



agència catalana
del consum



Generalitat
de Catalunya

**CODI DE
CONSUM
DE CATALUNYA**

Un pas endavant

**A step forward
in consumer
rights in the EU**



Catalonia

European Union:

27 member states and
501 million inhabitants

Catalonia:

32,114 km²
7,504,881 inhabitants (2010)
€216.9 billion GDP (2008)



The Catalan Consumer Agency

The Catalan Consumer Agency (ACC) is an autonomous body of the Government of Catalonia, attached to the Ministry of Economy and Finances. (Created by the Law 9/2004)

Our aim is to guarantee the rights of consumers and users.



Functions

- Advise consumers on their rights and the way to exercise them.
- Exercise the powers of inspection and sanction in the field of consumption.
- Encourage the development of consumers' and users' associations.
- Educate consumers and users.
- Promote the socially responsible and ecologically sustainable consumption.
- Cooperate with all the public administrations to improve the rights of consumers and service users.
- Promote mediation and arbitration as tools of consumer conflict resolution.
- **Develop laws related to all subjects that might affect consumers.**



The last 20 years



**12 member states and
350 million inhabitants**





**27 member states and
501 million inhabitants**







A few big conflicts

-  **2000-2001** Bovine Spongiform Encephalopathy

-  **2002-2003**
Language school troubles:
Opening, Wall Street, Brighton, etc.

-  **2006**
Security breach caused by airport workers in Barcelona.

-  **July 2007**
Barcelona power failure.



Data (Government of Catalonia)

1990

- Complaints and claims: 4,796
- Arbitral awards: 0
- Companies added to Catalan Arbitral System: 0
- Product alerts: 57
- Inspections: 13,953
- Total fines: 441,744€

2009

- Complaints and claims: 24,208
- Arbitral awards: 1,523
- Companies added to Catalan Arbitral System: 4,892
- Product Warnings: 3,086
- Inspections: 18,516
- Total fines: 2,379,589€



The law: a necessity



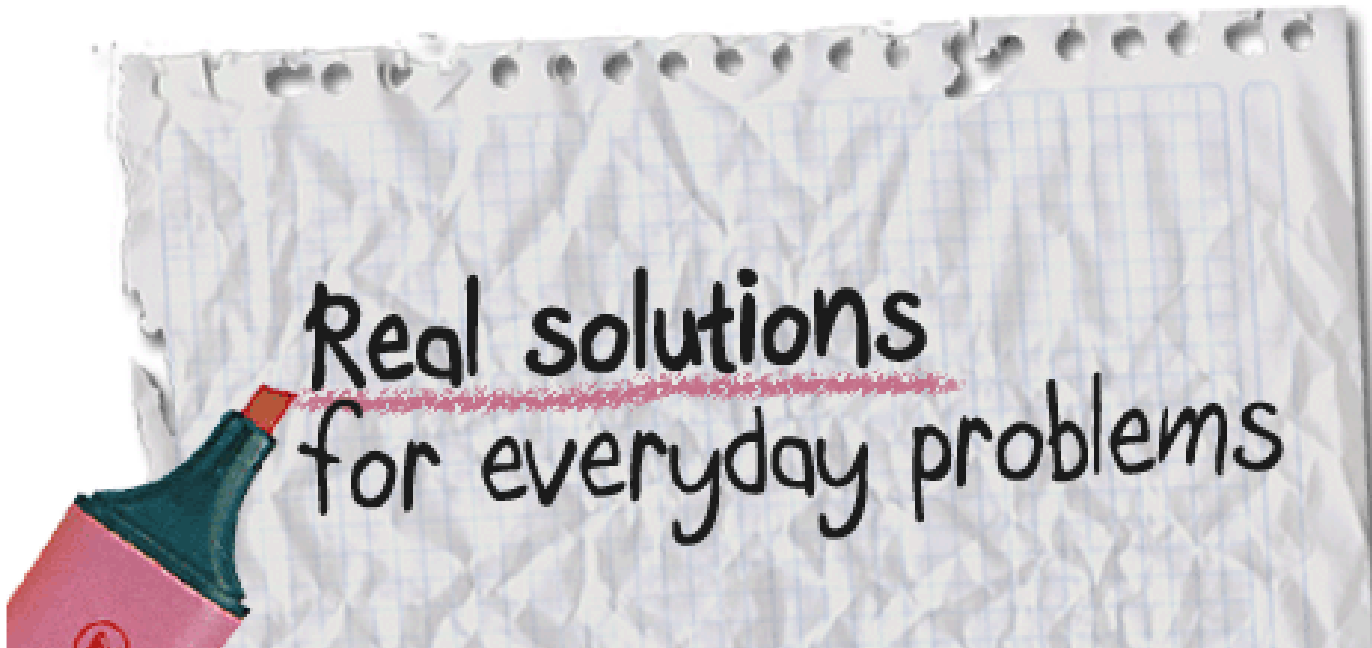
THE NEED TO DEVELOP A NEW LEGAL FRAMEWORK TO PROTECT AND DEFEND CATALAN CONSUMERS AND SERVICE USERS:

- Legal disorganisation (legal confusion).
- Time sensitivity of regulations (old laws).
- Creation of the Catalan Consumer Agency.
- Market practices: updating, new necessities (e-commerce, etc).
- New commercial formats and new forms of services offered.
- Adaptation to European directives



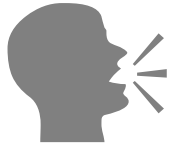
Goals

- 📖 Setup an instrument to protect the weakest part of the consumer relation in a modern and advanced society.
- 📖 Organise and structure regulations on consumer protection using a legal code: principle of legal clarity.
- 📖 Establish a new legal text that may become the general reference framework on consumer protection.







The Code: Real solutions for everyday problems

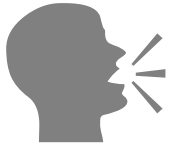


“My service has been cut off and on top of that I get charged for phoning in a complaint. Why isn't the customer service number free?”

-  Customer service telephone numbers for problems and complaints for basic service providers must be toll-free (art. 252-4).
-  Customer service numbers must not be higher-rate numbers under any circumstances (art. 211-4).



The Code: Real solutions for everyday problems



“What good does the government do if, when I make a complaint and am right, they say I have to go to court?”



If a company has signed up to the arbitration system there is a sure solution: the Code contains specific measures to encourage companies to join. All public companies must be signed up to the consumer arbitration system (art. 133-4).



Disciplinary decisions may include the return of unduly charged amounts and compensation for proven losses and damages (art. 333-6 and 333-7).



The Code: Real solutions for everyday problems



“Two months ago I bought an iron and now it doesn't work. I wanted to complain but the sales receipt faded. Now I can't read anything!”



Sales receipts and proofs of purchase must be permanently legible and must last as long as the useful life or compliance of the product (art. 211-3).






The Code: Real solutions for everyday problems



*“I paid in advance for a course and the academy closed.
Who is responsible?”*

 Amounts charged in advance must be guaranteed whenever such payment is in excess of 25% of the total cost and this amount is greater than €100 (art. 211-7).





The consumer code: innovative



Divided into three books:

- First. General provisions: definitions, basic principles, consumer rights, and specific measures for out-of-court dispute resolution
- Second. Regulates business obligations.
- Third. Market control: control and inspection procedure, infringements and penalties



Main innovations: Book I



New definitions (art. 111-2)

- **Average consumer:** a person who, according to common criteria, is normally informed and reasonably attentive in their consumer relations, as relates to social, cultural and linguistic factors.
- **Consumer relation:** any relation between enterprises, intermediaries or the administration acting as a provider of goods or services to the consumers.
- **Specially protected groups:**
 - Special vulnerability (special situation of inferiority or susceptibility). It includes: children and young people, old people, ill people, people with any disability or any other group who lack protection.



Main innovations: Book I

New definitions (art. 111-2)

- **Safe goods and services**
 - New concept of service safety:
 - Risk to the health and physical safety of the consumer
 - Protection of economic and financial interest of consumers

- **Responsible consumption**
 - Moderate, informed, thoughtful and conscientious consumption of goods and services, keeping in mind criteria of cultural, environmental, socio-economic and linguistic sustainability (art 111-2).
 - *The Code is ground-breaking in its introduction of the concept of a legal structure.*
 - *It will be taken into consideration in the sanction procedure.*

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Main innovations: Book I

 Summary of the **basic principles** upon which **consumer law** is based:

Basic character (art. 112-1)

- Good faith and a balance in legal positions (art. 112-1)
- Irrevocability of rights (art. 112-3)
- Responsible consumption (art. 112-4)
- Principle of consumer protection (art. 112-5). :
 - Law must be interpreted in favor of the consumer
 - If there are two possible infringements it should be considered the most serious one



Main innovations: Book I Basic rights



Basic rights of consumers (art. 121-2):


- Protection of health and safety
- Protection of economic and social interests
- Compensation and repair of damages
- Legal, administrative and technical protection
- Information, education and training
- Representation, consultation and participation
- Use of official languages

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Main innovations: Book II

 **Common requirements** are established for all consumer relations (art. 211-1 to 211-15):

Some examples:

- Customer care, including two main obligations:
 - To give an adequate and immediate attention to the consumers when any disruption or trouble (e.g. power failures and transport delays)
 - To answer within **1 month** to the claims or complaints of consumers
- Requirement of giving substantial written information, including:
 - The main characteristics of the good or service
 - The origin from the EU or not (specially for food products)
- Promotions and offers, with the obligation to inform in detail either about the lasting of the promotion or the exact quantity of products affected by the promotion or the number of consumers that could profit from the promotion.



