

THE LEGAL PROTECTION OF THE ELECTRONIC CONSUMER IN THE PHASE OF CONTRACTS UNDERWRITING IN ALGERIAN LAW

DR. BENBOUZID NORA¹

¹Profesor Lecturer A, Faculty of Law and Political Science, University of Lounici Ali. Blida 02 (Algeria).

The Author's E-mail: n.benbouzid@univ-blida2.dz

Received: 06/2024

Published: 12/2024

Abstract:

The electronic trade contracts have witnessed a huge development in the last years, mainly after Covid-19, which blocked the traditional markets, and after internet and ICTs penetration of all the fields, including trade.

This study sheds light on the guarantees imposed by the Algerian legislator to protect the consumer in the electronic trade contracts with the supplier, mainly in the phase of underwriting the contract. Findings show that, in the last years, the legislator focused on strengthening the protection of the electronic consumer, as he enacted Law 18-05 on the electronic trade and Law 09-03 on the protection of consumers and combating fraud. Despite these laws constituting a positive step, they need development to cope with the increasing requirements of the electronic trade.

Keywords: electronic trade contracts; electronic supplier; information; rescission; personal information.

INTRODUCTION:

Lately, the electronic trade flourished nationally and internationally, mainly after Covid-19, which limited the traditional commercial transactions and paved the way to the electronic. Besides, it blossomed thanks to the technological revolution, the increasing use of the internet, the development of computer programs and software, and the spread of connected mobile devices. Therefore, the expression “electronic consumer” emerged. The electronic trade provides the producers, traders, and consumers with many advantages that help in marketing and purchasing goods and services without a physical meeting. This raises the question of protecting the electronic consumer, who is subject to risks more than in the traditional trade, as he cannot examine the goods he wants to purchase and may be a victim of misleading, as some traders advertise products and sell others, putting the consumer in the cycle of manipulation and fraud. Therefore, consumer protection is crucial in developing the electronic trade.

Consumer protection has so long been a legal challenge, mainly because the consumer is the weaker part in the consumption chain. Therefore, many states addressed this issue to reestablish trust in the electronic markets through enacting rules and regulations due to the increase of risks. In this regard, the Algerian legislator targets providing guarantees against electronic fraud and deception, mainly in trade. Therefore, he regulated the electronic trade contracts and showed their methods, parties, execution, and effects. Besides, he enacted laws, despite being late compared to other Arab states, namely Law 18-05 on the electronic trade, which represents the cornerstone of a domestic electronic trade that amounts up to the international, and Law 09-03 on consumer protection and combating fraud, in addition to other laws in the civil law and executive decrees.

We must point out that the modern laws of consumer protection are different than the old ones. In this context, the traditional protection used to appear after the harm through ruling the nullity of disposal or restitution. Contrarily, modern law provides protection prior to and during the contract underwriting. This study focuses on the phase of underwriting the contract because it is the most important and dangerous, as it is the phase where the duties and rights of the parties are determined, leading to the rise of legal issues. Based on what was said, our problematic revolves

around the legal mechanisms set by the Algerian legislator in Law 18-05 on the electronic trade to ensure electronic consumer protection in the phase of underwriting the contract. To tackle the problematic, we used the descriptive method to present the main problems and their causes faced by the consumer in the electronic contract. In addition, we used the analytical method to trace and analyze the relevant laws to reach the target results. The study was divided into three axes; namely the right of the electronic consumer to information, the right to rescission, and the protection of the personal information.

Axis one: The right of the electronic consumer to information:

The Algerian legislator established the right of the consumer to information, as he devoted Chapter 05 of Executive Decree 13-378 to the methods and conditions of consumer information. Thus, we shall define the commitment to information and tackle its tools.

Section one: The concept of commitment to information:

This section tackles the definition of commitment to information, and shows its nature.

