

SPECIAL REPORT

Amendments to Customer Service Regulations in Spain

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1. INTRODUCTION

Customer service regulations have significant implications both for the client and for the companies offering the product or service. Protecting the rights of consumers and users must be in line with the effectiveness of commercial and production company structures while at the same time preserving their competitiveness.

The Government is developing a new law which will try to maintain a balanced position between the two sides of the issue while keeping in compliance with all relevant regulatory activity from the European Union.

However, it seems inevitable that a discussion on the scope of the measures being proposed will arise as consumer associations demand to go further and companies are forced to deal with new responsibilities arising from their new legal obligations.

This document summarizes the current law, details the characteristics of the initiative for policy change which did not reach culmination in the previous legislature, provides tips regarding the intentions of the current government, analyzes the implementation of European legislation on this issue and makes reference the main opposition party's proposals.

2. CURRENT REGULATIONS

Customer service in Spain is regulated by the Royal Decree 1/2007, of 16 November, which approves the revised text of the General Law for the Defence of Consumers and Users. In addition, the regional legislation develops the application of the provisions of the Act within each Autonomous Community (each having their own legal development, except La Rioja).

In Article 21, the Act establishes the following provisions in relation to customer service:

- Service firms must ensure that the consumer is aware of their grievances and complaints.
- Telephone customer service must be given directly, although other technical support can be used in addition.

“A maximum period of one month is given to resolve complaints and other contractual issues”

- Companies must provide all the necessary contact details to its consumers, including postal address (regular and/or legal), telephone and fax numbers or email address.
- Service providers must respond to complaints as soon as possible and no later than one month from the filing of the complaint.
- If within that period of time the issue has not been resolved satisfactorily, service providers, bound by a non-judicial settlement of conflicts system shall provide the user access to it.
- Companies must use a unitary or centralized management system so that the record of complaints, claims and incidents can be tracked and guaranteed.
- A maximum period of one month is given to resolve complaints and other contractual issues.
- The maximum waiting time for the user from receiving the call in customer service may not exceed one minute for more than 90% of customer service calls.
- Customer service hours shall conform to the characteristics of the service. Essential services must be available 24 hours a day, 365 days a year for the formulation of incidents relating to the continuity of service.

3. THE REGULATION PENDING ON THE PREVIOUS LEGISLATURE

In the previous legislature, the government of José Luis Rodríguez Zapatero introduced a Bill regarding Customer Services with the following basic points:

- Free telephone customer service and telephone number to address complaints and any contractual incidents.
- The use of premium rate numbers as a means of communication with customers is prohibited.
- Client information may not be used to offer other products to the customer.
- Companies should inform users of contractual issues that may seriously affect the service as soon as they become aware of it and without it being explicitly necessary.
- Companies must develop systems that measure improvements in their customer service and will have to pass annual external audits.
- In the future, companies must employ staff that is properly trained and qualified to address customer complaints.



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This regulation would apply to companies that provide water, gas and electricity, transportation services, postal services, audiovisual conditional access service and electronic communications services.

During the parliamentary process, the Popular Party (PP) filed 28 amendments to the Bill, of which the following points stand out:

- Extend the scope of the regulation by incorporating the financial and insurance sectors.
- Obligate all companies, regardless of their size or sector, to provide free customer service
- During the filing of a complaint, claim or incident, the operator must request permission from the client in order to inform them of other products or services offered by the same company.
- Customer service must always be accessible to people with disabilities, communication barriers which could affect people with visual and hearing disabilities must be removed and alternative options must be provided.

The parliamentary proceedings of the Bill were interrupted by early finalization of the legislature which lapsed with dissolution by Parliament.

4. CHANGES IN THE CURRENT LEGISLATURE

In 2013, the Ministry of Health expressed its commitment (during its term) to proceed with the regulation of customer service. However, they have yet to disclose details regarding the specific content or the significance of said regulation as the project is still at a preliminary stage.

The Consumer Association FACUA said that the project includes some improvements over the initiatives which were not approved in the last term, although this association believes that the project “still leaves much to be desired, as the guarantees fall short”. While document generalizing the legislation on customer service exists, new developments affecting specific sectors or specific patterns of consumption continue to pop up. They are summarized below.

Free telephone customer service for utilities companies:

The Royal Decree Law 13/2012 of 30 March, in which guidelines for utilities companies (internal electrical and gas markets) and electronic communications are detailed, obligates these companies to make available to its customers a free telephone service to resolve claims.

Several consumer associations claim that “a year later and some of the electrical companies

“The proposed amendment to the General Law users will especially affect the areas of electronic commerce and the contracting of services via telephone”

have yet to provide these free numbers, and if they have, they have been made difficult to use.” Rosa Díez, parliamentary group spokeswoman for UPyD, reported this in a parliamentary question.

Regulation of distance contracts, including contracts for the supply of water, gas and electricity:

of 30 March, in which guidelines for utilities companies (internal electrical and gas markets) and electronic communications are detailed, obligates these companies to make available to its customers a free telephone service to resolve claims.

On April 19, the Cabinet gained awareness of a draft bill responding to the implementation of a European Directive relating to consumer service, in this case Directive 2011/83 / EU of 25 October regarding distance contracts including contracts for the supply of water, gas and electricity. The draft continues in process by various advisory bodies. It is expected that in the coming months, it will be sent to Parliament.

The proposed amendment to the General Law for the Protection of the Rights of Consumers and Users will especially affect the areas of electronic commerce and the contracting of services via telephone.

