Consumer Protection in Spain

Javier Gutierrez
Bufete B. Buigas
Barcelona, Spain

Introduction

Consumer protection is an area of law that reflects the influence of public administrative law in private relationships. Operations carried out by consumers have traditionally been classified as either purchase and sale operations or as service operations.

The legislative framework applicable to consumer protection in Spain has undergone important amendments in the past two decades, particularly in terms of product liability and class actions, resulting in a regulatory framework that is highly protective of consumers.

Legislative and Regulatory Framework

The Consumer Protection Regime

The consumer protection regime in Spain is a balance between private law, administrative law, and self-regulation.

Consumer protection regulations in Spain essentially stem from two sources: the Spanish Constitution and European Union (EU) law.

Consumer protection in Spain is tightly controlled by the government, and it is generally articulated through mandatory provisions from administrative law or private law.

The rules of administrative law normally regulate general safety issues such as product safety requirements, labeling, packaging, and the penalties to be imposed on the manufacturers or traders of unsafe products. The rules of private law tend to protect the safety and health of consumers, individually or collectively, and to guarantee the indemnification of damage caused, at the expense of the manufacturer, importer, or trader of the products.
In Spain, both the central government and the autonomous communities have competences for consumer protection. This chapter only refers to the national regulations on the subject, and the rules set forth by the different autonomous communities are beyond its scope.

Basic Consumer Rights

Since the enactment of the Constitution of 1978, consumer protection has been a basic principle that obliges the Spanish government to guarantee citizens’ rights and freedoms within this scope. Section 51 of the Constitution stipulates that public authorities must guarantee the defense of consumers; protect their safety, health, and economic interests; promote the education of and information to consumers; and encourage consumers’ organizations by attending to their requests concerning issues that may affect them.

This obligation of consumer protection is developed by the rest of the rules included in the legal order. Among these, the most relevant is the General Law on the Protection of Consumers and Users (Ley general para la defensa de los consumidores y usuarios — LGDCU).\(^1\) Section 1 of the LGDCU is devoted to the general principles and establishes that its aim is consumer protection, pursuant to Section 51(1) and (2) of the Spanish Constitution. These provisions establish the basic framework for consumer protection in Spain.

The LGDCU defines consumers as natural or legal persons that act within a field other than business or professional activities. That means that they take part in consumer relationships for private purposes, hiring goods and services as final addressees, without incorporating them, either directly or indirectly, in processes of production, trading, or rendering services to third parties.

The LGDCU and the laws enacted by the autonomous communities in order to develop this subject, set the basis for consumer protection and consumer rights, which are complemented by the rules issued for particular sectors and subjects.

Section 8 of the LGDCU includes the basic rights of consumers, which are discussed in turn.

Consumers are entitled to protection against any risks that may affect their health or safety, which is a right that is considered a general rule. Therefore, sellers are banned from placing on the market products...

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that may entail risks for the health or safety of consumers. The LGDCU recognizes as safe those goods or services which, in normal or reasonably foreseeable conditions of use, including the duration of use, do not entail any risk for consumers' health and safety, or entail only the minimum risks compatible with the use of the goods or service and which are deemed acceptable within the high level of protection of consumers' health and safety.

The protection of economic and social interests, particularly by way of prohibiting the inclusion of unfair terms in contracts, is another basic consumer right that must always be complied with, both when the offer is made and in the promotion and advertising of products and services. This basic protection is implicit, even if is not explicitly stated in the purchase or service agreement.

Consumers are entitled to indemnification for losses and compensation for damage resulting from the consumption or use of products or services.

Consumers have the right to receive accurate information about the different products or services. They also are entitled to education and measures to promote knowledge about the appropriate use, consumption, or enjoyment of products and services.

The purpose of this consumer right is to enable purchase decisions to be freely and rationally made, to make the information provided to consumers understandable, to provide information about consumer rights and obligations and how to exercise them, to prevent any risks that may arise from consumption, and to promote sustainable consumption. The scope of the provisions on consumer education and information includes the training of professionals in this field.

The right to audience, participation, and representation also is a basic consumer right. This right is implemented by consulting consumer associations when provisions directly affecting consumers are being drafted.

Finally, consumers have the right to protection in circumstances where they are the weaker party in the consumer relationship. For such purposes, public agencies should adopt measures to balance the relationships between companies that offer their products in the market and consumers, preventing abuses or situations that are detrimental to consumers.

**Administrative Bodies and Public Law Structure**

The organization of public services for consumer protection functions at three different levels: the State General Administration, the autonomous communities, and the municipal bodies, each of which has its own services for consumers.
Concerning the State General Administration, the National Consumer Institute is the body that promotes and guarantees the rights of consumers and users. In parallel and within the framework of the competences granted to the autonomous communities, each has its own regulations to protect consumers and is authorized to penalize companies that violate these regulations. Finally, the town councils have municipal offices to provide consumer information, with competences to deal with the claims submitted by consumers.

Market Regulatory Systems

On the one hand, the regulatory systems secure a supply of standard quality for consumers; on the other, they provide employment and market protection and control in terms of determining the extent to which there is potential for monopolistic abuse.

Certain key sectors have special bodies to supervise the companies operating within the sector and which, directly or indirectly, also act to protect consumer interests.

The purpose of the Securities and Exchange Commission is to guarantee transparency and correct price formation in the markets, as well as the protection of investors.

The National Telecommunications Market Commission is a decentralized body whose purpose and functions are the regulation, supervision, control, and verification of aspects related to the rendering of telecommunication services, postal services, and services involving the use of the radio-electric spectrum.

The purpose of the National Energy Commission is to guarantee the effective management of energy systems and the objectivity and transparency of its operations in the interests of all providers and consumers of energy systems.

The National Water Commission has the purpose of managing and protecting national water resources in order to achieve their sustainable use.

Consumer Product/Service Standards

General Regime on Product Liability

Applicable Laws

The general rules that establish the standards to be fulfilled by products aimed at consumers are set forth in the LGDCU and in Royal Decree
Royal Decree Number 1801/2003 of 26 December on general product safety (Royal Decree Number 1801/2003), which transposes the General Product Safety Directive\(^2\) into Spanish law. These laws regulate, in particular, the liability for defective products as well as the general obligation imposed on sellers to place safe products on the market.

Royal Decree Number 1801/2003 defines a "safe product" as any product that is either free of risk to the consumer or which only gives rise to minimal risks that are acceptable and compatible with the use of the product. The product must be used under normal or reasonably foreseeable conditions, respecting high health and personal safety protection standards.

This provision applies to all products for consumer use, taking into account, in particular:

1. The characteristics of the product, including its composition and packaging;
2. The effect of the product on other products when it is reasonably foreseeable that it will be used with other products;
3. The information attached to the product, particularly the labeling, any applicable warnings and instructions for use and disposal, assembly instructions and (where appropriate) instructions for installation and maintenance, and any other indication or information related to the product;
4. The presentation and advertising of the product; and
5. The categories of consumers at risk when using the product, particularly children and the elderly.

Royal Decree Number 1801/2003 establishes the obligations of producers and suppliers in order to guarantee that every product introduced into the Spanish market fulfills the minimum quality requirements to be reported as safe.

The LGDCU establishes the liability of the producers or importers for defective products they may manufacture or import. It states that any injured person has the right to be indemnified for the damage caused by a product or service.

This liability regime includes personal injury (including death) and property damage, provided that the loss or damage is attributable to a product or service objectively aimed at private use or consumption which has been used by the affected person. Any clauses exempting or limiting the producer’s liability will be ineffective.

Liability for Defective Products

Pursuant to the LGDCU, a defective product is one that does not offer the safety that may legally be expected, taking into consideration all circumstances — in particular, its presentation, its reasonably foreseeable use, and the moment it is put into circulation. In any case, a product is defective if it does not offer the safety normally offered by the rest of the items from the same series.

A product is not considered defective by the mere fact that the same product is subsequently placed into circulation in an improved version.

In principle, the producer is the person to be held liable for the damage caused by a defective product. The term "producer" is understood to mean:

1. Any participant in the production process;
2. The importer of the defective product;
3. Any person attaching its name, trade mark, or other distinguishing feature to the product; and
4. Any person supplying a product whose manufacturer cannot be identified.

Within the meaning of the law, the manufacturer or importer into the EU of a finished product, a raw material, or any component of a finished product is considered the producer. If the producer cannot be identified, the supplier of the product is considered the producer, unless the supplier can indicate to the affected person, within a three-month period, the identity of the producer or of the person who has supplied or provided it with the defective product.

The same rule applies in the case of an imported product when the product does not specify the name of the importer, even if the name of the manufacturer is indicated. The supplier — that is, any natural or legal person that supplies the seller with stock (e.g., merchandising, raw material, packages or containers) which the seller will subsequently sell, transform, or process — will be held liable for any defective product, as if he were the producer, when he has supplied the product while being aware of the existence of the defect. In such cases, an action for recovery can be brought by the supplier against the producer.

Exemption from Liability

According to the applicable rules, the producer will not be held liable if it is proved that:

1. It did not put the product into circulation;
Given the circumstances of the case, it is possible to presume that the defect did not exist at the moment when the product was put into circulation;

The product had not been manufactured to be sold or for any other type of distribution with an economic purpose, nor was it manufactured, imported, supplied, or distributed within the framework of a professional activity or business;

The defect was due to compliance of the product with mandatory regulations issued by the public authorities; and

The state of the scientific and technical knowledge existing at the moment when the product was put into circulation was not such as to enable the defect to be discovered.

The producer of a component of the final product will not be held liable if it is proved that the defect is attributable to the design of the product or to the instructions provided by the its manufacturer.

Claim for Damages

Under the consumer protection law, the injured person who may obtain compensation for the damage caused by a defective product must prove the defect, the damage, and the causal link between the defect and the damage.

The action for recovery of damages will be time-barred three years from the date when the damage was caused to the injured person, whether for a defective product or for damage caused by the defective product, as long as the party responsible for the product is identified.

If several persons are liable for the damage and one of them pays the compensation, it may claim the relevant shares from the other liable parties. This action for reimbursement of compensation paid will be time-barred one year after the date of payment of the compensation.

The rights of an affected person to file an action for damage caused by a defective product will expire ten years from the date on which that product was placed into circulation, unless the relevant legal proceedings have been initiated during the ten-year period.

Restrictive Measures

The autonomous communities may adopt all measures that are deemed necessary to guarantee consumers’ health and security. These measures,

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3 General Law on the Protection of Consumers and Users, Section 139; Royal Decree Number 1801/2003.
which must be consistent with the reasons that give rise to them, are to: (i) immobilize and recall the defective products; (ii) recover the defective products from the consumers; and (iii) order the suspension of any activities, sales, offers, or promotions related to the defective products.

These measures may affect distributors, service providers, or any other person contributing to the risk to any extent.

The expenses arising from applying these measures will be borne by the persons whose unlawful behavior caused the problem.

Furthermore, the administrations that adopt any of these measures or any other bodies that suspect a reason to impose restrictions on the circulation of certain products within the market must communicate this to the Ministry of Health and other administrative institutions. The communication may be by ordinary means or through the national system integrated with the Community Rapid Exchange of Information System (RAPEX).

Ordinary means are when the administrative bodies adopt measures to restrict the circulation of a product. This decision must be communicated to the Ministry of Health through the National Consumer Institute within fifteen days.

RAPEX is the EU system that facilitates the rapid communication of a defective product or danger existing in one Member State to all the other Member States. Its purpose is to facilitate speedy communication and exchange of information in situations that present a serious risk.

The national system integrated with RAPEX is under the Ministry of Health and is deemed to be an instrument for the prevention and detection of unsafe products.

Under the LGDCU, an important consideration is that the producer’s civil liability for any damage caused by defective products is subject to the following provisions: (i) a sum of EUR 390.66 will be deducted from the amount of the compensation for property damage; and (ii) the global civil liability that can be imposed on the producer for death or personal injuries caused by the same defect in the same product is limited to a maximum amount of EUR 63,106,270.96.

The established liability can be reduced or eliminated according to the circumstances of the case, if the damage caused arises jointly from a defect in the product and by the fault of the injured person or of a third person.
Special Regimes

Food

In addition to the LGDCU, several laws regulate food products, governing issues such as the labeling, presentation, and advertising of foodstuffs; the creation of the Spanish Agency for Food Safety; and the general safety of products and the technical health regulations on human food products.

The public administration comprises a series of organizations set up to protect the safety of consumers. The European Food Safety Agency foresees the creation of national organizations that will apply the programs of the parent organization. Its Spanish counterpart, the Spanish Agency for Food Safety, is composed of scientists, consumers’ representatives, and the Ministries of Science and Technology, Agriculture, Health, and Environment.

In Spain, the General Department for Agri-Food and Food Industry is entrusted with the task of drafting the national regulations concerning the development of the Spanish Food Code and the relevant food regulations, together with the coordination of the tasks concerning food quality control.

The legal systems of the autonomous communities have deliberately embarked on the protection of agricultural products and foodstuffs, which are differentiated in quality by their specific characteristics, their geographical origin, or by environmentally friendly methods and techniques. It seems, however, that the increase in regulations has led to a greater increase in economic interests rather than in protection of the final consumer.

Apart from consumer protection provided by the technical regulations on matters related to food production, a key issue is labeling control.

The EU regulations on the labeling of food products recognize the consumer’s right to be informed. The basic principle on which these rules are based is that consumers must be furnished with all the essential information about the composition of the product, the manufacturer, and the methods of storage and preparation.

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4 Royal Decree Number 1334/1999 of 31 July, approving the general regulations on labeling, presentation, and advertising of foodstuffs.
6 Act Number 43/2002 of 20 November on plant health; Royal Decree Number 1801/2003, of 26 December on general product safety; Royal Decree Number 1050/2003, of 1 August, approving the technical health regulations on fruit juices and other similar products meant for human consumption.
Producers and manufacturers can add further information if they so wish, provided that it is exact, it does not mislead the consumer, and it is not aimed at attributing to the foodstuff the possibility of preventing, treating, or curing a disease.