Main innovations: Book II



Requirements concerning information (art. 211-3):

There is the specific requirement to inform of the complete price of goods and services, including all the tax or any additional expense charged to the consumer. In relation to this general requirement, it is forbidden to increase prizes because of the way of payment used by the consumer except for the cost that the trader might directly bear due to the admission of this way of payment.



Main innovations: Book II



Linguistic rights (art. 211-5 in relation to 128-1)

➤ **CUSTOMER CARE**

Traders must “understand” either of the two official languages in Catalonia.

➤ **INFORMATION AND DOCUMENTATION**

Must be immediately available, at least in Catalan:

- Invitations to buy, permanent information (including signs, posters or any other written information addressed to the consumers in the shops), contractual documentation, estimates, deposit receipts, invoices and other related documents.
- Information for the use, handling, and appropriate consumption of goods and services, and the obligatory information directly related to health and safety.
- Standard-form agreements and contractual general conditions.



Main innovations: Book II

Formal requirements concerning documentation (art. 211-6):

- The size of the text must allow for easy reading and comprehension.

Advance payment (art. 211-7):

- Prior information (in the estimate or in a visible manner).
- It does not imply automatically the acceptance of the offer.
- If the amounts are more than €100 and 25% of the total transaction, they must be guaranteed by an insurance policy or guaranteed fund.



Main innovations: Book II



Unification of the general requirements of commercial establishments, including the obligation to give an estimate to the consumer when demanded (**art. 212-1, 2 and 3**).



Grouping into a single text all the special modalities of consumer relations (art. 222-1 to 225-2):

- Distance selling
- Doorstep/Direct selling
- Vending machine selling, including the obligation to give a ticket to the consumer
- Non-sedentary selling



Main innovations: Book II



Classification of services (art. 251-2):

- **To people:** any service in which the rendering affects directly to the people, like the health or social welfare services.
- **Of goods or things,** such as car or other appliances repair
- **Basic services,** which are of an essential nature and necessary to everyday life including services of general economic interest, such as transport, home supplies, audiovisual communication and telecommunications, health and social welfare services and finance and insurance services.
- **Continuous services,** referring to those which have continuity during a period of time, as in all the home supplies (gas, water, electricity...)
- **Brand-name services,** in which the commercial brand is clearly shown to consumers



Main innovations: Book II







Requirements for the rendering of services :

- **Common (art. 251-3 to 251-7):** minimum guarantee of 6 months, advance payments must be guaranteed, etc.
- **Specific (art. 252-1 to 252-7):** For each type of service. Special reference to:
 - **BASIC SERVICES:**
 - Physical address
 - Free phone number
 - Right to have the contract before signing it
 - **CONTINUOUS SERVICES:**
 - Non-interruption of the service if there is a claim in process
 - To interrupt the service, there must be at least 2 unpaid bills



Main innovations: Book III

-  General legal requirements on market regulation (art. 311-1 to 311-5)
-  Regulation of complaints (art. 311-6 and 7)
-  Principles of market regulation (art. 312-1 to 312-12)
-  Regulates surveillance and market control actions (art. 321-1 to 323-5) and sanction procedures (art. 341-1 to 342-3)



Main innovations: Book III



Territorial scope of powers (art. 312-10):

- Any consumer act which takes place in Catalonia irrespective of the headquarters of the trader could be prosecuted by the Catalan consumer authorities



Matters of powers (art. 312-11):

- When a matter is regulated both by consumer and other specific legislations, the most protective for the consumer must prevail.



Main innovations: Book III



Classification of infractions (art. 331-1 to 331-6):

- Concerning safety and for non-compliance with dispositions or administrative resolutions.
- For alteration, adulteration, fraud or deceit.
- Concerning commercial transactions and prices.
- Concerning standardisation, sales documentation and conditions, supplying or rendering of services.
- Non-compliance with obligations or legal agreement prohibitions.
- Other infractions: obstruction of inspection, failure to provide claims forms, non-compliance with obligations of customer service, non-compliance with mediation agreements or arbitral decisions, infringement of linguistic rights, etc.



Main innovations: Book III



Fines (art. 333-1):

- **Minor**
up to €10,000
- **Serious**
from €10,001 to €100,000
- **Very serious**
from €100,001 to €1,000,000
- **Additional**
Loss and destruction of merchandise, temporary closure of businesses, public rectification, publication of the fine.
- **Other measures (arts. 333-6 and 7 and arts. 342-1, 2 and 3)**
Restitution of amounts, compensation for losses and damages and coercive fines.



Entry into force

 Pre-existing obligations: 23 August, 2010.

 New obligations:

- 6 months after the date of their publication (23 January, 2011).
- For small or medium-sized businesses the limit for adaptation will be one year (23 July, 2011).



The Catalan Consumer Code



A giant step towards guaranteeing consumer rights:

- Easier access to consumer services.
- More mechanisms for resolving consumer conflicts.
- Better conflict prevention and more information.
- More responsible and sustainable consumption.

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