

Special Information Briefing COVID-19 (No. 12):

Measures relating to consumer protection included in Royal Decree-Law 11/2020 of 31 March, adopting additional urgent social and economic measures to deal with COVID-19

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Madrid, 1 April 2020

1. Introduction

On 1 April 2020, **Royal Decree-Law 11/2020 of 31 March** was published in the Official State Bulletin, **adopting additional urgent social and economic measures to deal with COVID-19 (“RDL 11/2020”)**. The RDL establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted through the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19, and its subsequent extension, approved by Royal Decree 476/2020, of 27 March.

2. Consumer protection measures

Chapter I includes a section III with two articles (36 and 37) that regulate the measures adopted in relation to consumers and users, providing them with “*the mechanisms to guarantee their rights and their protection*”. For this purpose, a series of measures have been implemented in relation to contracts for the sale of goods and the provision of services when performance has become impossible as a consequence of the declaration of the state of alarm. Likewise, certain activities related to gambling are limited in order to “*avoid an increase in online gambling*”.

A. The right to terminate contracts for the sale of goods and services entered into by consumers and users

Consumers and users will have the right to terminate contracts for the sale of goods or services, including those of continuous performance, which, because of the measures adopted during the state of alarm, cannot be fulfilled. Consumers and users may request that the contract be terminated as long as each of the parties have previously proposed contract revisions with the aim of finding a friendly solution based on good faith and re-establishing the reciprocity of the contract's interests.

The parties will have a 60-day period from when performance of the contract became impossible to negotiate these proposed contract revisions. If this period elapses without the parties reaching an agreement, the consumers and users may exercise the right to terminate the contract.

Article 36 of the RDL establishes a period of 14 days for consumers and users to exercise this right to terminate.

If the contract is terminated, the refund must also be issued within 14 days. The expenses that were incurred may be deducted, as long as the consumer is provided with a duly itemised list thereof.

The RDL includes specific provisions for contracts for the continuous provision of services and travel packages.

(i) Contracts for the continuous provision of services:

The following measures are established for those cases in which the contract is not terminated:

- Consumers and users may choose between:
 - Recovering the service they have already paid for at a later date (for example, by means of a voucher or gift certificate).
 - Obtaining a refund of the amounts already paid corresponding to the period when the service was not provided.
 - Deducting the amounts already paid from future fees to be charged by the service provider.
- The service provider must suspend the collection of further fees until the service can be provided again normally and without causing the termination of the contract, unless this is the wish of both parties.

(ii) Package travel contracts:

A specific regime is established for package travel contracts that have been cancelled due to COVID-19. There are two different scenarios:

- As a general rule, the organiser can give the consumer a voucher, to be used within one year following the end of the state of alarm, for an amount equal to the payment made by the consumer or user. If the period of validity of the voucher elapses before it has been used, the consumer or user can request a full refund of any payment made.
- It is also possible to terminate the contract in accordance with the provisions of article 160.2 of the General Law for the Defence of Consumers and Users. However, in this case, refunds are subject to the organiser or retailer having in turn received a full refund from the service providers whose services were included in the package travel contract.

If the organiser or retailer has only received partial refunds from the service providers, the consumer or user will be entitled to a partial refund corresponding to the amount of the refunds the organiser or retailer has received, which will be deducted from the amount of the voucher.

The organiser or retailer will have a period of 60 days from the termination of the contract, or from the date the refund was issued by the service providers, to refund the consumer or user.

In conclusion, consumer refunds can be deferred for one year (by issuing a voucher in the meantime) if the organisers have not been able to obtain a refund from the service providers to whom they had already committed.

B. Restrictions on the marketing communications of companies engaged in gambling activities

Specific measures are established for companies that carry out gambling activities (according to the provisions of Law 13/2011 on gambling regulations), whose marketing actions have been limited as follows:

- (i) Ban on issuing marketing communications that implicitly or expressly refer to the exceptional situation caused by COVID-19.
- (ii) Ban on promotional activities intended to attract new customers or retain existing customers.
- (iii) Ban on broadcasting commercial communications via audio-visual communication services (i.e. television, radio) except in the time slot between 1 a.m. and 5 a.m.
- (iv) Ban on broadcasting commercial communications which are marketed, sold or arranged by video exchange service providers except in the time slot between 1 a.m. and 5 a.m.
- (v) Ban on broadcasting commercial communications sent using information society services, including individualised communications via e-mails or equivalent media and social networks.

Failure to comply with any of these obligations will be deemed as a serious infringement for the purposes of the provisions of Law 13/2011, on gambling regulations.

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