Labeling requirements for food products are regularly updated to ensure that they reflect any scientific advances and consumers’ changing expectations.

According to the applicable Spanish regulations, labeling must not mislead or deceive the consumer, especially in terms of:

1. The characteristics of the product, particularly its nature, identity, qualities, composition, quantity, shelf life, country of origin or provenance, and the methods of manufacture or production;
2. Attributing to the foodstuff effects or properties that it does not possess;
3. Suggesting that the foodstuff possesses special characteristics, when all similar products possess the same general characteristics; and
4. Attributing to the foodstuff the possibility of preventing, treating, or curing a disease, or to refer to such properties, including characteristics of natural mineral waters and foodstuffs for special nutritional use.

Furthermore, the applicable regulations establish a list of compulsory items to be indicated on any food label. In addition to the special characteristics of each type of food, these particulars must include, in Spanish:

1. The name under which the product is sold;
2. The list of ingredients;
3. The quantity of ingredients or (where applicable) the category of ingredients;
4. The alcoholic strength by volume of beverages containing more than 1.2 per cent by volume of alcohol;
5. The net quantity in the case of pre-packaged foodstuffs;
6. The date of minimum durability or the best-before date;
7. Special storage conditions or conditions of use;
8. Instructions for use, when they are essential for the proper use of the foodstuff;
9. Identification of the company, including the name or business name of the manufacturer or packager or of a seller established within the EU and their addresses;
10. The batch number; and
11. The place of origin.
Medicines and Health Products

The national legislation on pharmaceutical products is contained in Act Number 29/2006 of 26 July on guarantees and rational use of medicines and health products. Section 1 of this Act regulates medical and health products for human use, their assessment, authorization, registration, manufacture, processing, and quality assurance, as well as clinical research.

Act Number 29/2006 also regulates the storage, distribution, circulation, traceability, marketing information and advertising, importation and exportation, prescription and dispensation, and monitoring of the benefit-risk ratio of medicines and health products. Furthermore, it regulates their rational use and, where appropriate, the procedure for their financing from public funds.

The regulations also cover the substances, excipients, and materials used for the manufacture, preparation, or packaging of medicines and health products. The intervention of natural or legal persons concerning their participation in the industrial or commercial distribution and in the prescription or dispensation of medical and health products also is regulated.

Act Number 29/2006 imposes certain special obligations on suppliers of medical products, to the extent that they are the individuals who make their product available to the consumer through their participation in the market. Consequently, if any medicine or health product is defective, the supplier, distributor, or any person who may have taken part in the introduction of that product in the market will be held liable for the defect.

Consumers of medical products have several rights under the law, which correspond to the obligations of the members of the supply chain.

Authorization and Registration  Industrially manufactured medicines cannot be placed on the market unless they have been authorized by the Spanish Agency for Medicines and Health Products and registered in the Register of Medicines. Alternatively, they must have previously obtained authorization in compliance with the provisions of the EU regulations that establish the common procedures for the authorization and control of medical products for human and veterinary use and which are regulated by the European Medicines Agency.

Quality Assurance  The qualitative and quantitative composition of every medical product must be clearly established.
Safety  All medicines, including active ingredients and raw materials contained in them, must undergo toxicology and clinical testing that guarantees their safety under normal conditions of use and corresponding to the foreseen duration of the treatment.

Guarantee of Effectiveness  The effectiveness of medical products for each of their current uses must be established on the basis of previous pre-clinical testing and clinical trials. These tests and trials must comply with the regulatory requirements and with those requirements arising from advances in scientific knowledge on the subject.

Guarantee of Identification  Each active ingredient is allocated an official Spanish denomination (denominación oficial española — DOE) by the Spanish Agency for Medicines and Health Products. The use of the official Spanish denomination is compulsory; optionally, the denomination also may be in the relevant official languages of the autonomous communities.

Guarantee of Information  The manufacturer must provide proper written information about the identification of the medical product, its possible uses, and the warnings to be observed when using it. At least the Spanish version of this information must be included. This information will be used to prepare the technical data sheet (intended for health professionals), the information leaflet (intended for the patient-consumer), and the labeling.

In this context, pharmaceutical laboratories under the control of the public administration present the information on the pharmaceutical product through the technical data sheet and the information leaflet. The laboratories will be held liable for failure to comply with the duty to provide the required information, but they will not be held liable for the damage caused by the products if the consumer has been furnished with the appropriate information about the risks related to their correct use.

Likewise, doctors must be familiar with the pharmacology of medical products and the information on the medication they prescribe, and they must inform the patient of the necessary dose and of any possible incompatibilities, risks, or side effects.

The principal obligations of pharmacists are to provide patients with the right medication, to inform and advise them on the proper use of such medication, and to carry out appropriate medical and therapeutic monitoring of treatment.
Guarantees of Transparency  In order to ensure the transparency of its actions, the Spanish Agency for Medicines and Health Products must guarantee public access to its final decisions on the authorization of medical products and to any modifications, cancellations, or withdrawal of approval, as well as the summary of the product characteristics.

Price  The prices of medicines must meet objective and demonstrable criteria. Medical products are subject to the general rules of the government’s pricing policy, which fixes the maximum wholesale price of each item and the price of sale to the public. The price must be indicated on the medical product.

Presentation  Medical products must be manufactured and presented so as to ensure the reasonable prevention of accidents, especially in the case of children and the handicapped. They must have child-resistant caps, containers resistant to opening, procedures for quick identification, and must avoid unnecessarily appealing colors and flavors.

Advertising  The law states that only those medical products which comply with specific requirements are allowed to be advertised to the public.

The requirements are that: (a) the medical products are not financed from public funds; (b) given their composition and purpose, the medical products are planned and conceived to be used without the intervention of a doctor to diagnose, prescribe, or monitor the treatment, even though they require the involvement of a chemist (not applicable to vaccination campaigns approved by the competent health authorities); and (c) the medical products are not psychotropic or narcotic substances according to the provisions included in international conventions.

Furthermore, all advertisements must comply with certain requirements.

The promotional character of the message must be obvious and the product must be clearly identified as a medicine. If the medication contains only one active substance, advertisements must include both its brand name and the generic name.

Advertisements must include the information essential for the adequate use of the medicine and an explicit and legible invitation to carefully read the instructions included in the informative leaflet or on the external packaging, as appropriate, and a recommendation to consult the pharmacist about its proper use.
Advertisements may not include any expressions suggesting a guarantee of the medication’s healing powers, or personal stories about the properties of the product, or recommendations made by health professionals or endorsements by famous persons who, due to their celebrity status, encourage its consumption.

Advertisements also may not use as an advertising argument the fact that they have obtained approval in any country or any other type of approval or authorization, registration number, or certificate from the competent authorities, or the controls or analyses to be performed by such authorities pursuant to the provisions of Act Number 29/2006.

Advertising messages disseminated through the mass media must comply with the conditions of accessibility for disabled people established by the legal regulations on institutional advertising.

Advertisements may not be directed at children (except for tooth-pastes), nor may an advertisement for a medical product claim that the product is harmless because it is a natural substance.

Advertisements must include clearly readable text when they deal with the correct use of the product and must be fully audible or understandable, avoiding the use of technical terms.

Finally, advertisements may not induce users to irresponsible self-medication.

Penalties Act Number 29/2006 foresees that in case of violations of its provisions, offenders will be subject to the relevant administrative penalties, in addition to civil, criminal, or other liabilities that also may arise.

Offenses can be classified as minor offenses, felonies, and serious felonies, according to the degree of risk to health, the amount of the benefits eventually obtained, the seriousness of the health and social damage caused, the scope of the offense, and recidivism.

Violations of the law will be penalized by applying a minimum, average, or maximum fine to each level of offense. The severity of the penalty depends on the negligence and intention of the offender, fraud, connivance, failure to comply with previous warnings, the company’s turnover, the number of people affected, and the damage caused. The penalty also will depend on the benefits obtained as a result of the offense and the permanent or temporary character of the risks and the repetition of more than one offense of the same nature in a one-year period, when it is so declared by a final court decision.

Minor offenses may be penalized with fines between EUR 6,000 and EUR 30,000, felonies may be penalized with fines between EUR 30,001
and EUR 90,000, and serious felonies with fines between EUR 90,001 and EUR 1,000,000, according to the degree of the offense.

In addition to the economic penalties, infringements of the law will be penalized with the seizure of the illegal benefits obtained as a consequence of the commission of the offense, for the benefit of the public treasury. In the case of serious infringements, offenders will be penalized with the temporary closure of the premises for a period of no more than five years.

Motor Vehicles

The Spanish legal system contains numerous regulations governing the quality and safety standards applicable to vehicles and their components. Among these are Royal Decree Number 2822/1998 of 23 December, approving the General Regulations on Vehicles (Reglamento General de Vehículos — RGV) and Royal Decree Number 2042/1994 of 14 October, regulating the Technical Inspection of Vehicles (Inspección Técnica de Vehículos — ITV).

According to the RGV, as an essential condition for ordinary registration or for the registration of tourists’ vehicles, all motor vehicles and their trailers and tractor-trailers must correspond to previously approved types, according to the applicable regulations established in Spain and in the EU. Vehicles that do not have this registration may not be driven on public roads.

For purposes of identification, apart from the plates and regulatory inscriptions, all vehicles registered or placed into circulation must display certain clearly readable information that would be difficult to modify. This information is: (i) an identification number, engraved, stamped, or inscribed in a permanent way on the frame or the unitized body; (ii) a plate from the manufacturer; and (iii) in motor vehicles, the inscriptions or initials which identify the type of engine, placed on the engine.

Moreover, the technical regulations establish certain conditions that must be fulfilled by motor vehicles (in terms of their parts and components) for them to be registered or placed into circulation. These technical regulations specify the elements the vehicles must include, their position, their size, and compliance with environmental protection regulations.

7 The General Law on the Protection of Consumers and Users also is applicable.
In order to guarantee the safety of vehicles that have been placed in circulation, they must undergo periodic technical inspections at the ITV stations authorized for such purposes.

After the identification of the vehicle is verified, the technical inspection will cover the condition of the vehicle concerning road safety, environmental protection, regulatory inscriptions, alterations, and (where appropriate) the validity of the certificates for transportation of dangerous and perishable goods.

Electrical Appliances

The applicable regulations with regard to electrical appliances are included in Royal Decree Number 58/1988 of 29 January on the protection of consumer rights concerning household appliances and repair services, and Royal Decree Number 208/2005 of 25 February on electrical and electronic appliances and the management of e-waste, to which the rules on product safety are applied.\(^8\)

**Labeling** The rules on labeling are of particular importance in the case of electrical appliances.\(^9\) These rules establish the basic information that must be included with an electrical product and which are necessary to ensure its proper and safe use.

The basic information required on the label of an electrical product includes its generic name, its basic characteristics, instructions for use and installation, use and maintenance warnings and considerations, handling instructions, and safety conditions.

The basic information that must be included, at least in Spanish, is the identity and address of the manufacturer (whose registered address must be located within the EU), the maximum power output, supply voltage, and power consumption.

The regulations also establish that the seller of the electrical appliance must clearly and prominently display the relevant energy label, which allows consumers and users to compare its efficiency to that of other models and/or brands and the symbol indicating the selective collection of electrical and electronic equipment.

The first part of the label is common to all electrical appliances. It specifies the energy efficiency of the appliance. The rest of the label is

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\(^8\) Also applicable are Royal Decree Number 1801/2003 and the General Law on the Protection of Consumers and Users.

\(^9\) Royal Decree Number 1334/1999 of 31 July.
specific to each appliance. For example, the label for a washing machine specifies the capacity, the water consumption, the level of noise, and other product-specific features.

Warranty Subject to the warranty conditions, the seller must ensure that the product fulfills the conditions of the agreement for a period of two years from the delivery date. For second-hand products, the seller and the consumer can agree to a shorter period of warranty, but not for less than one year from the delivery date.

If the product is defective, the consumer may decide to request repair or replacement of the product, unless one of these two remedies is objectively impossible or disproportionate.

Recycling The specific rules on the recycling of electrical products are significant, as electrical appliances have components that can cause severe damage to the environment.  

The regulations provide that users of electrical appliances who want to get rid of them must return these appliances to be correctly disposed of, free of charge. This way, the user who buys a new product can return the old appliance to the supplier, who is obliged to collect it.

Furthermore, towns with a population of more than 5,000 must guarantee that their municipal services will collect household e-waste. The rules also establish specific obligations related to the treatment of electric and electronic waste.

Textiles

Textile products are regulated by a set of specific rules, apart from the general rules for consumer protection and the Retail Trade Regulation Act.

Labeling The relevant laws on labeling are Royal Decree Number 928/1987 of 5 January on Labeling and Product Composition; Royal Decree Number 1468/1988 of 2 December, approving the regulations on labeling, presentation, and advertising of industrial products intended

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11 Act Number 7/1996 of 15 January for the regulation of retail trade. Also applicable are the general rules contained in Royal Decree Number 1801/2003 and the General Law on the Protection of Consumers and Users.
for direct sale to consumers; and the Order of 23 September 1985, which sets forth the regulations for the informative labeling of fur and leather products. One of the principal objectives of these rules is to protect the consumer by providing proper information through the labeling of products.

Textile products are defined as products that unprocessed, semi-processed, or processed, semi-manufactured or manufactured, semi-finished or finished, and products entirely made of textile fiber, although certain regulations also consider as textile products those with a composition of at least eighty per cent of textile fiber.