Part one: Definition of the commitment to information:

Jurisprudence has different definitions of the commitment to information. It is informing the purchaser about the components, characteristics, and safe method of using the goods, telling him about the potential hazards, and directing him towards the use or possession precautions (1). In addition, part of the jurisprudence sees the commitment to electronic information as the commitment of the producer or professional in the electronic contract to enlightening the consumer through information and necessary data that affect his satisfaction during the execution of the contract, such as identifying the personality of the producer or professional, the specifications of the goods or services, the methods of their use, and the potential hazards (2).

In the context of uninforming the consumer in general and the electronic in particular about the contract subject, we must point out that inequality in knowing the information and conditions is equivalent to contract imbalance due to the difference of the legal positions because the weaker part is exploited by the stronger who has experience (3). Thus, in order to overcome the issue of the supplier information of the consumer about the contract subject, the trader must commit to informing the consumer and providing all the contract information to facilitate its management.

As for the Algerian legislator, he explicitly provided for the compulsory information of the consumer in Article 17 of Law 09-03 on protecting the consumer and combating fraud (4). It states that any intervener must inform the consumer about all the information about the product through the label, signs, or any other suitable tool. This rule applies to electronic trade contracts, like conventional trade contracts (5). Besides, Article 12 of Law 18-05 on the electronic trade provides that the product or service order goes through three compulsory phases:

- Putting the contractual conditions within reach of the electronic consumer to raise his awareness.
- Checking the details of the order by the electronic consumer, mainly regarding the nature of the goods and services, the total and unit prices, and the quantities to allow the consumer to adjust, cancel, or redress the order.

This shows the Algerian legislator's interest in information in the electronic contracts because the consumer cannot have enough knowledge about the product or ask questions about it and the contract due to the lack of direct contact with the seller. Therefore, legal rules that oblige the seller to provide the minimum information about the product must be enacted. In this context, Article 352 of Algerian Civil Law provides for this commitment (6). However, the legal texts do not show the regulating sides that guarantee the information of the electronic consumer in particular. Thus, paragraph 02 of Article 05 of Executive Decree 13-378 on consumer information provides that

regardless of the provisions of this decree, some rules must be applied to the online products, including the necessity of providing all the compulsory information at delivery.

In addition, despite the issuance of the electronic trade law no° 18-05, the commitment to inform the consumer during the execution of the electronic contract was not tackled. Thus, the Algerian legislator must regulate this question, cope with the development in the electronic contract system, and foster commitment to ensure the contractual electronic information.

Part two: The nature of the commitment to information:

The jurisprudence did not agree about the nature of the commitment to information, as some see that the product must achieve its results mentioned in the written information that must be provided to the consumer. However, this was criticized because the fact of writing the information on the product package is an information of the consumer. Another party sees that the electronic supplier must show due diligence through commitment to providing all the product information to the consumer, who shall take informed decisions. Generally speaking, the commitment to informing the consumer is among the main principles that protect him in the prior contract phase until the contract underwriting.

Section two: The tools of executing the commitment to information:

Article 17 of Law 09-03 on the consumer protection and combatting fraud tells that information must be through the label, signs, or any other suitable tool. In defining the label, the Algerian legislator mentioned the brand despite it has its own legal system. However, since the brand has a vital role in informing the consumer about the product, it was mentioned with the writing and data that can be included in the label because they help distinguish the industrial and agricultural products from the other ones, mainly the imported. In addition, the label facilitates advertisement to avoid misleading the consumers because there are different products in the markets, mainly the electronic (8). Based on this, we shall tackle the methods of informing the consumer through the label and, then, through the electronic commercial offer.

According to paragraph 04 of Article 03 and Article 18 of Law 09-03 on the consumer protection and combatting fraud, the label is all the product-related information and date found on the package, regardless their shape or method. Besides, the law provides that the label data, the user guide, and the warranty conditions must primarily be written in Arabic, with possibility of including other foreign languages understood by the consumers, and must be readable, understandable, and undeletable. The label has an informative task that provides the consumer with the necessary product information, and a security task to guarantee the safety of the product and deter fraud.