Three thematic lines stand out:

- Increasing the information requirements provided to the consumer by the employer

regarding the transaction, as well as confirming the consumer’s agreement on the following:

1. Accurate information about the total price payable must be provided for the consumer
 2. The consumer is not obliged to pay any additional cost or will be refunded their money if they have not been informed of extra fees prior to transaction.
 3. The Government has opted for the possibility offered by the European Directive that the consumer only becomes responsible once they have signed the offer or sent their written consent. Such confirmation must be made in a durable format such as fax, email or communication via text message.
- Strengthening consumer choice to exercise the right to discontinuance:
 1. The right of the consumer to withdraw from the contract or the purchase of goods is extended from 7 to 14 days.
 2. The consumer will have greater assurance that said discontinuance will not involve extra costs, except in the case of the returning of goods by post or in proportion to

“Companies must provide sufficient information to consumers”

the amount of services consumed at the time of discontinuance.

3. The application of this right will automatically terminate any supplementary contract, which applies to the field of distance transactions, Directive 2008/48 / EC on consumer credit.

- The definition of other consumer rights relating to:

1. Delivery of purchased goods within a maximum of 30 days.
2. The cost of the format of payment, which may not exceed those of the seller.
3. The cost of telephone communication between the consumer and seller, which may not exceed the basic rate.
4. Additional payments not included in the original price will not be fronted by the consumer.

Alternative dispute resolution and online dispute resolution:

There are two other European directives, recently approved by the European Parliament, which affect customer service. They refer firstly, to consumer alternative dispute resolution and secondly, to consumer online dispute resolution.

The first establishes the obligation of each State to ensure the

existence of out of court dispute settlement for all sectors of the business. Companies must provide sufficient information to consumers regarding the existence of these entities at the time of contracting and via customer service.

The second directive specifically applies to all Internet transactions in which at least one party is in the European Union and supposes the creation of an electronic platform which will automatically send claims to an institution of dispute resolution, obligating “online” seller to include this link in their website. This direct link will be hosted on the European Union’s portal “Tu Europa” (Your Europe) and must be multilingual and provide a unified access to the complaint form.

According to an authoritative spokesperson, the Ministry of Health, through the National Consumer Institute, is preparing arbitration rules that are in line with European standards, but until it is approved, a transition period that allows for adaptation will take place.

5.PROPOSALS BY THE OPPOSITION

The PSOE tried to recuperate the Bill submitted by the previous government for processing. It did so through a proposed bill from its parliamentary group presented at the beginning of the legislature, but it was rejected on 22/06/2012 by the PP parliamentary majority.

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Similarly, they have introduced in Congress a motion to amend the Code of Civil Procedure to allow class actions claims for company liability. This reform would eliminate backlogs, which seem to happen with preferential claims.

Given the current process of the drafting of new regulations by the government, the Socialist Party seems willing to negotiate basic points, although their spokespeople state that this will only occur “when it serves the interests of consumers”.

Among the main issues for the PSOE, which must still appear in the proposals detailed in the new Bill, the establishment of a deadline for the resolution of complaints, that fact that contact numbers are prohibited from having an extra charge, definitive agreements must always have permanent support even though they were initially made without it and that an existing contract may be broken through the same means by which it was established.

The Socialists are aware that many of these basic points detailed in the bill are already being implemented in a timely manner. What the PSOE proposes is to generalize them for all sectors and all forms of consumption.

6. THE DEBATE ON CUSTOMER SERVICE

In the coming months, the debate on the regulation of customer service will grow. The reform of the Law of Consumers and Users,

before mentioned, focuses on distance and off-premise transactions. Currently, most of the contracting of new services and many purchases are made by electronic means, meaning that all sectors will be affected by these legislative changes. Different sectors are negotiating with the Government the margin rigidity for the implementation of the European directives. Telecommunications, energy, banking, insurance and e-commerce and telesales are the sectors mainly affected by the changes.

For their part, consumer associations are awaiting the broadening of the scopes of the present Act. They also have a system of penalties and compensations in the event that complaints are not properly addressed by companies. FACUA, UCE, FUCI and CECU are leading the dialogue with the government, directly and indirectly, via the media in order to emphasize the issues they wish to introduce into the new regulation.

During these months, many sectors involved will voice their opinions. The Government will collect these statements and arguments, filter them by relevance and send them to Congress for processing. At this time, political parties will position themselves as the primary advocates consumer rights.

The media noise surrounding the customer service reform will increase in the coming months as companies and associations aim to assure that the new law best suits their interests.



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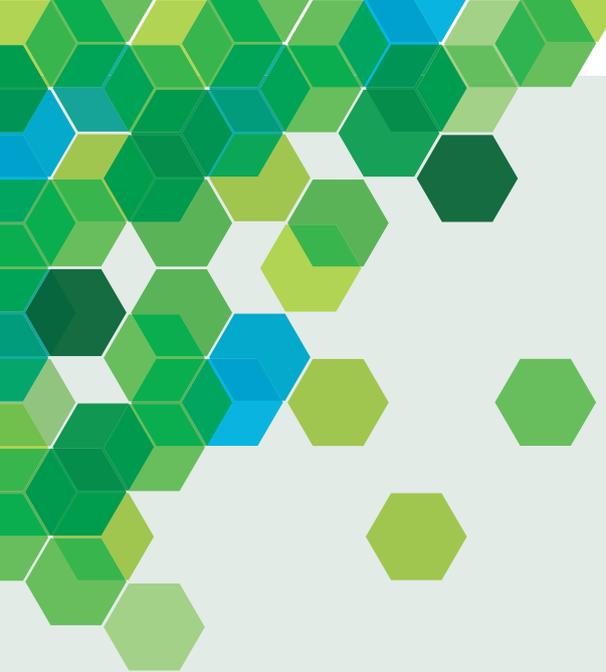
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