Textile products must be correctly labeled and must include: (i) the name, the address and the Spanish tax identification number (Número de Identificación Fiscal — NIF) of the manufacturer, trader, or importer; (ii) for products manufactured in Spain, the manufacturer’s industrial registration number; and (iii) the composition of the product, in dry goods and fabric (e.g., cotton, wool, and so on).

The label must be made from a resistant material, preferably a textile fabric. It must remain permanently sewn or fixed to the garment, and it must have the same lifespan as the garment.

In the case of wrapped products, the label must be placed on the wrapping, unless the garment and its label are clearly visible through the packaging.

It is forbidden to include misleading advertising on the label.

**Traders’ Obligations** Under the applicable regulations, traders of textile products are obligated to:

1. Indicate the price, inclusive of value-added tax (VAT), on the products for sale (both on the items inside the shop and those in the window display), which may not exceed established prices;
2. Only sell products that comply with the regulations in force and which are correctly labeled;
3. Sell the products on display to the public (refusal to sell is not permitted); and
4. When advertising, include only truthful information that does not mislead the consumer.

**Sales and Special Promotions** During periods of special promotions, such as during sales or when offering seasonal discounts, the following rules must be observed:

1. Sales can only take place at the beginning of the year and during summer;
(2) The duration and specific terms of sales promotion activities must be specified;
(3) Reduced items must indicate the former selling price and the reduced price (not applicable to items on sale for the first time);
(4) All offered items must clearly indicate whether they are offered as closeout stock, reductions, clearout stock, promotions, or gifts;
(5) Items in poor condition cannot be offered on sale;
(6) Promotional sales must only promote the sale of a particular item or the launch of a shop, and the items on sale (damaged items may not be promoted) must have better prices and advantages than under ordinary conditions;
(7) In clearance sales, it is permitted to sell damaged or obsolete items, provided that this is explicitly stated and the sale of the damaged or obsolete items does not entail a risk for the consumer;
(8) In closeout sales, the cause of the liquidation must be specified (e.g., closure of business, stock clearance, change of activity) as well as the duration and the closeout stock;
(9) Sales offering gifts may be carried out in order to increase sales by offering a free product or service or by drawing lots, pursuant to the relevant sectorial regulations; and
(10) Sellers cannot make joint offers unless the products are related, when it is common practice to sell these products in amounts exceeding a minimum, when they offer the possibility to purchase the products separately at a normal price, and when they are sets or groups of items intended for gifts or a joint presentation for esthetic purposes.

Toys

In Spain, the applicable regulations on toys are included in Royal Decree Number 880/1990 of 29 June, approving the regulations on toy safety. ¹²

A toy is defined as a product aimed at being used for play by children less than 14 years of age. The regulations are based on the fact that children’s capacities and abilities develop progressively as they play. Therefore, the primary aim of the applicable rules is to guarantee that this activity, which is considered essential for the child’s good development, is performed safely.

¹² Toys also are regulated by the general rules contained in Royal Decree Number 1801/2003 and in the General Law on the Protection of Consumers and Users.
Toys sold to consumers must not entail any risks for their health or safety, except for what is common practice and acceptable, according to the regulations, in normal and foreseeable conditions of use. Therefore, only safe toys can be placed on the market.

The level of safety of the toy must be established according to the common behavior of children. The applicable law requires that the consumer must be informed about any specific risks that the use or handling of the toy may entail, as well as their consequences and the way to prevent them, by providing the relevant instructions and directions necessary for the correct use of the toy. Once the consumer has been duly informed, he alone is to be held responsible for the appropriate use of the toy and for the prevention of any predictable risks.

There are four concepts that are essential for consumer protection regarding toys: safe products, safe use of the product, labeling, and advertisement.

**Safe Products**  
Toys must be designed so as to not entail any risk for children’s health. They must be solid and durable and not easily breakable. There is an exhaustive listing of all the requirements that toys must have in order to comply with these safety regulations — for instance, they cannot contain toxic products and electrical wires and cables must be protected.

For these reasons, toys must bear the "CE" mark (Œ), which certifies that the manufacturer of the toy has passed the necessary controls that guarantee the product’s safety.

**Safe Use**  
Notably, a toy is safe to the extent that it is intended for the right age group and for users with the appropriate capacities.

In that sense, the consumer of a toy is not only the person who buys it or requests a specific-use service for it, but also the person who uses, operates, and enjoys it without having purchased it. It is therefore relevant to establish a difference between the consumer in the legal sense and the consumer in the material sense.

The consumer in the legal sense is the person who makes the purchase of the product or hires the service, and the consumer in a material sense is the end user who uses or enjoys the product or service. However, only persons who directly buy the toy are protected by the law to exercise the rights, guarantees, and actions arising from the purchase, such as presenting a claim because the toy does not match the specified characteristics, or is defective, or has missing parts or components.
In the event of damage, any person who uses or enjoys the toy, or any person who uses it under a toy lending agreement (such as toy libraries or playgrounds) is allowed to exercise his rights as a result of a safety fault in the toy or to claim compensation for damage.

**Labeling**  
Considerations that must be taken into account in labeling toys are:

1. The information on the label must be complete, truthful, and objective and must not mislead the consumer;
2. All the specifications must be printed in a visible place on the packaging or on the label on the toy and must be legible and indelible;
3. When certain toys are not appropriate for children less than 3 years of age, this must be clearly indicated on the label;
4. All the compulsory information required under the safety regulations must be stated at least in Spanish, if Spain is the target market reported by the importer;
5. The product packaging must clearly display the full name and address of the manufacturer and the authorized distributor or the importer, together with a recommendation to keep such details, in case that they are not placed in an indelible way on the toy itself;
6. Toys must include the "CE" mark, with a font height of at least 5 millimeters, indicating that the product meets the safety requirements of the regulations in force; and
7. Instructions also must be included when they are necessary for the toy’s assembly or change of batteries, indicating that this must be done by an adult if it requires the use of tools or special abilities.

**Advertising**  
Advertisements for toys cannot mislead the consumer about their characteristics, about their safety, or about the skills and abilities that children need to use the toys without causing harm to themselves or to others.

A consumer who buys a toy that seriously fails to meet the basic rules of safety or who has suffered damage as a consequence of a defect in a toy can file a claim at the shop where it was bought, at the Consumer Affairs Offices, and also may resort to consumer arbitration, an administrative claim, or legal channels.
Insurance

In addition to the general regulations on consumer protection under the LGDCU, insurance purchase and trading is specifically regulated by the Act on Insurance Contracts, the Act on Private Insurance and Reinsurance Mediation, and Royal Decree Number 6/2004 of 29 October, approving the consolidated text of the Private Insurance Regulation and Supervision Act.

Spanish law regulates consumer protection in the insurance sector at different levels: control over the activity of insurance companies, insurance contract regulations, insurance mediation, and the public claims system.

**Control over the Activities of Insurance Companies** The Private Insurance Regulation and Supervision Act regulates the requirements and procedures to be fulfilled by insurance companies in order to carry out their activities. Control over the fulfillment of such requirements is periodically exercised by an administrative body, known as the Directorate General for Insurance and Pensions Funds, in order to guarantee that insurance companies are in compliance with the legal requirements.

This administrative authority supervises the fulfillment of financial solvency and technical and professional requirements and supervises compliance with the laws that regulate insurance contracts.

Failure to meet these requirements entails the imposition of penalties, which may even include the cancellation of the authorization to operate in Spain.

Consumer protection in the insurance sector is achieved through the supervision of insurance activities and the insurance market, exercised by the administrative authority.

**Insurance Contract Regulations** A direct way to protect consumers involves limiting the freedom of the parties to stipulate the terms of the insurance contract.

This limitation results from a wide number of provisions under the Insurance Contracts Act, the application of which is compulsory for both parties. Any insurance contract that fails to meet these provisions will be deemed invalid.

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13 Act Number 50/1980.
14 Act Number 26/2006.
The general terms and conditions cannot have detrimental implications for the insured party and must be included in the insurance contract, a copy of which must be held by the insured person. They must be written in a clear and precise manner, and clauses limiting the rights of the insured must be especially highlighted and explicitly accepted by the insured person.15

Furthermore, prior to signing the contract, an insurance policy proposal must be established, which may not bind the petitioner but which does bind the insurance company for a period of fifteen days.

The contract must be executed in writing or be recorded by any other durable means that allows storing, easy retrieval of the contents, and the unchanged reproduction of the stored information. The insured person must keep a copy of the contract. For modalities where no policy is required to be issued, the insured person must be provided with a document stating the clauses by which the contract is governed.

The insurance contract also may be executed at a distance or by electronic means, in which case the provisions related to distance contracts are applied.16

The Private Insurance Regulation and Supervision Act provides that the minimum content of an insurance contract must include:

1. The first and last names or corporate name and address of the contracting parties and the designation of the insured and of the beneficiary;
2. The type of policy;
3. Nature of the risk covered;
4. Designation of the insured objects and their location;
5. Insured amount or range of coverage;
6. Premium amount, surcharges, and taxes;
7. Due date of premium payment and the place and method of payment;
8. Duration of the contract, stating the date and time when it effectively starts and terminates; and
9. Name of the insurance mediator (or mediators), if applicable.

Insurance Mediation Another mechanism for consumer protection is the control and regulation of the activity of insurance brokers. This activity is regulated by the Act on Private Insurance and Reinsurance Mediation.

15 The General Act on Standard Terms of Sale, discussed in the subsection "Standard Terms of Sale", below, also is applicable to insurance contracts.
16 Distance contracts are discussed in the subsection "Distance Sales", below.
Concerning insurance mediation, the protection of consumers is guaranteed through the mediator’s duties: (a) the duty to advise and inform the insured prior to and during the signing of the insurance agreement; (b) the duty to advise and support the insured in case of an accident; and (c) the duty to attend to customer claims and complaints.

Public Claims System

Apart from the possibility for consumers to go before a court in order to exercise their rights against insurance companies, the Directorate General for Insurance and Pension Funds has a claims department. Companies also are required to have a customer service department.

The customer service department or insured consumer service department\(^1\) has the purpose of handling complaints or claims from the company’s customers and answering them, stating their grounds in the response.

The claims department of the Directorate General for Insurance and Pension Funds\(^2\) is competent to attend to any raised queries, claims, or complaints. It also is authorized to advise consumers on their rights and on the existing legal channels for issues related to insurance agreements and pension funds resulting from the activities of insurance companies, pension funds management companies, and insurance mediators.

The complaints and claims are resolved through a report deciding whether the company has infringed the insurance regulations and, where appropriate, whether it has complied with the principles of best practices in financial activities.

This report has an informative and non-binding character, and it makes no reference to any possible damage that may have been caused to the consumer.

Travel

Package Trips

The LGDCU regulates package trips by transposing the Package Travel Directive\(^3\) into Spanish law.

\(^1\) Regulated by Royal Decree Number 303/2004 of 20 February, approving the regulations for commissioners for the defense of financial services customers.

\(^2\) Regulated by the Act on the Financial System Reform Measures (Act Number 44/2002 of 22 November).

Under the LGDCU, a package trip entails the combination of at least two of three elements: transport, accommodation, and other tourist services not included in the transport or the accommodation and which comprise a significant part of the package trip.

These regulations contain a series of provisions for the protection of consumers, the most important of which are discussed in turn.

**Advertising**  When booking a package trip, the retailer or the organizer must provide the consumers with a written information brochure or program containing at least the minimum information about the package trip. This information must clearly and concisely present different aspects of the package trip offer, including the general conditions.

The information contained in the brochure will be binding on the organizer and the retailer, unless the changes are notified in writing before the signing of the contract and this possibility has been foreseen in the brochure.

**Contract**  The package trip contract must be executed in writing. The clauses, terms and conditions, and provisions of the contract must be specific, clear, precise, and comprehensible.

**Cancellation and Transfer**  Among other rights, the consumer has the right to cancel the services requested or contracted at any moment and to transfer the booked trip to a third party.

The contracting party or the beneficiary of the package trip can freely transfer his booking to a third person, who must meet the same requirements as the transferor regarding the package trip. The assignment must be communicated through a written request and giving fifteen days’ notice prior to the date of commencement of the trip.

Both the transferor and the transferee are held jointly responsible to the travel agency for the payment of the price of the trip and of the additional justified costs arising from the assignment.

Likewise, at any moment the user or client may choose not to take up the services requested or contracted, with the right to a refund of the amount paid to date, whether this is the full amount or a deposit. In this case, and except where cancellation is the result of *force majeure*, the client must compensate the travel agency.

Depending on the circumstances, compensation may be made for the processing fees and cancellation charges, and may include a penalty. The penalty consists of a monetary sum that varies on the basis of when the cancellation is notified in terms of the time remaining before
the commencement of the trip. The penalty may be up to a maximum amount of twenty-five per cent of the total cost of the package.

However, failure to appear at the time scheduled for departure will lead to the loss of all the money paid, unless the parties have agreed otherwise.

**Contractual Changes**  In the event that, prior to the departure date, the organizer finds itself obliged to substantially change an essential part of the contract, including the price, it must immediately inform the client. In this case, and unless the parties agree otherwise, the client may choose between terminating the contract with no penalty whatsoever or accepting a modification of the contract, which will specify the changes made and their effect on the price.

Within three days of being notified of the change by the organizer, the client must inform the organizer (the travel agency) or the retailer (who sells the package trip) about his decision. In the event that the client fails to do so, it will be understood that he has chosen to terminate the contract.

In the event that the client chooses to terminate the contract, he will be entitled, from the moment at which the contract is terminated, to the refund of all money paid or to participate in a package trip of equal or higher quality. In addition, if appropriate, the client is entitled to compensation corresponding to a breach of contract.

If the breach of contract occurs between two months and fifteen days immediately prior to the date scheduled for the trip, the compensation must be at least five per cent of the total price of the contracted trip; if it occurs between fifteen days and three days before the trip, the compensation must be at least ten per cent; and if the breach occurs within forty-eight hours of the scheduled start of the trip, the compensation must be at least twenty-five per cent of the total price.