The consumer information through the commercial offer refers to providing the necessary information about the electronic supplier, such as the fiscal identification number, the physical and electronic addresses, the phone number, the commercial register number, and the professional card number (in case of craftsmen). In addition, these offers must include the prices of goods and services and the sale conditions to help the consumer easily recognize the products and services without direct contact with the sellers, foster the contracting freedom, and limit segregation.

Article 11 of Law 18-05 on the electronic trade provides that the electronic commercial offer must be clear and easily read and understood. Besides, it must be visible through showing the prices and tariffs in a clear visible manner. In case the prices are not apparent or placed in unsuitable places, such as down the product or in a hidden place, the supplier violates his commitment to information. Moreover, the prices must be clearly written with numbers and Arabic letters to ensure the consumers understanding. We must point that the commitment to consumer information is a commitment to result, not just due diligence, as the offer must be clear and available to satisfy the consumer right to knowledge.

Axis two: The right of the electronic consumer to rescission:

The right to rescission is one of the legal protection guarantees on behalf of the electronic consumer who does not have real potential to examine the contract subject and its quality due to the virtual contract and lack of physical presence. However, we face, here, a contradiction with the principle of the binding force of the contract, as long as the consumer may cancel a contract. The right to rescission is one of the methods used by modern laws to protect the consumer, as it gives him the chance to think (9). Thus, we need to tackle the concept of the right to rescind in the electronic contract and its effects.

Section one: The concept of the right to rescission

The right to rescission has different jurisprudential definitions. Part of the French jurisprudence defines it as reversing and withdrawing the priorly expressed will, as if it had never existed, with no effects (10). In addition, others define it as the authority of one of the contracting parties to cancel the contract without the will of the other party (11). As for the Algerian legislator, he did not define it in law 18-05 on the electronic trade; rather, he assigned the contracting parties, including the conditions and deadlines of rescission in the electronic contract when needed. Thus, the right to rescission is a choice by the electronic consumer, or an agreement mentioned in the contract, by which the consumer declares his will to reverse the contract within deadlines after contract underwriting.

It is based on the pure will of the consumer according to legal rules, as stated in Article 11 of Law 18-05. Thus, it is a personal right exercised by the consumer to achieve his interests. In addition, paragraph 02 of Article 19 of Law 09-03 on consumer protection and combating fraud, supplemented by Article 02 of Law 18-09, defines the right to rescission as the consumer's right to decline his will of buying a product with no reason. The consumer has this right as long as he respects the contract conditions without paying additional fees. The conditions, methods, deadlines, and products under this right are determined by the regulation. Moreover, Article 22 of Law 18-05 on the electronic trade regulated this right and provided for the possibility of the electronic consumer to return the product to the electronic supplier in case the latter disrespects the delivery deadlines.

Section two: The effects of the right to rescission:

The electronic contract is based on satisfaction and allows the consumer to exercise the right to rescission with his own will. This is a violation of the general rules that ban the cancellation or adjustment of the contract unless by agreement of the two parties or by one of the legal causes. Nevertheless, we can accept this right because the electronic consumer did not physically see the purchased products. The right to rescission has several legal effects on the electronic supplier and consumer. In this regard, the rescission by the consumer ends the contract. Besides, the parties must make restitution.

Part one: The effects of rescission on the electronic supplier:

After the deadlines (04 days after reception of the product) of the right to rescission, the contract is binding on the two parties. However, before deadlines, the right to rescission obliges the supplier to pay back the value of the product if the purchaser made a prepayment, in addition to the costs of delivery, within 15 days of receiving the product, as provided by Articles 22 and 23 of Law 18-05 on the electronic trade. In general, the effects of rescission on the electronic supplier manifest in paying back the cost of the product, delivery, and cancelling the contract.

Part two: The effects of rescission on the electronic consumer:

The right to rescission obliges the consumer to return the product to the supplier in its original state of delivery. Nevertheless, the electronic consumer may not cancel the contract but ask for changing the product with a similar one (13). Article 23 of law 18-05 provides that the electronic supplier must withdraw his product if he delivers a non-corresponding or defective one. It adds that

the electronic consumer must send the product in its original package within 4 days of its reception, showing the cause of refusal; the costs of resending are paid by the electronic supplier. The electronic supplier commits to:

- Providing a new corresponding product;
- Repairing the defective product;
- Changing the product;
- Cancelling the order and paying back the price, taking into account the possibility of the electronic consumer's demand of compensation in case of damage.

