his trading name;
- c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer or user to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
- d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;
- e) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
- f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
- h) the language or languages in which the contract can be formalised, when this is not the language in which the pre-contract information has been provided/delivered;

research, in which case each communication sent to the data subject shall inform him of the origin of the data, the identity of the controller and the rights of the data subject".

³ Amended by sole article 28 of Law 3/2014, of 27 March

URL of source: <http://boe.es/buscar/act.php?id=BOE-A-2007-20555>

-
- i) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right, as well as the model withdrawal form;
 - j) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
 - k) that, if the consumer or user exercises the right of withdrawal after having made a request in accordance with Article 98.8 or Article 99.3, the consumer shall be liable to pay the trader reasonable costs in accordance with Article 108.3;
 - l) where a right of withdrawal is not provided for in accordance with Article 103, an indication that the consumer or user will not benefit from it or, where appropriate, the circumstances under which the consumer loses it;
 - m) a reminder of the existence of a legal guarantee of conformity for goods;
 - n) where applicable, the existence of after sales customer assistance to the consumer and user, after-sales services and commercial guarantees, as well as their conditions;
 - o) the existence of relevant codes of conduct and how copies of them can be obtained, where applicable. To this end, the expression, code of conduct means an agreement or set of rules not imposed by law, regulation or administrative provisions, which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;
 - p) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for termination;
 - q) where applicable, the minimum duration of the obligations of the consumers and users under the contract;
 - r) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
 - s) where applicable, the functionality, including applicable technical protection measures, of digital content;
 - t) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
 - u) Where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

6. If the trader has not complied with the information requirements on additional charges or other costs as referred to in point (e) of paragraph 1, or on the costs of returning the goods as referred to in point (i) of paragraph 1, the consumer shall not bear those charges or costs.

7. The information requirements established in this chapter are in addition to the requirements set out in Law 17/2009 of 23 November on the free access to the services activities and their practice and Law 34/2002 of July 11, on information society services and electronic commerce.

Notwithstanding the provisions of the preceding paragraph, if a general or sectoral provision to provide services, including information society services and e-commerce, relating to the contents or the way it must provide the information conflicts with any provision of this Law (1/2007), then the provision of this Law shall prevail.

8. As regards compliance with the information requirements laid down in this Article, the burden of proof shall rest on the trader.

Article 98

Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall provide the consumer and user with the information requested in Article 97.1, in language used in the contract offer or, the language specified in the contract, and at least Castilian, or make that information available in a clear and comprehensible manner in a way appropriate to the means of distance communication used, with due regard, in particular to the principles of good faith in commercial transactions, as well as principles governing the protection of those who are unable. In so far as that information is provided on a durable medium, it shall be legible.

2. If a distance contract to be concluded by electronic means places the consumer and user under an obligation to pay, the trader shall make the consumer and user aware in a clear and prominent manner, and just before the order is placed, of the information provided for in points (a), (e), (p) and (q) of Article 97.1.

The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. Failing that/ otherwise, the consumer or user shall not be bound by the contract or order.

3. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.

4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in points (a), (b), (e), (i) and (p) of Article 97.1. The other information referred to in Article 97 shall be provided by the trader to the consumer and user in an appropriate way in accordance with paragraph 1 of this Article.

5. Without prejudice to paragraph 4, if the trader makes a telephone call to the consumer and user with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, as well as the commercial purpose of the call.

6. In those cases where a distance contract with the consumer and user is to be concluded by telephone, the trader must confirm the offer to the consumer and user in writing, or in case of objection to that, in any durable medium. The consumer and user will only be

bound once they have signed the offer or sent their written consent, which via other mediums, can be achieved by paper, email, post or SMS.

7. The trader shall provide the consumer and user with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:

- a) all the information referred to in Article 97.1 unless the trader has already provided that information to the consumer and user on a durable medium prior to the conclusion of the distance contract; and
- b) where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with Article 103 (m).⁴

9. Responsibility lies with the trader to prove compliance with the obligations referred to in this Article. The trader shall take appropriate and effective measures that allow him to unequivocally identify the consumer and user with whom he concludes the contract.

10. This Article shall be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders set out in Law 34/2002 of 11 June.

Article 101

Need for explicit consent

1. In no case will the lack of response to the contract offer be considered as acceptance of it.
2. If the trader, without the explicit consent from the consumer and user of the offer, provides the good and service offered, the provision in article 66c (prohibition of unsolicited delivery of goods) will be applied.

⁴ Exceptions to the right of withdrawal (Art 103): (m): the supply of digital content which is not supplied on a tangible medium if the performance has begun with the prior express consent of the consumer and user and their acknowledgment that they thereby lose their right of withdrawal.