**Cancellation of the Trip**  In the event that the organizer cancels the package trip before departure or if the bookings are not confirmed according to the terms agreed under the contract due to reasons not attributable to the client, the client also is entitled to the full refund of the amount paid for the trip.

There will be no obligation for the agency to pay compensation if the cancellation is due to the fact that the number of people who have signed up for the package trip is less than the number required and when the client is notified about this in writing prior to the deadline established to this effect in the contract. This notification must be made less than ten days prior to departure.
Liability  The organizing travel agency and the retailer that sells the package trip will be held liable toward the client for non-compliance with contractual obligations, regardless of whether they are obliged to comply with the obligations themselves or whether other service providers are to undertake the obligations.

The organizers and retailers of the package trip will be held liable for any damage suffered by the client as a result of non-compliance or inappropriate compliance with the terms of the contract. The exception is circumstances where non-fulfillment of the contract is attributable to the client or to a third party not associated with the services included in the contract or when the failure is unforeseeable or insuperable, due to force majeure or to an occurrence which the retailer (or, where applicable, the organizer) could not foresee or resolve, despite having acted diligently.

The limitation period for any actions arising from the rights recognized in the LGDCU is two years from the moment when the action could have been exercised. The client may claim compensation for breach of contract or specific performance within the limitation period.

Air Transport  The regulations governing air transport in Spain are included in the Act on Air Navigation,²⁰ the Act on Air Safety,²¹ and EC Regulation Number 261/2004.²²

Contract  The transport contract must be included in the airline ticket, which is a personal and non-transferable document that can only be used for the flight for which it was issued and for the seat or class indicated on it.

As a mandatory condition, the minimum content of the airline ticket must include information related to the place and date of issue, the name and address of the carrier, the place of departure and the destination, the passenger’s first and last names, the class and fare, the date and time of the flight, a brief summary of the route to be followed and any scheduled connections, and the flight number.

²⁰ Act Number 48/60 of 21 July, amended by Royal Decree Number 37/2001 of 19 January, which updated the amounts of compensation.
²¹ Act Number 21/2003 of 7 July.
Baggage  The carrier is obliged to transport passengers along with their baggage. The price of the airline ticket includes certain weight and size limits: twenty kilograms of luggage weight restriction for economy class and thirty kilograms weight restriction for business class. Excess baggage is subject to special conditions. Hand-baggage and any other personal objects carried by the passenger on his person are not considered baggage.

Liability  The carrier is liable for the loss, theft, or damage of the checked-in baggage.

The carrier is also liable for any damage or injuries suffered by the passenger during transportation (on board the aircraft or while entering or leaving it) and for a passenger’s bodily injury or death during transportation.

Insurance  Airlines must possess insurance coverage for passenger travel, third-party property damage, airline service aircrafts, and aircrafts subject to mortgages.

Furthermore, all airlines must provide each passenger with written instructions about the limits applying to the flight with regard to the airline’s liability in case of death or injuries or in case of destruction, loss, or damage of the checked baggage, or with regard to the airline’s liability for any damages arising from a delay.

The instructions to passengers also must contain a warning that if the baggage value is higher than that which is stated in the instructions, the company must be informed of it at the moment the passenger checks in or must be fully insured by the passenger before boarding the aircraft.

Overbooking  In case of overbooking, the carrier must first call for volunteers to surrender their confirmed reservations in exchange for benefits to be agreed between the passenger and the operating air carrier.

In addition to such benefits, the volunteer passengers must be offered the choice between: (i) reimbursement of the full cost of the ticket for the part of the journey not made (if the flight will no longer serve any purpose in relation to the original travel plan), together with a return flight to the first point of departure at the earliest opportunity; or (ii) re-routing to the final destination under comparable transport conditions at the earliest opportunity or re-routing to the final destination under comparable conditions at a later date, at the passenger’s convenience and subject to seat availability.
If these measures are not adequate, the carrier may deny boarding to certain passengers against their will. In this case, passengers denied boarding must receive an economic compensation and assistance, including:

1. Reimbursement of the full cost of the ticket, or re-routing to the final destination under comparable transport conditions at the earliest opportunity, or re-routing to the final destination under comparable conditions at a later date;
2. A meal and refreshments in reasonable relation to the waiting time;
3. Hotel accommodation, if a stay of one or more nights becomes necessary, including transport between the airport and the hotel; and
4. Two telephone calls, fax messages, or e-mails, free of charge.

The economic compensation that passengers must receive amounts to EUR 250 for flights of 1,500 kilometers or less; EUR 400 for all intra-Community flights of more than 1,500 kilometers and for all non-EU flights between 1,500 and 3,500 kilometers; and EUR 600 for flights of more than 3,500 kilometers other than within the EU.

If passengers are offered the option to be re-routed to the final destination, and provided that the delay does not exceed two, three, or four hours respectively, the carrier may reduce these compensatory amounts by fifty per cent. The compensation may be paid in cash, by bank transfer, or in the form of travel vouchers and/or other services (with the passenger’s signed consent).

**Delays**  
A flight is considered delayed in terms of scheduled departure time when that time exceeds: (a) two hours or more in flights of 1,500 kilometers or less; (b) three hours or more in case of intra-Community flights of more than 1,500 kilometers and flights other than within the EU between 1,500 and 3,500 kilometers; and (c) four hours or more in case of all flights not falling under (a) or (b).

In the event of a delay, the operating carrier must offer the following complimentary services to the delayed passengers:

1. Meals and refreshments in reasonable relation to the waiting time;
2. Hotel accommodation in cases where a stay of one or more nights becomes necessary or where a stay additional to that intended by the passenger becomes necessary;
3. Transport between the airport and the place of accommodation (hotel or other);
Two telephone calls, telex or fax messages, or e-mails; and

When the delay is at least five hours, reimbursement within seven days of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight no longer serves any purpose in relation to the passenger’s original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity.

Furthermore, passengers are entitled to receive compensation amounting to: (a) EUR 250 for all flights of 1,500 kilometers or less; (b) EUR 400 for all intra-Community flights of more than 1,500 kilometers, and for all other flights between 1500 and 3500 kilometers; and (c) EUR 600 for all flights not falling under (a) or (b).

Such compensation may be reduced by fifty per cent when passengers are offered re-routing to their final destination on an alternative flight, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked: (a) by two hours for all flights of 1,500 kilometers or less; or (b) by three hours for all intra-Community flights of more than 1,500 kilometers and for all other flights between 1,500 and 3,500 kilometers; or (c) by four hours for all flights not falling under (a) or (b).

**Flight Cancellation**  In the event that the flight is cancelled, passengers must be offered:

1. Reimbursement, within seven days, of the full cost of the ticket for the part of the journey not made when the flight no longer serves any purpose in relation to the original travel plan, together with a return flight to the first point of departure at the earliest opportunity;
2. Re-routing, under comparable transport conditions, to the final destination at the earliest opportunity; or
3. Re-routing, under comparable transport conditions, to the final destination at a later date, at the passenger’s convenience, subject to seat availability.

The carrier also must offer passengers meals and refreshments in reasonable relation to the waiting time and two telephone calls, fax messages, or e-mails, free of charge. If the passenger chooses re-routing to the final destination and the scheduled date of departure is the following day, the carrier must offer hotel accommodation, including transport between the airport and the hotel.
Passengers also have the right to compensation in case of flight cancellation, unless:

1. They are informed of the cancellation at least two weeks before the scheduled time of departure;
2. They are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival;
3. They are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival; and
4. The cancellation is caused by extraordinary circumstances that could not have been avoided.

An operating air carrier denying boarding or canceling a flight must provide each affected passenger with a written notice setting out the rules for compensation and assistance in line with Regulation Number 261/2004. It also must provide each passenger affected by a delay of at least two hours with an equivalent notice.

Sanctions  Airlines can be penalized for infringement of the regulations on fares, use of airports, scheduled flights, and published timetables, except in case of force majeure.

Irregularities in the maintenance of aircrafts, equipment, or facilities that may diminish the safety and efficiency of the service also may be penalized.

Airlines also may be penalized for denying the public free access to the use of their services without justified reasons and for issuing tickets that result in an infringement of the regulations on foreign currencies or other mandatory provisions.

Rail Transport  Rail transport is regulated by the Act on the Railway Sector (Ley del Sector Ferroviario — LSF), Royal Decree Number 2387/2004 of 30 December, EC Regulation Number 1371/2007, and

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23 Act Number 39/2003 of 17 November.
the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980. COTIF was amended by the Vilnius Protocol of 3 June 1999. All the EU Member States are parties to the COTIF and bound by its provisions, which establish the rules governing international rail freight contracts.

The purpose of the LSF is to regulate, within the scope of competence of the Spanish government, railroad infrastructures and the rendering of railroad transportation services and other additional, complementary, or auxiliary services.

Under the applicable regulations, users’ rights include:

1. Prior access to the services timetable and the related fares published by the railway company;
2. Hiring the provision of railway services from or to any of the stations where passengers are collected or set down (for which purposes railway companies may provide their services between any of the stations of the route they cover);
3. Being provided the services complying, as appropriate, with the prices according to the relevant fares;
4. Signing a transport contract with the railway company that complies with the provisions of the LGDCU;
5. Being compensated by the railway company in case of a failure to fulfill the duties imposed by the LGDCU and the provisions for its application or failure to fulfill the obligations agreed under the contract signed pursuant to the LSF; and
6. Being informed of the procedures established for the settlement of any conflict that may arise with regard to the fulfillment of the railway transport contract.

On the other hand, Regulation Number 1371/2007, which also regulates consumers’ rights, is aimed at establishing rules relating to, among other things, the information that railway companies must provide, the signing of transport contracts, ticket sales, and the liability of railway companies and their obligations concerning travel insurance for passengers and their baggage.

Regulation Number 1371/2007 specifies that the obligations imposed on railway companies cannot be limited or waived, although railway companies may offer travelers more advantageous conditions. For the regulation of specific aspects, it refers to the COTIF.

Delays According to Regulation Number 1371/2007, if is reasonable to foresee that the scheduled arrival at the final destination according
to the transport contract is delayed by more than sixty minutes, the passenger will be immediately entitled to:

1. Reimbursement of the full cost of the ticket for the part or parts of the journey not made, and the part or parts already made if they are no longer serve any purpose in relation to the original travel plan, and, where appropriate, a return service to the first point of departure at the earliest opportunity;

2. Continuation or re-routing, under comparable transport conditions, by an alternative transport service to the final destination at the earliest opportunity; and

3. Continuation or re-routing, under comparable transport conditions, by an alternative transport service to the final destination at a later date, at the passenger’s convenience.

Furthermore, in case of a delay for which passengers have not been reimbursed the ticket price, they may request compensation from the railway company for the delay, without losing the right of transport.

The minimum level of compensation is twenty-five per cent of the ticket price for a delay of 60 minutes to 119 minutes and fifty per cent of the ticket price in case of a delay of at least 120 minutes.

Passengers will not be entitled to compensation if they are informed of the delay before the purchase of the ticket or if the delay resulting from the continuance of the journey on a different service or from re-routing by an alternative transport service does not exceed sixty minutes.

In case of delays of more than sixty minutes, passengers must be offered a free meal and refreshments in a reasonable relation to the waiting time, if they can be reasonably supplied. If a stay of one or more nights becomes necessary, passengers must be offered hotel or other adequate accommodation, including transport between the station and the place of accommodation, provided that this is possible.

If the train is blocked on the track, the railway company must arrange transport from the train to the railway station, to an alternative departure point or to the final destination of the service, where and when physically possible.

**Liability for Damage**  In the event of an accident, the carrier is liable for damages arising from a passenger’s death or bodily injury (physical or mental) to a passenger if the accident was due to the functioning of the train or the railway track and takes place when the passenger is on the train or while he is boarding or leaving the train, depending on the railway infrastructure in use at the time.
However, the carrier will not be liable if the accident is caused by circumstances not related to the functioning of the train and is due to events which the carrier, despite taking the due care required by the special nature of such circumstances, could not have avoided, resulting in consequences that the carrier was unable to prevent.

The carrier also will not be liable if the accident is due to the passenger’s fault or negligence, or if the accident is caused by a third party’s behavior that the carrier, despite having acted diligently according to the particular case, could not avoid and the consequences of which it could not obviate.

In the event of a passenger’s death, the damages must cover the expenses arising from the death, especially the transportation of the body and funeral expenses, together with any other additional damages established for injuries, if the death was not immediate, and compensation for any dependents of the deceased passenger.

In the event of personal injury (physical or mental) to the passenger, damages must cover any expenses resulting from the injury, especially treatment and transport expenses, and compensation for the economic damage caused, whether for permanent disability (either total or partial) or increased physical dependency.

Furthermore, in the event of delay, the carrier is liable for loss and damage if the passenger’s journey cannot be continued the same day due to the delay, including a delay leading to a missed connection or cancellation, or if the passenger cannot reasonably be expected to continue the journey on the same day because of the circumstances.

Damages in the event of delay also include any reasonable accommodation expenses and reasonable expenses arising from informing the people awaiting the passenger.

The carrier will not be liable in respect of delays, including delays leading to a missed connection, or cancellation resulting from any of the causes established for the exemption of liability in the event of the death of or injury to a passenger.

Baggage  The carrier is liable for damages arising from the total or partial loss or damage to the baggage checked in by the passenger, from the moment the carrier takes charge of it until its delivery, as well as for delay in delivery.

The carrier is not liable for any loss or damage to baggage resulting from particular risks related to a packaging failure or defect, the special nature of the baggage, or checking in as baggage objects that are excluded from carriage by rail.
The carrier must compensate passengers in the event of total or partial loss of checked-in baggage.

If the amount of the loss or damage suffered is proved, the carrier must pay compensation equal to that proved amount, but not exceeding EUR 80 per kilogram or EUR 1,200 per item of baggage.