The paid sums must be returned within 15 days of receiving the product. This article shows that rescission cancels the contract and raises legal effects on the consumer who must return the product. However, the consumer may maintain the contract and ask for changing the product or repairing the defect. Thus, the right to rescission is an efficient right and measure in the electronic trade. It is characterized by individuality and is an exception to the binding force of the contract.

Axis three: protecting the personal information of the electronic consumer:

The emergence of the internet and its wide use in life brought about risks. Since the electronic transactions require sending personal information from the consumer to the electronic supplier, including identity information, images, address, profession, etc, we shall study the concept of personal information of the electronic consumer and tackle the conditions of the electronic supplier's commitment to protecting the personal information of the electronic consumer.

Section one: The concept of personal information of the electronic consumer:

The electronic trade contracts require the electronic consumer to provide direct and indirect personal information to the supplier during the contract underwriting or execution. However, this information in the digital world may be subject to violation by the electronic supplier or others. Therefore, the Algerian legislator enshrined the right to privacy for the electronic consumer in Law 18-05 on the electronic trade. In the past, Algeria witnessed a legal void regarding the protection of personal information. However, things changed after the issuance of Law 18-07 on the protection of the personal information of the natural persons (14). Paragraph 01 of Article 03 defines personal information as any information, regardless of its support, about an identified or identifiable person in a direct or indirect manner, mainly through the identification number or one or many psychical, physiological, genetic, biometric, psychological, economic, cultural, or sociological identity elements.

Thus, we can divide the personal information into two main types. The first is about the nominal information, like full name, address, email, postal address, genetic information, health information, criminal record, personal photo, civil status, biography, date of birth, and profession. The second is about the indirect nominal information, such as the phone number, the social insurance number, the ID number, the passwords, the biological and biometric information, the account number, the fingerprint, and the genetic print. In addition, we can mention the information provided by the users, who are subjective persons, which allow their direct or indirect definition for the identification of the electronic ID. Such information may be provided by the users themselves or collected from the websites they surf on (15).

Section two: The conditions of the electronic supplier's commitment to the protection of the consumer's personal information:

The Algerian legislator obliged the electronic supplier to disclose the contractual items related to protecting the personal information of the consumers under the electronic commercial offer. In addition, he insisted on respecting the regulations for processing the consumers' personal information and banned the suppliers' collection of data beyond what is necessary for the commercial transactions. In this context, Article 11 of Law 18-05 provided that the electronic offer must show

the general conditions of sale, mainly the items about protecting the personal information. Thus, the supplier website must show all the methods of protecting the consumers' personal information and the privacy policy, provide enough information on the available choices to reach the information and the methods of data transfer, use, and protection, and commit to their secrecy (16).

In addition, Article 26 of Law 18-05 on the electronic trade provided for respecting the regulations of processing the personal information of the electronic consumer, stating that the electronic supplier who collects personal information and builds up files of the customers and of the potential ones must collect only the information needed for the commercial transactions and:

- Get the approval of the electronic consumers before collecting information;
- Ensure the security of the information system and data confidentiality.
- Commit to the legal and organizational provisions of the field.

The methods of storing and securing the personal data are determined according to the applicable law.

This article shows that the legislator set many conditions to protect the electronic consumers' personal data. Thus, allowing the supplier to collect the data after their approval does not mean having the right to disclose the information. In addition, the customer's approval of storing the information does not mean the freedom to transfer them to others. In this context, the legislator obliged the supplier to commit to the secrecy and security on the information, as he provided for some sanctions if this commitment is violated. Article 39 of Law 18-05 provides that any electronic supplier who violates one of the commitments mentioned in Articles 11 and 12 is sentenced to a monetary fine of 50.000 to 500.000 Algerian dinars.

CONCLUSION:

In the end, we conclude that the Algerian legislator aims at protecting the consumer in the electronic commercial contracts with the electronic supplier during the contract underwriting, as he provided for a set of legal mechanisms in Law 18-05 on the electronic trade, including the right of the electronic consumer to information, which is a right that comes before and lasts after the contract issuance, the right to rescission, and the electronic supplier's commitment to the protection of the personal information. These guarantees were established because the consumer is the weaker part in the contract with the electronic supplier, mainly that he cannot examine the goods and the services before purchase.

Based on the findings, we recommend:

- Since the guarantees of protection in the electronic contract represent a new issue in the Arab laws, including the Algerian, it is better to establish a complementary legal system to enshrine more protection and save the consumer from the risks of the technological development in the electronic trade.
- It is necessary to extend the deadlines of rescission like the foreign laws that have more experience in the field of electronic trade.
- It is necessary to promote legal awareness about the electronic transactions and inform the consumers about their rights to increase trust in the electronic commercial transactions.

REFERENCES:

1. Zahia Houria Si Youcef, the civil liability of the producer, Houma House for printing, publication, and distribution, Algeria, 2009, p. 39.
2. Samia Bouizri, the new guarantees to protect the consumer in the phase of executing the electronic contract, Magister thesis, faculty of laws and political sciences, University of Mhaned Akli in Bouira, Algeria, viva date: 23/06/2018, p. 15.

3. Abd al Moniim Moussa Ibrahim, the protection of the consumer, al Halabi legal publications, 2007, p. 366.
4. Law 09-03 of 25 February 2009 on the protection of the consumer and combating fraud, supplemented and complemented, official gazette 15 of 08 March 2009.
5. Law 18-05 of 10 May 2018 on the electronic trade, official gazette 28 of 16 May 2018.
6. Paragraph 01 of Article 352 of the Algerian Civil Law provides that the purchaser must be sufficiently aware about the product; the sufficient awareness is when the contract includes the main specifications of the product to be able to define it.
7. The executive decree 178-13 of 09 November 2013 identifies the methods and conditions of informing the consumer, official gazette 58 of 18 November 2013.
8. Al Sadek Sayad, Protecting the Consumer in the Light of the New Law 09-03 on Consumer Protection and Combating Fraud, Magister Thesis in Administrative and Legal Sciences, Faculty of Laws, University of Constantine, 2013/2014, p. 74.
9. Taher Chawki Moumen, The Electronic Sale Contract: A Research in the Electronic Trade, Arab Renaissance House, Egypt, 2007, p. 114.
10. VILLEY-Michel, Leçons d'histoire de la philosophie du droit, annales de la faculté de droit et de sciences politiques de Strasbourg 6, Paris Dalloz, 1957, p 334.
11. Omar Abd al Baki, The contractual protection of the consumer: a comparative study between the Sharia and law, knowledge facility, Vol. 02, Egypt, 2008, p. 321.
12. Hiba Hamza & Mohamed Amine Ben Kada, The Legal Mechanisms to Protect the Electronic Consumer no° 05/18 on the Electronic Trade, Journal of the Law and Development, Vol. 08, Issue 01, 30 June 2020, Algeria, p. 203.
13. Zahia Houria Si Youcef, The Right to Rescission as a Mechanism to Protect the Electronic Consumer, Journal of Jurisprudence for Legal and Economic Studies, 2018, Algeria, p. 23.
14. Law 18-07 of 10 June 2018 on the protection of the personal information of the natural persons, official gazette 34 of 10 June 2018.
15. Maryem Loukal, The International and National Legal Protection of the Personal information in the digital space in the light of the Information Protection Law no° 18-07, Journal of Legal and Political Sciences, University of Mhamed Bougara in Boumerdes, Algeria, p. 1309.
16. Sihem Karoune, the commitment of the electronic supplier to protect the personal information of the consumer in Law 18-05 on the electronic trade, journal of the researcher for the academic studies, Vol. 07, No° 02, 2020, p. 1018.