If the amount of the loss or damage suffered is not established, the carrier must pay liquidated damages of EUR 20 per kilogram or EUR 300 per item of baggage.

In case of damage to the checked-in baggage, the carrier must pay compensation equivalent to the loss in value of the baggage.

In case of delay in the delivery of the checked-in baggage, the carrier must pay in respect of each whole period of twenty-four hours after delivery has been requested, but subject to a maximum of fourteen days: (a) compensation equal to the amount of the loss, up to a maximum of EUR 0.80 per kilogram or EUR 14 per item of baggage that was delivered late, if the person entitled proves that loss or damage has been suffered by the delay; or (b) liquidated damages of EUR 0.14 per kilogram or EUR 2.80 per item of baggage that was delivered late, if the person entitled does not prove that loss or damage has been suffered by the delay.

Distance Sales

In today’s era of globalization, distance sales have increased significantly and now occupy a prominent position in the market.

Originally, distance sales were foreseen only in a sole section of the Spanish Civil Code (Section 1262, which is still in force), but specific rules on the subject were created over the years. Currently, such rules are included in the LGDCU and in the Retail Trade Regulation Act.25

Scope of Application    Distance sales are considered to be sales that take place between sellers and consumers within the framework of a business activity, without the simultaneous physical presence of the contracting parties. The seller’s proposal and the buyer’s acceptance are exclusively conveyed by means of distance communications of any nature, under a distance contract system organized by the seller. Therefore, all the requirements included in this definition must be met for the special regulations of the LGDCU to be applicable.

According to the applicable rules, the means of distance communication include forms, with or without a specific addressee; standardized letters; advertising in the press with an order coupon; catalogues; telephone calls, with or without human intervention, such as in the case of automatic calls or audio-to-text; radio or television, videophone, videotext, whether via a computer or a television screen; and e-mail or fax.

The special regulations foreseen for distance sales do not include:
(a) sales concluded by means of automatic vending machines or on automated commercial premises; (b) sales concluded at auctions (except when conducted electronically); (c) contracts for financial services; (d) contracts related to the construction of real property; and (e) contracts signed with telecommunication operators in relation to the use of public telephones.

**Pre-Contract Information**  The rules specifically regulate the pre-contract phase of such agreements, so that the consumer is guaranteed to be furnished with all the necessary information to execute the contract. In that sense, the LGDCU states that before starting the contract procedure and sufficiently in advance, the seller must provide the consumer, in writing, with specific information.

Among other matters, the specific information must include:

(1) The cost of distance communication when the related expense is other than the standard rate;
(2) The essential characteristics of the product or service;
(3) Delivery and shipping costs, where appropriate;
(4) The period for which the offer and price remain valid;
(5) Exceptions to the right of withdrawal in cases permitted by law;
(6) Minimum duration of the contract, where appropriate, in the case of contracts for the supply of goods and services to be performed permanently or recurrently;
(7) The terms and conditions under which the seller may provide a product of equivalent quality and price as a substitute for the product ordered by the consumer, if such possibility is envisaged;
(8) The method of payment and the arrangements for delivery or performance;
(9) Specification of whether the seller has or adheres to any out-of-court procedures for the settlement of disputes, where appropriate;
(10) The address of the seller’s premises where the consumer or user can lodge his complaints;
(11) Information related to technical assistance services or any other after-sales services and information on the applicable warranties; and
(12) Conditions for the termination of the agreement, when signing an indefinite term contract or a contract whose duration is for more than one year.

**Contract** For the execution of the contract, the seller must obtain the consumer’s explicit consent, and failure to reply to a distance sales offer may under no circumstances be regarded as acceptance.

In the event that, without such explicit acceptance, the seller supplies goods or services to the consumer that have not been ordered beforehand by him, the recipients of such articles will not be obliged to return them, nor may any claims be made for payment of the price.

When the unsolicited goods were shipped to the recipient by manifest error and not following an unsolicited delivery, the burden of proof to establish this fact rests on the seller.

**Withdrawal** According to the general regulations, the consumer may withdraw from the contract within a period of no less than seven working days, without incurring any penalty whatsoever and without providing any explanation for withdrawal. However, in the case of distance contracts, the consumer may be obliged to defray the direct cost of returning the goods or service to the seller.

On the other hand, the general regulations foresee some exceptions to the right of cancellation. Unless agreed otherwise, the right of cancellation will not be applicable to:

(1) Contracts for the supply of goods or services, when the price is dependent on fluctuations in the financial market that cannot be controlled by the seller;
(2) Contracts for the supply of goods made to the consumer’s specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to get damaged or are perishable;
(3) Contracts for the supply of audio or video recordings or computer software that have been unsealed by the consumer or user, and computer files delivered electronically that can be immediately downloaded or reproduced for permanent use;
(4) Contracts for the supply of newspapers and magazines;
(5) Contracts for the supply of services, if the performance of the contract has begun, with the consumer’s or user’s agreement,
before the period of seven working days provided for withdrawal has ended; and

(6) Lottery and gaming services contracts.

**Execution of the Order**

Regarding the execution of the order, the regulations establish that, unless the parties have agreed otherwise, the seller must execute the order within a maximum period of thirty days from the day following the consumer’s acceptance of the contract.

When a seller fails to execute the order within the thirty-day period, the consumer must be informed of this situation and must be able to obtain a refund of any sums he has paid within a period of no more than thirty days. Should the seller fail to refund the sum involved within the thirty-day term, the buyer may double the claim, without prejudice to his right to damages in excess of such sum.

If the goods or services ordered are not available, the seller may provide the consumer with goods or services of equivalent or higher quality at the same price, provided that the consumer was expressly informed of this possibility. In this case, the consumer may exercise his right of withdrawal without being obliged to defray the direct cost of returning the goods or service to the seller.

**Credit Card Payments**

Spanish regulations on distance sales also include provisions related to credit card payments, which establish that if a card used for payment is fraudulently or unduly charged for a purchase not made, the cardholder may demand immediate cancellation of the charge.

If the purchase on the card was actually made by the consumer and the demand for the refund does not ensue from the exercise of the right of withdrawal, the consumer will be liable to the seller for any damages incurred as a result of the cancellation.

**Product Testing and Safety Requirements**

Testing is not regulated as such in Spain, but there is a public agency in charge of performing tests, in addition to which companies themselves must conduct tests on their products to verify that they meet all the specified requirements. Consumer organizations also periodically perform tests on certain products.

The Research and Quality Control Center (Centro de Investigación y Control de la Calidad — CICC) is a set of laboratories that carry out analysis and trials on products on the Spanish market in order to assess
whether they comply with the technical health regulations and the quality rules governing them.

The samples for analysis collected by the CICC are provided by different bodies of the public administrations, such as the inspection services of the autonomous communities, the National Consumer Institute, arbitration boards, municipal consumer information offices and town councils, courts of justice, and other official bodies. These bodies ensure that products available to consumers meet the legally established safety requirements.

Royal Decree Number 1801/2003 regulates the safety of products that are placed on the market.

The purpose of these regulations is to guarantee that products placed on the market are safe. They are applicable to any product intended for consumers, including products offered or made available to consumers within the framework of the provision of services, for their direct consumption, operation, or use.

These regulations also apply to products that, under reasonably foreseeable conditions, may be used by the consumers, provided to them, or made available to them, either as a free gift or for good and valuable consideration within the framework of a business activity, whether new, used, or reconditioned.

These regulations do not apply to used products that are supplied as antiques or as products to be repaired or reconditioned prior to being used, provided that the supplier provides this information to the person to whom he supplies the product.

According to these regulations, a product is deemed to be safe if it complies with the applicable rules on health and safety requirements. If no regulations of mandatory application are in force for this purpose or if the regulations do not cover all the risks or risk categories of the product, in order to assess its safety — always ensuring the level of safety that consumers may reasonably expect — the following rules must be taken into account:

(1) National technical regulations that transpose non-harmonized European regulations;
(2) UNE regulations,26 which include technical specifications for an activity or product and which have been agreed to by all the involved parties;

26 UNE regulations are technical standards issued by the Spanish Association for Standardization and Certification (Asociación Española de Normalización y Certificación — AENOR).
(3) The recommendations of the European Commission that provide guidelines on product safety assessment;
(4) The codes of good practice on the safety of products in force in each sector, especially when consumers and the public administration participate in their preparation and approval; and
(5) The current state of knowledge and practice.

A product will be presumed unsafe if the product or the facilities where it is made is not authorized or has not undergone any of the necessary preventive administrative controls established for the direct purpose of protecting the health and safety of consumers and users. In particular, a product will be deemed unsafe if it has been placed on the market without the relevant and mandatory CE Declaration of Conformity, the CE mark, or any other mandatory safety mark.

A product also is considered unsafe if it does not include the basic information and details necessary to identify the producer, or if it belongs to a range, batch, or consignment of products of the same class or with the same characteristics in which an unsafe product has been detected.

The regulations impose certain duties on producers, including the general duty to place on the market only safe products. Producers also are duty-bound to use appropriate means to provide consumers or users with all relevant information relating to the product, so as to enable them to assess the risks inherent in the product throughout the normal or reasonably foreseeable period of its use, when such risks are not immediately obvious without adequate warnings.

Furthermore, if producers know or, on the basis of information in their possession, should know that a product which they have placed on the market entails a risk to the consumer that is incompatible with the general safety requirements of these regulations, they are obliged to adopt the relevant measures to prevent the risks.

Risk-preventive measures include the provision of information to consumers through (where appropriate) the publishing of special notices, the withdrawal of the products from the market, or recall of the products in question.

The regulations also refer to the duties of suppliers, who must only supply safe products, and their collaboration in the surveillance of the safety of products placed on the market.

If producers or suppliers fail to fulfill the duties imposed on them by the regulations, the competent administrative bodies may immediately adopt any measures required to re-establish or ensure consumer
health and safety. These bodies also may adopt one or several measures as may be necessary for the full effectiveness of their purpose.

If there is evidence that a product may be unsafe, measures can be adopted to temporarily prohibit the selling, offering for sale, or display of the product during the period necessary to carry out the relevant testing, verification, or quality assessment procedures or until there is enough scientific evidence of the product’s safety.

If a product is proved to be unsafe, measures can be adopted to prohibit its placement on the market and accessory measures may be necessary to ensure the enforcement of the prohibition.

If the risk may be prevented with specific modifications, precautions, or conditions before placing the product on the market, the administrative prohibition must state this. In particular, it may be stated that the product must include any relevant warning, written in a clear and understandable manner, about the risks that it may entail, at least in Spanish.

When these provisions are fulfilled, the product may be marketed, provided that the producer adds some external element to differentiate the packaging of the modified product from the product that was originally prohibited. The prohibition also may be lifted if the producer limits or restricts the use or destination of the product.

If an unsafe product has already been placed on the market, measures that may be adopted are the withdrawal of the product in question from the market and, as a last resort, the recall of the product from consumers or the safe destruction of the product.

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Advertising Claims

Applicable Laws

In Spain, advertising is regulated by the General Act on Advertising (Ley General de Publicidad — LGP)\(^27\) and by the Act on Unfair Competition (Ley de Competencia Desleal — LCD).\(^28\) The LGDCU also contains provisions on advertising targeted at consumers.

The LGP defines advertising as any form of communication made by a natural or legal person, whether public or private, in the exercise of a commercial, industrial, or professional activity or a craft, for the

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\(^{27}\) Act Number 34/1988 of 11 November.

\(^{28}\) Act Number 3/1991, as amended by Act Number 29/2009 of 30 December, which modifies the legal regulations on unfair competition and advertising in order to improve consumer protection.
purpose of directly or indirectly promoting the contracting or selling of goods, real property, services, and rights and obligations.

The recipient is the individual or legal entity at whom the advertising message is aimed or whom it reaches in any way.

**Unlawful Advertising**

According to the LGP, certain practices are considered unlawful advertising.

Advertisements that violate the dignity of persons or that are contrary to the values and rights enshrined in the Spanish Constitution are considered unlawful.

In particular, this prohibition refers to advertisements depicting women in a degrading manner, either by directly using their bodies or parts of their bodies as mere objects unrelated to the product being promoted, or by associating their image with stereotyped roles antithetical to the principles of Spanish law, thus contributing to the violence referred to in the Organic Act on Integrated Protection Measures against Gender Violence.

Advertising addressed to minors that exhorts them to purchase certain goods or services by taking advantage of their inexperience or credulity or that directly appeals to children to persuade parents or guardians to buy the advertised product for them is considered unlawful.

Advertisements may not unreasonably show children in dangerous situations. Furthermore, advertisements must not mislead the public about the characteristics of the products, or about their safety, or about the abilities and skills that children must have to use them without causing harm to themselves or to others.

Subliminal advertising, which is defined as advertising that targets sensory stimuli below an individual’s absolute threshold for conscious perception, is considered unlawful.

Advertising may not violate rules explicitly designed for the advertisement of certain products, goods, activities, or services.

Misleading advertising and unfair advertising are considered unlawful. Misleading advertising is defined as advertisements that may in any way, including by the appearance or presentation of the advertisement, mislead the public about the nature, origin, composition, quality, intended use, availability, and novelty of the products or any other elements of the products. Unfair advertising is defined as advertisements that discredit competitors or their products, or create confusion regarding competitors.
Comparative Advertising

The LGD allows comparative advertising. This is defined as advertising which, explicitly or implicitly, identifies a competitor or the goods or services offered by a competitor, provided that:

1. The goods or services compared have the same purpose or satisfy the same needs;
2. The comparison is objective and relates to essential, relevant, verifiable, and typical characteristics of the goods or services compared, among which the price also may be included;
3. In the case of products with a guarantee of origin or geographical indication, a specific guarantee, or traditional specialty guaranteed classification, comparison is only made between products with the same guarantee;
4. No goods or services that imitate or duplicate a product or service having a trade mark or trade name are advertised;
5. If the comparison refers to a special offer, the start date (if the offer has not begun) and the end date of the offer are specified; and
6. No undue advantage is taken of the reputation of a competitor’s trade mark, commercial name, or any other sign, or from the guarantee of origin or geographical indication, specific guarantees, or traditional specialty guaranteed classification held by competitor products, or of the organic production method of a competitor’s products.

Unfair Competition

Under the regulations on unfair competition in the LCD, illegal commercial practices include:

1. Commercial practices (including comparative advertising) that lead to confusion, including the risk of association with any goods or services, trade marks, commercial names, or other distinguishing business marks, provided that they are liable to affect the consumers’ financial capacity;
2. Commercial practices falsely stating that the seller or the professional adheres to a code of conduct, that a particular code of conduct has been approved by a public body or by any other type of authorization, or that a seller or a professional, their commercial practices, or a product or service has been approved, accepted, or authorized by a public or private body, or making such a statement...
without meeting the conditions required for such approval, acceptance, or authorization;

(3) Displaying a trust or quality seal without having obtained the required authorization;

(4) Enticing consumers to buy one product/service at a specific price, but then trying to persuade them to buy a different product/service, by refusing to show them the original product or service, or by refusing to take any supply orders or requests, or by refusing to supply it in a reasonable period of time, or by showing a defective sample of the promoted product or discrediting it;

(5) Clearance sales claiming that the seller is about to cease trading or move premises when it is not;

(6) Commercial practices offering a prize, without awarding the prize described or a reasonable equivalent;

(7) Describing a product as "free", as a "gift", or "without charge", or making similar claims, if the consumer or user has to pay anything other than the cost of delivery for the item;

(8) Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact there is no prize, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost;

(9) Stating or creating the impression that a product can legally be sold when it cannot;

(10) Claiming that products are able to facilitate winning in games of chance;

(11) Falsely claiming that a product is able to cure illnesses, dysfunction, or malformations;

(12) Falsely stating a product will only be available for a very limited time;

(13) Creating the false impression that after-sales service in relation to a product is available in a EU Member State other than the one in which the product is sold;

(14) Creating, directing, or promoting pyramid schemes;

(15) Advertising under the guise of being information in the media to promote a product, but where a seller has paid for the promotion and when this is not made clear;

(16) Creating the impression that the consumer cannot leave the seller’s premises (or the professional’s premises) or the place where the commercial activity takes place until a contract is concluded;

(17) Conducting personal visits to the consumer’s home, ignoring the consumer’s request to leave or not to return;
(18) Making persistent and unwanted solicitations by telephone, fax, e-mail, or similar media, except in circumstances and to the extent justified to enforce a contractual obligation;

(19) Including in an advertisement a direct encouragement to children to buy the advertised product or to persuade their parents or other adults to buy the advertised product for them; and

(20) Requiring a consumer who wishes to claim on an insurance policy — whether as the policyholder, beneficiary, or an affected third party — to produce documents which could not reasonably be considered relevant to the validity of the claim, or deliberately failing to respond to correspondence in an attempt to dissuade the consumer from pursuing his contractual rights.

Likewise, the LCD establishes that corporations, associations, trade organizations, professionals, and consumer bodies may formulate codes of conduct related to commercial practices with consumers. These codes may be voluntarily adopted by sellers and professionals. Their purpose is to increase the levels of consumer protection and ensure the collaboration of consumers’ organizations in formulating codes of conduct.

**Consumer Actions**

A consumer who experiences an act of unlawful advertising or unfair competition may bring an action before ordinary courts within one year. This one-year period is counted from the time the action becomes exercisable and the consumer becomes aware of the person who committed the violation, subject to a prescription period of three years.

Consumer actions include:

(1) Action for a declarative judgment of an unfair practice having occurred;

(2) Action to cease the unfair practice or to prohibit the reiteration of unfair practices in the future (the latter being exercisable even if the unfair practices have not yet occurred);

(3) Action to end the effects caused by the unfair practice;

(4) Action for the correction of misleading, inaccurate, or false information; and

(5) Action for compensation for any loss or damage arising from the unfair practice in case of bad faith or willful misconduct, if the defendant is declared guilty.
Standard Terms (Adhesive Contracts)

In General

Most contracts signed by consumers are adhesive contracts, where the consumer only expresses his consent to the clauses of the contract. This means that, in a way, the contract clauses are imposed on the consumer by the seller, which entails an imbalance between the parties to the contract.

The importance that these modes of mass contracting have acquired in the market has led to their being specifically regulated. Currently, these regulations are included in the LGDCU and in the Act on the Standard Terms of Sale (Ley de Condiciones Generales de la Contratación — LCGC), which transposes the Unfair Contract Terms Directive into Spanish law.

The regulations included in the LGDCU refer to non-individually negotiated clauses and to unfair clauses, while the LCGC refers to the standard terms of sale. Both sets of provisions are instruments used in the framework of mass contracts and they are characterized by their pre-existence.

However, while the standard terms of sale tend to apply to a plurality of contracts, non-individually negotiated clauses are not necessarily imposed on all contracts in the same sector of economy or for the same activity.

Another difference between both regulations is that the LCGC applies to contracts regardless of whether or not consumers are involved, provided that one party imposes such regulations and applies them to a plurality of contracts, while the LGDCU only applies to contracts with consumers.

Standard Terms of Sale

The scope of the LGCG does not include: (a) administrative contracts; (b) employment contracts; (c) contracts for incorporation of companies; (d) contracts on family relations and property transfer; (e) standard terms provided by the provisions or principles of international conventions; and (f) terms that are specifically regulated by

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29 Act Number 7/1998 of 13 April.
legal or administrative provisions of a general character and which are mandatory for the contracting parties.

The LGCG defines standard terms as pre-existing clauses whose incorporation into the contract is imposed by one of the parties, regardless of their material author, their appearance, their length, and any other circumstances, and which have been written for the purpose of being incorporated into a plurality of contracts.

The regulations establish that standard clauses must meet the criteria of transparency, clarity, specificity, and simplicity.

Furthermore, special rules are established for the interpretation of contracts with standard clauses. The general rules foreseen in the Spanish Civil Code also are applicable; if the standard clauses and the specific clauses of a contract are inconsistent, the latter will prevail, unless the standard clauses are more beneficial for the consumer than the specific ones. In addition, any doubts in relation to the interpretation of standard clauses must be resolved in favor of the consumer.

For the standard clauses to be validly incorporated into a contract, three requirements must be fulfilled.

First, the standard clauses may be incorporated into a written contract only when the terms are accepted by the consumer and the contract is signed by all the parties. The contract must mention the incorporated standard terms. Therefore, the acceptance of the standard terms incorporated into the contract will not be deemed to have occurred when the proposing party has not explicitly informed the consumer of their existence or has not furnished him with a copy of such terms.

Second, if the contract does not need to be executed in writing, the proposing party must provide the consumer with written proof of the consideration received and need only display the standard terms and conditions in a visible place at the premises where the contract is executed or include them in the documents produced as a result of the execution. It also is permitted that the seller ensures, by any other means, that the consumer is made aware of the existence and contents of the standard terms at the time the contract is concluded.

Third, contracts executed by telephone or e-contracts must include the acceptance of all the clauses of the contract, without the need for a conventional signature. In this case, written proof of the executed contract must be sent to consumer, which must include all the terms that apply to him.

Standard terms that will not be deemed to be incorporated into the contract are: (a) terms that have not been adequately disclosed or
brought to the consumer’s notice at the time of execution of the contract, or if these terms have not been signed (if relevant); and (b) terms that are illegible, ambiguous, obscure, or incomprehensible, unless comprehensible terms have been explicitly accepted in writing by the consumer and meet the specific regulations governing the necessary clarity of the clauses included in the contract.

If any of the provisions of the LGCG or of any other act are infringed, the LGCG states that the standard terms which do not meet the requirements will be declared null and void by law.

In any case, unfair standard terms will be declared null and void when the contract has been signed with a consumer, with reference to the LGDCU, which provides a list of the clauses that are deemed unfair.31

Notably, the fact that the standard terms are declared null and void does not entail the full nullity of the contract in those cases where the contract can remain in force without the null and void clauses.

The LGCG establishes the creation of a public Standard Terms Register, where the standard terms of sale can be entered according to the provisions of the LGCG, unless otherwise stated for specific sectors.

The Standard Terms Register also may contain ordinary claims and final court decisions on annulment or declaration of non-incorporation of standard terms; collective petitions for and declarative judgments concerning cessation of use and retraction of standard terms; and judicial decisions ordering the preventive suspension of the validity of a standard term.

Non-Individually Negotiated Terms

A clause has not been individually negotiated when it has been previously written and the consumer has not had any influence on its content. The regulation of such clauses is included in the LGDCU; the LCGC does not apply to such clauses.

The LGDCU establishes that consumer contracts that contain non-individually negotiated clauses must meet certain requirements. These requirements are: (a) precise, clear, simple, and easily understandable language in the drafting, without referring to texts or documents which are not provided before or at the time of conclusion of the contract (and which must, in any case, be explicitly mentioned

31 Discussed in the following subsection.
in the contract); (b) accessibility and readability, so that the consumer or user is made aware of the existence and contents of the contract before its execution; and (c) good faith and a fair balance between the rights and duties of the parties, thereby excluding the use of unfair clauses.

The fulfillment of these requirements prevents the inclusion in contracts of clauses considered to be unfair. Under the LGDCU, unfair clauses are defined as those stipulations that are not individually negotiated and those practices not explicitly consented to and which — contrary to good faith requirements and to the detriment of the consumer or user — cause a significant imbalance between the rights and duties of the parties to the contract.

The regulations include a non-exhaustive list of the clauses that are considered to be unfair. These are clauses that link the contract to the seller’s will, limit the consumer’s or user’s rights, establish a lack of reciprocity in the contract conditions, impose disproportionate guarantees on consumers or are disproportionate in relation to contract execution, and clauses that violate the rules on unfair competition and the applicable law. Each of these is discussed in turn.

Unfair clauses that link the contract to the seller’s will include fixing dates and periods which are not clearly defined; limiting the rights of the consumer to express his will in relation to extension of the contract; and reserving the right of unilateral interpretation or alteration of the contract in favor of the seller.

Such unfair clauses also include, among others, authorizing the seller to cancel the contract at his discretion, when the consumer does not have the same option; stating that the consumer or user is bound to the contract unconditionally, even though the seller does not fulfill his obligations; imposing on the consumer a disproportionately high compensation for breach of contract; and establishing terms that entirely depend on the seller’s will or which authorize the seller to change the price.

Clauses are considered unfair when they limit the rights of the consumer or user by limiting or depriving those rights that have been acknowledged by general law, or when they exclude the seller’s liability.

Clauses that establish a lack of reciprocity in the contract are considered unfair. Lack of reciprocity may be established by imposing unequal obligations on the parties; by imposing obligations on the consumer, even though the seller has not fulfilled his obligations; by establishing the payment for products or services not effectively used or consumed; or by granting to the seller the right to unilaterally
execute penalty clauses that have been fixed by the contract or by establishing compensations that do not reflect the actual damage suffered.

Also deemed unfair are clauses that impose on consumers and users disproportionate guarantees or unduly impose on them the burden of proof of the seller’s breach of contract.

Unfair clauses that are disproportionate in relation to the execution of the contract include the adhesion of the consumers to clauses which they have not been made aware of before signing the contract; the imposition of additional goods or services which have not been requested; and the imposition of credit terms which exceed the legal limits.\(^{32}\)

Finally, clauses that infringe the provisions on unfair competition and the applicable law, or any forms of arbitration different from consumer arbitration, are deemed unfair.

The clauses that do not meet the legal requirements will be declared null and void and will not be applicable. The contract will only be declared invalid when the remaining clauses lead to an unfair situation that cannot be corrected, to the detriment of any of the parties.

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**Pricing**

**Price Information**

This subject is governed by Royal Decree Number 3423/2000 of 15 December, which regulates the indication of the prices offered to consumers. These regulations incorporate Directive 98/6/EC\(^{33}\) into the Spanish legal system.

The purpose of providing price information is to regulate the indication of the selling prices and the unit prices of the products offered by sellers to consumers, so as to improve consumer information and facilitate price comparisons. Notably, these regulations do not apply to products supplied as a result of the rendering of services, public auction sales, antiques, and art works; nor do they apply to medicines, which are governed by sector-specific regulations.\(^{34}\)

The regulations establish the obligation to indicate the selling price on all products offered by sellers to consumers. The selling price is

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\(^{32}\) Further discussed in the section "Consumer Credit", below.


\(^{34}\) Discussed in the subsection "Medicines and Health Products", above.
defined as the final price for a unit of the product or a specific amount of the product, including VAT and other applicable taxes.

The regulations also establish the obligation to indicate, for each product category, the price per unit of the standard measure used (e.g., one kilogram, one liter, one square meter) or a different product unit or, with respect to specified products, the amount as stated in the regulations. Products sold in terms of units or parts must refer to the unit measure.

Both the selling price and the unit price must be unambiguous, easily identifiable, clearly legible, and placed so as to be visible without the consumer having to search for this information.

**Residual Controls against Extortionate Prices**

Usury is governed by the old Act on Suppression of Usury.\(^{35}\) This Act provides for the nullity and voidance of loan contracts establishing an interest that is substantially greater than what is usual for money and totally out of proportion with the particular circumstances of the case.

The Act on Suppression of Usury also stipulates the nullity and voidability of loan contracts establishing terms that render the interest to be excessive and when there are reasons to think that the borrower may have accepted the onerous conditions due to his distressing situation or due to his inexperience or limited mental faculties.

Once nullity of the contract has been declared according to the provisions of the law, the borrower must pay to the lender only the amount received; and in the event that the borrower has already paid part of it and the interests due, the lender must reimburse the borrower, taking into account the total amount received that is in excess of the amount of the loan.

The Act on Suppression of Usury, despite its obsolescence, is currently applicable in order to declare the nullity and voidance of loans and mortgages, especially for companies that grant the so-called "fast loans" in those cases where the interests are blatantly disproportionate.

**Competition Law**

One of the elements promoting a healthy market economy is the existence of effective competition between companies. Effective competition results in higher productive efficiency that benefits consumers with lower prices or a larger number, wider range, and higher quality of

\(^{35}\) Act of 23 July 1908.
products, with the subsequent increase of society’s welfare as a whole, as guaranteed in the Spanish Constitution. Therefore, the regulations on the protection of competition are closely related to the pricing of products offered to consumers, as far as they emerge in a market where free competition is ensured.

The protection of competition in Spain is governed by the Act on the Protection of Competition (Ley de Defensa de la Competencia — LDC),\(^{36}\) which follows the principles of the European regulations on this matter.

These regulations refer to specific practices related to price fixing which, should they occur, are understood as agreements contrary to the principle of free competition and therefore detrimental to consumers, whose freedom of choice in the market is reduced.

In order to ensure free competition, the LDC prohibits any agreement, decision, or collective recommendation or any concerted or consciously parallel practice that has, as its object or effect, the prevention, restriction, or distortion of competition in all or part of the Spanish market and, in particular, those practices that directly or indirectly fix prices or any other commercial or service terms.

The LDC also prohibits the abuse, by one or more companies, of a dominant position in the domestic market or in a substantial part of it. It lists, as a specific form of abuse, the direct or indirect imposition of prices or other unfair commercial or service conditions.

Furthermore, and despite the purpose of the LDC to improve product prices for consumers, the regulations also prohibit predatory pricing — a practice which involves selling a product at a very low price when a new competitor enters the market as a strategy to drive away the competitor.

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**Consumer Credit**

**Applicable Law**

The regulations on consumer credit and installment sales are included in the Act on Consumer Credit (Ley de Consumidores Credite — LCC)\(^ {37}\) and in the Act on Personal Property Installment Sales (Ley de Ventas a Plazos de Bienes Muebles — LVPBM).\(^ {38}\)

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\(^{36}\) Act Number 15/2007 of 3 July.

\(^{37}\) Act Number 7/1995 of 23 March.

\(^{38}\) Act Number 28/1998 of 13 July.
The LCC incorporates into the Spanish legal system the Consumer Credit Directive, as amended.

**Consumer Credit Act**

The LCC applies to contracts by which a natural or legal person, in the exercise of its activity, profession, or job, grants or commits itself to granting a consumer a line of credit in the form of a delayed payment, a loan, or any other similar credit instrument, in order to satisfy his personal needs, regardless of his business or professional activities. In this context, the term "consumer" means a natural person who acts for purposes not related to his business or professional activity.

The LCC applies to credit contracts involving amounts of more than EUR 150. Credit contracts involving amounts of more than EUR 20,000 are governed by Chapter III of the LCC.

The LCC does not apply to: (a) contracts where it is agreed that the consumer repays the credit, either in a single installment within a period of no more than three months, or in a maximum of four installments within a period of no more than twelve months; (b) current account credits granted by a credit institution, which do not include credit card accounts; and (c) free-of-charge credit contracts or contracts where, without an interest rate being specified, the consumer is bound to repay in a single installment a specific amount that exceeds the amount of the credit granted.

Content and Form of Credit Contracts

All credit contracts must be evidenced in writing and reproduced in as many copies as the contracting parties involved. In addition to the essential terms, credit contracts must include other specific details.

The credit contract must state the annual equivalent rate of interest and the conditions under which the annual rate of interest may be amended. When it is not possible to state this rate, the contract must at least specify the annual nominal rate of interest, the applicable charges.

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from the moment of execution of the contract, and the conditions under which they may be amended.

The credit contract also must include the amount, the number of payments, the frequency or the dates of the payments to be made by the consumer for the repayment of the credit and the payment of the interests and any other expenses, and (when possible) the total amount of such payments.

In case of omission, the consumer will only be required to make immediate payment of the amount or to pay the value of the credit in the agreed installments. In case of omission or inaccuracy in determining the periods, the consumer’s payment cannot be required before the expiration of the contract.

Finally, the consumer credit contract must include the list of the elements that make up the total amount of the credit granted, except for those related to the performance of the contractual duties. The contract must specify which of the elements are included in the annual equivalent rate of interest and the necessity of contracting (when appropriate) a loan repayment insurance policy to cover the eventuality of the holder’s death, disability, illness, or unemployment.

In case of omission, the consumer will not be required to pay any other costs not specified in the contract or establish or renew any security or guarantee.

If the credit contract is not executed in writing, it will be declared null and void.

The LCC establishes the right of consumers to repay the granted loan in advance, whether totally or partially, at any moment during the validity of the contract.

The LCC also specifies that the effectiveness of consumer contracts which explicitly stipulate that the transaction is conditioned on the granting of a financial credit will be subject to the effective execution of such credit. Any covenant in the contract which states that the consumer is required to pay in cash (or through any other method of payment) if the expected financial credit is not obtained will be null and void.

Credit Cost

The LCC defines the total cost of credit, such as interests and any other expenses and charges that the consumer is obliged to pay for the granting of credit. The total cost of credit includes the cost of the loan repayment insurance on account of death, disability, illness, or
unemployment of the holder, which is required by the seller as a condition for granting credit. It also includes the annual rate of interest equivalent to the total cost of credit expressed as an annual percentage of the amount of the credit granted.

The LCC establishes rules related to any modification of the total cost of credit. These rules specify that the total cost may not be changed to the detriment of the consumer, unless this event is foreseen in the written contract. Additional conditions in this context require that the increase or decrease in the cost of credit should be adjusted in accordance with an objective reference index and that the agreement executed by the parties should contain at least three elements.

These elements are: (a) the rights assigned to the parties under the contract with regard to any change in the total cost of credit initially agreed and the procedure to be followed to effect such change; (b) the differential applicable, if relevant, to the reference index used to determine the new cost; and (c) the identification of the benchmark used or, failing that, a clear definition of it and of the procedure followed to calculate it.

Any details that may serve as a basis for the index must be included in the agreement according to an objective procedure.

Advertising

The LCC stipulates that any advertisement or any offer which is displayed at business premises, in which a credit or mediation for the execution of a credit contract are offered, provided that the rate of interest or any figures relating to the cost of credit are indicated, also must include a statement of the annual rate of interest, through a representative example.

Nullity and Penalties

The LCC declares null and void any covenants, clauses, and terms that are contrary to its provisions. In a clear attempt to benefit the consumer as the weaker contracting party, the LCC appoints any district judge of a court located at the consumer’s domicile as competent to resolve any disputes in this regard.

A seller that fails to fulfill the provisions of the LCC will be penalized for committing an infringement of the law.

Furthermore, the National Consumer Institute, consumer organizations, and the Tax Ministry may file a petition for an injunction aimed
at obtaining an order instructing the seller to cease the infringing activity and to prohibit the reiteration of such conduct in the future.

**Personal Property Installment Sales Act**

The provisions of the LVPBM are aimed at governing installment sales contracts for the sale of non-consumable and identifiable personal property, loan contracts aimed at facilitating their purchase, and the guarantees constituted to ensure the fulfillment of the duties arising from such contracts.

Identifiable property means any product that carries a brand name and serial number or manufacturing number indelibly and inseparably in one or several of its main parts, or which has any distinguishing characteristic that reasonably prevents its confusion with other goods.

The LVPBM defines an installment sales contract as a contract under which one of the parties sells a tangible personal property to the other, obligating the purchaser to pay a determined price totally or partially in installments and in a period of time of no less than three months from the date of contract execution.

Regarding financing loan contracts for installment sales, the regulations distinguish between contracts for seller financing loans and buyer financing contracts.

Seller financing loan contracts are: (a) those by which the seller assigns or transfers to a financial entity the loan agreed with the buyer arising from a contract for sale by installments, with or without reservation of ownership; or (b) those by which the seller and a financing entity enter into an agreement to enable the purchase of the property by the buyer for the payment of the purchase price in a period of no less than three months.

Buyer financing loan contracts are those involving the seller and buyer, stipulating that the sale is subject to the LVPBM. Under this contract, a third party provides the buyer with the cost of purchase of the property (with reference to the LVPBM), reserving the agreed guarantees. The buyer is obliged to repay the amount of the loan granted in one or several installments over a period no less than three months.

**Content and Form of Credit Contracts**

The LVPBM requires a credit contract to be executed in writing, and its effectiveness is subject to the execution of the credit in those cases where
it is explicitly stated that the transaction entails the granting of a financing credit. The minimum contents to be included in the contract are:

1. Place and date of the contract;
2. The first and last names (or the corporate name) and the addresses of the parties and, in financing contracts, the name of the financing entity and its address, along with the NIF of the contracting parties;
3. The description of the object being sold, with the specifications necessary to enable its identification;
4. Sale price in cash, the amount of the initial payment, the part of the payment that is delayed, and (where appropriate) the part financed by a third party (including the loan capital in financing contracts);
5. In case of transactions with a fixed or variable interest rate, specification of the amount, number, frequency, and dates of the payments to be made by the buyer for the repayment of the credit and the payment of the interests and any other expenses, as well as the total amount of such payments, when this is possible;
6. The nominal rate of interest and, in the case of transactions agreed at a variable rate of interest, the procedure followed to determine such rate;
7. The indication of the annual equivalent rate of interest, and the procedures to be followed to make any changes to it;
8. The list of the elements that make up the total amount of credit granted;
9. When agreed to by the parties, the assignment of the seller’s rights to the buyer, transferred to a third party, and the first and last name or corporate name and address of the third party, or the reservation of the right to assign to an unspecified person, if it is so agreed;
10. A reservation of ownership clause, if it is so agreed, and the right to assign it, or any other guarantee foreseen and governed by law;
11. The prohibition to transfer or to carry out any other act of disposal with respect to the subject of the contract as long as the total amount of the price has not been paid or the loan has not been repaid, without the written authorization of the seller or, where relevant, of the financing entity;
12. The place stipulated by the parties for purposes of receiving notifications or, if it is not stated, the usual address of each of the contracting parties where notifications, citations, and
summons may be received (including an address for the verification of the payments);

(13) The valuation of the goods, to serve as a basis for their auction in case they have to be sold as a result of non-payment by the consumer; and

(14) The consumer’s right to withdraw from the contract within a period of seven working days after the delivery of the goods, under certain conditions.

Regarding the consumer’s right of withdrawal, the conditions are that the consumer: (i) has not used the sold goods, except solely for purposes of examining or testing; (ii) returns the goods within a period of seven days, in the place, form, and condition in which he received it, without the seller having to bear the expense of return of goods; (iii) proceeds, if it is so agreed, to compensate the seller under the terms agreed in the contract, for the eventual depreciation of the commercial goods (the compensation may not exceed twenty per cent of the sale price in cash); and (iv) reimburses the granted loan under the agreed terms in case of withdrawal.

Nullity and Breach of Contract

Any covenants, clauses, and terms that are contrary to the LVPBM or are aimed at avoiding the enforcement of its provisions will be considered null and void.

If there is a delay in the payment by the buyer of two installments or the last one, the seller may request the payment of any pending amounts or the termination of the contract.

Recognition of Professional Qualifications

In EU Member States, regulated professions can only be accessed and pursued by individuals with specific professional qualifications. In order to prevent such regulation from becoming an obstacle to the free movement of professionals, the Professional Qualifications Directive 89/48/EEC\(^4\) covers the mutual recognition of qualifications in recognized professions that require a University degree or its equivalent.

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The Professional Qualifications Directive was incorporated into the Spanish legal system through Royal Decree Number 1665/1991 of 25 October. Royal Decree Number 1665/1991 applies to, *inter alia*, a regulated profession or activity or range of activities, the access to which or the pursuit of which directly or indirectly requires the possession of a qualification or degree and which is recognized as a profession in an EU Member State. Annex I of the Royal Decree lists the professions that are regulated in Spain.

In Spain, regulated activities are currently established in Royal Decree Number 1837/2008 of 8 November regarding the recognition of professional qualifications and certain aspects of the exercise of the legal profession, which incorporates into the Spanish legal system the new Professional Qualifications Directive\(^\text{42}\) and Council Directive 2006/100/EC.\(^\text{43}\)

The new Professional Qualifications Directive and Royal Decree Number 1837/2008 were proposed with two primary aims.

On the one hand, the objective was to consolidate all the Community regulations concerning the recognition of professional qualifications into a single text, ending the previous dispersion of regulations.

On the other hand, even though the essential foundations of the former systems are maintained, including the difference between a general system and a recognition based on the coordination of the minimum conditions of training, the new Directive incorporates important new elements and principles established by the case law of the European Court of Justice (ECJ).

The purpose of Royal Decree Number 1837/2008 is to establish the regulations to allow access to and pursuit of a regulated profession in Spain through the recognition of the professional qualifications acquired in any of the EU Member States and which allow the holder of such qualification to pursue the same profession in Spain.

Annex VIII to Royal Decree Number 1837/2008 contains a list of professions and activities for the purposes of the application of the qualification recognition system that it regulates.

The regulations apply to the citizens of EU Member States, including members of liberal professions, whether self-employed or employed, who intend to pursue a profession regulated in Spain through the

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recognition of their professional qualifications obtained in another Member State or in other Member States. The recognition of professional qualifications by the competent Spanish authority enables the holder of the qualification to pursue in Spain a profession for which he is qualified in the Member State of origin and to exercise it with the same rights that are enjoyed by Spanish citizens.

A regulated profession is defined as the professional activity or group of activities the access to which or the pursuit of which directly or indirectly requires the possession of specific professional qualifications, under legal, regulatory, or administrative provisions.

A professional qualification means the capacity for access to a particular profession or to the pursuit of it, which is officially accredited by a qualification, degree, or diploma certificate, by the relevant evidence of a completion certificate, by proven professional experience, or by the occurrence of more than one of these circumstances.

Likewise, the regulations establish that the competent Spanish authority must authorize the access to and allow the pursuit of a regulated profession when the access is subject to the possession of a qualification that involves higher education or university studies lasting a minimum of four years and the applicant is in possession of a qualification certificate.

Several other legislative measures contain provisions governing the regulation of professional activities in Spain.

The Act on Tax, Administrative, and Social Measures\textsuperscript{44} links the practice of the profession of enologist to a degree in enology.

The Act on Town Planning and Development\textsuperscript{45} regulates, among other professional designations, those of project designer, technical project manager, work execution manager, and site health and safety coordinator, which are linked to degrees in architecture, architectural technician, engineer, and technical engineer.

The Act on Health Professions\textsuperscript{46} regulates the professions that require qualifications as Bachelor of Medicine, Bachelor of Pharmacy, Bachelor of Dentistry, and Bachelor of Veterinary Medicine, specialists in health sciences, and graduate nurses, physiotherapists, occupational therapists, opticians, speech therapists, and graduates in human nutrition and dietetics.

The Organic Law on Education requires that a secondary school teacher must have a bachelor’s degree, an engineering degree, or an

\textsuperscript{44} Act Number 50/1998 of 30 December.
\textsuperscript{45} Act Number 38/1999 of 5 November.
\textsuperscript{46} Act Number 44/2003 of 21 November.
architecture degree, or the equivalent graduate/specialist qualification, apart from the postgraduate certificate in education (masters course). The Organic Law also regulates the professions of primary and nursery school teachers, which require the relevant specialist qualification or equivalent.

The Act on Access to the Professions of Lawyer and Solicitor\textsuperscript{47} regulates the professional activities of these legal professionals.

**Quality Denominations for Product Classes**

The EU has created four quality logos applicable to certain products: denominations of protected geographical indications (\textit{Indicación Geográfica Protegida} or the IGP logo), denominations of origin (\textit{Denominación de Origen Protegida} or the DOP logo), denominations of traditional specialty guaranteed (\textit{Especialidades Tradicionales Garantizadas} or the ETG logo), and the denomination of organic agriculture production (\textit{Producción Agricultura Ecológica} or the PAE logo).

The IGP logo on a product signifies that it possesses a specific characteristic or reputation that associates it with a particular area, where at least one phase of the production, processing, and preparation procedure takes place. The IGP logo refers to an area or a specific place (or, in exceptional cases, to the name of a country) that is used as a description of an agricultural or food product.

The IGP logo is governed by EC Regulation Number 510/2006.\textsuperscript{48}

According to this Regulation, a product that bears an IGP mark such as the name of an area, of a particular place, or, in exceptional cases, of a country, is used to designate an agricultural or food product: (a) that comes from that area, particular place, or country; (b) that possesses a particular quality, reputation, or other characteristic which can be related to that geographical origin; and (c) that is produced, processed, or prepared within the delimited geographical area.

In other words, to receive the IGP status, the entire product line must be traditionally and at least partially manufactured (prepared, processed, or produced) within the specific region and thus acquires unique properties.

\textsuperscript{47} Act Number 34/2006 of 30 October

A product that bears the DOP logo has proven and unique characteristics that are only possible due to the natural environment and to the skills of the producers in the associated area of production.

In order to be entitled to a DOP logo, the product must not only have the qualities and characteristics essentially resulting from the region where it is produced, but also must be produced, processed, and prepared exclusively in that region. In other words, to receive the DOP denomination, all products must be made in a traditional way and totally manufactured (produced, prepared, and processed) within the specific area and must possess properties unique to that area.

The DOP logo also is governed by Regulation Number 510/2006. According to the Regulation, a product that bears a DOP logo, such as the name of an area, a particular place or, in exceptional cases, of a country, is used to designate an agricultural or food product: (a) that comes from that area, particular place, or country; (b) that has qualities and characteristics that are fundamentally or exclusively due to the geographical environment and its natural and human factors; and (c) that is produced, processed, or prepared within the delimited geographical area.

The ETG logo is intended for products that have distinctive characteristics and that are either made of traditional ingredients or have been manufactured according to traditional methods.

The PAE logo means that the food product has been produced according to approved ecological organic methods that respect the environment and meet the strict requirements of cattle production.

Although these logos are generally applied, some EU countries such as Spain have regulated and created their own quality seals, particularly the "guarantee of origin" seal. Some of the autonomous communities also have created their own seals.

The guarantee of origin grants the consumer a level of quality that is more or less constant and has specific characteristics. In exchange, the producers obtain legal protection against the production, preparation, or processing of those products in other areas where the same ingredients and procedures are used, which enables them to positively influence their final price.

It also has been remarked that a quality logo promotes the organization of the productive sector and facilitates the access of producers to national and international markets. Today, approximately 600 Spanish food products such as cheeses, various types of meat, fruits and vegetables, and oils, bear an IGP, DOP, or ETG logo.

All the producers and processors of agricultural and farm foods are qualified to file an application before the relevant authorities to
register the specific characteristics of the relevant agricultural or food product. If they also apply for reservation of name, this name may only be used by the producers that meet the legally mandated characteristics. If the reservation of name is not requested, the name in question may be of free use, but the producers who fulfill the established terms and conditions may use the term "Guaranteed Traditional Specialty" on their labeling, with the corresponding symbol designed for that purpose.

Most guarantees of origin in Spain are focused on wine and olive oil.

**Implementing Consumer Rights**

**Claim Procedures**

When a problem with the purchased product is detected, it is possible to contact the shop itself or the manufacturer. In the case of door-to-door or distance sales, it is advisable to write to the address that must be provided for any claims and which is normally that of the manufacturer or its sales agent in the EU.

If the problem cannot be resolved in this manner, the consumer must be informed about the procedure to be followed or file the relevant claim with the regional consumer body or at any of the provincial offices, at the Municipal Consumer Information Offices (*Oficina Municipal d’Informació al Consumidor* — OMIC) or through consumer organizations.49

If no result is obtained, the consumer has recourse to three procedures: consumer arbitration, administrative claims, and legal proceedings.

**Consumer Arbitration**

The consumer arbitration system is an instrument that the public administrations offer to citizens in order to effectively resolve the conflicts and claims arising from consumer relationships, given that consumer protection requires that consumers be provided with the appropriate mechanisms to resolve their claims.

The basic regulations governing the consumer arbitration system are contained in Sections 57 and 58 of Royal Decree Number 1/2007

49 Discussed in the subsection "Administrative Bodies and Public Law Structure", above.
of 16 November approving the LGDCU and in Royal Decree Number 231/2008 of 15 February, which regulates the consumer arbitration system.

For areas that are not governed by these statutes, the applicable provisions are those of the Act on Arbitration.\textsuperscript{50} For electronic arbitration and acts executed by electronic means, the applicable provisions are those of the Act on Electronic Access by Citizens to Public Services.\textsuperscript{51}

In cases not provided for by these legislative measures, the activities of the consumer arbitration boards and administrative bodies responsible for arbitration are governed by Royal Decree Number 231/2008 of 15 February and by the Act on the Legal System of Public Administration and Common Administrative Procedure.\textsuperscript{52}

The consumer arbitration system is defined as an out-of-court procedure to resolve conflicts between consumers and sellers. This procedure has no special formalities and has a binding and executive character for both parties. It is the means by which consumer claims are resolved, as long as the dispute is not related to poisoning, injuries, or death and there is no reasonable evidence of an offense having been committed.

Through the consumer arbitration system, the parties voluntarily turn to an arbitration body, which acts with impartiality, independence, and confidentiality, deciding on the dispute or conflict between the parties. The decision, binding for both parties, has the same validity as a court judgment.

The application for arbitration is filed, personally or through the relevant consumer organization, before the relevant consumer arbitration board, depending on the domicile of the consumer. The arbitration board is made up of an arbitrator representing the consumers, an arbitrator representing the involved business sector, and a chairman, appointed by the administrative body of that particular business sector.

Once the proceeding is opened, the parties are summoned for a hearing, after which the arbitration board will issue a decision.

During the arbitration proceeding, the board will hear the parties, request the submission of evidence, if necessary, and issue an arbitral award. The written award is executive and must be obligatorily obeyed by both parties within the period fixed in the award. If the award is not complied with, enforcement may be requested before a court of

\textsuperscript{50} Act Number 60/2003 of 23 December.
\textsuperscript{51} Act Number 11/2007 of 22 June.
\textsuperscript{52} Act Number 30/1992 of 26 November.
first instance. The award has the same value as a court judgment and prevents access to other claim procedures.

Administrative Claims

The consumer can turn to the competent administrative body for consumer protection in order to file a claim against the offender, against whom disciplinary proceedings may be initiated. The consumer also may turn to any of the OMIC offices (located in town halls), to any provincial consumer bodies, or to the regional bodies.\(^{53}\)

The administrative body inspects and imposes fines on manufacturers who fail to comply with the regulations on consumer protection, but it does not establish any compensation for loss or damage suffered by the consumer as a result of the effect of a product. For an administrative claim, a written claim must be submitted either personally or through the relevant OMIC office.

Legal Proceedings

A consumer who suffers damage may turn to civil or criminal law by submitting the relevant claim before a civil or criminal court, depending on the case against the manufacturer or supplier of the defective product, in order to claim compensation for loss and damage.

In this case, there is a special regime for civil liability arising from defective products, which enables the claimant to exercise the action within a period of three years from the time the consumer suffered the damage. Liability claims will be barred ten years after the time the product was placed in circulation.

Class Actions

Class actions are recognized in the Civil Procedure Act (\textit{Ley de Enjuiciamiento Civil} — LEC).\(^{54}\) The LEC provides a mechanism for consumers to file a collective claim for loss and damage caused by a particular product or service.

Article 15 of the LEC regulates the possible involvement of individual consumers affected in proceedings brought by the authorized

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\(^{53}\) Discussed in the subsection "Administrative Bodies and Public Law Structure", above.

\(^{54}\) Act Number 1/2000 of 7 January.
bodies (that are regulated in Article 11 of the LEC) and the ways in which such proceedings can be initiated.

The filing of class action suits involves two premises: first, to determine the person or persons who are authorized to bring such actions; second, to determine the loss or damage for which they seek recovery through such actions.

Article 15(1) of the LEC establishes the objective and subjective scope of action that is regulated in the Act. The LEC governs actions that can take place in proceedings brought by organizations or entities created to protect consumers’ and users’ rights and interests, or by groups of affected consumers, and on behalf of any individual who is considered an affected party for the use of the product or the service which gave rise the proceedings, so that they may assert their individual rights or interests.

The only persons that may benefit from the class actions procedural system are those who meet the legal requirements to be considered consumers — that is, they must be the final recipients of the goods or services that are not employed in an ulterior process of transformation or commercialization.

In all proceedings filed by entities or organizations, individual consumers may take part in the action when they have been directly, effectively, and materially affected by the use of a product or the hiring of a service that has resulted in damage against their person or property. Therefore, such proceedings do not apply to collective damages or to supra-individual interests.

A significant aspect of the Spanish legal system is that the proceedings brought by the exercise of a class action welcomes any claims related to any fact resulting in damage. Consequently, Article 15 of the LEC regulates the mechanism of "promotion of class actions", which provides information about the collective procedure to all the eventual affected consumers and about their involvement in this procedure.

According to Article 15 of the LED, an appeal must be made to consumers of the product or users of the service to enable them to enforce their individual right or interest. The notification of the appeal is made by publishing the claim admission in the mass media available in the territory or area where the infringement of the rights and interests of the consumers occurred. The cost of this publication is included in the calculation of court fees, although such cost must be paid in advance by the consumer organization as the claimant party.

The judgment issued in a class action proceeding that orders a specific compensation to a particular and individualized consumer
constitutes an executive title; the consumer who benefits from the sentence may therefore claim action for enforcement against the defendant.

If the judgment does not specify the affected persons individually, they must be individualized in the proceedings for the enforcement of the judgment and be informed of the relevant compensations that may be granted.

Furthermore, Section 519 of the LEC allows non-litigant third parties to benefit from any advantages arising from the judgment issued in a class action proceeding, provided that they meet the requirements to be considered affected persons.

**Conclusion**

The legislative framework applicable to consumer protection in Spain has undergone important amendments in the past two decades, particularly with reference to product liability and the possibility of filing class actions, resulting in a regulatory framework that is highly protective of consumers. Consumer protection in Spain is governed by several legislative measures that are most often aligned with EU directives and regulations.

The LGDCU and Royal Decree Number 1801/2003 provide a comprehensive legal framework for the protection of consumers. The general regime on product liability sets forth a double liability regime that is indistinctively applicable to services and products.

For regular products, the LGDCU stipulates the principle that manufacturers and distributors are jointly liable for any negligence in the introduction in the market of products or services that give rise to liability due to any damage caused to consumers.

For products that are subject to certain specific requirements, there is a strict liability regime, according to which the consumer must always be compensated for any damage suffered as a result of using, consuming, or operating the product.

There are several sector-specific regulations conforming to EU law where applicable, which further enhance consumer protection. These cover specific aspects such as advertising, safety standards, warranties, redressal, and allied matters in relation to, *inter alia*, food, medical products, vehicles, toys, textiles, travel, and insurance.

Consumers whose grievances are not satisfied after a direct complaint to the seller or manufacturer, have the option to resort to arbitration, administrative claims, or file a civil or criminal action, as
relevant. Claims also may be filed through regional consumer bodies or consumer organizations. Additionally, the LEC provides the mechanism for filing collective claims for loss or damage suffered as a result of using a product or service.