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## Legal Protection Of Electronic Contracting In Algerian Legislation

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### Abstract

In light of the recent transformations in the global economy and the emergence of electronic methods in commercial transactions, such as the ease of contracting between producers and consumers for providing services or selling goods and products, which now conceal flaws and contain risks threatening the security, health, and safety of consumers in its broadest sense, it has become imperative for legislators to seek alternative methods that are more effective in providing protection for consumers in the digital realm. This reality has demonstrated the inadequacy of traditional theories of obligations in protecting consumers, leading legislators to recognize the necessity of protecting the weaker party in this contractual relationship. Consequently, new legal texts have been introduced as alternatives to general rules, adding new guarantees for consumer protection, such as the right to information during the negotiation and execution phases of the contract, the right to receive goods that conform to agreed-upon conditions, as well as the right to withdraw and seek assistance from dedicated protection bodies. This article will discuss the legal protection afforded by legislators to consumers in electronic contracting in light of specific and recent legal texts.

**Keywords:** Consumer; Electronic Contracting; Hidden Defects; Exposure; Entitlement; Conforming Delivery; Right of Withdrawal; Algerian Legislation.

### Introduction:

The industrial and technological advancements we are experiencing today have led to the emergence of a wide variety of goods and products tailored to individual needs, aiming to satisfy desires and achieve comfort and sophistication.

This development has extended to the offering and acquisition of these goods and products through modern electronic means, resulting in commercial transactions and contracts between consumers and producers. Examples include contracts for purchasing goods, household appliances, and smart devices such as computers and mobile phones. Despite their abundance, diversity, and the undeniable positives of ease of purchase, these products also present numerous drawbacks that pose risks to their purchasers. This situation has prompted countries to consider implementing laws to ensure consumer protection.

Algeria, like other countries, has adopted a market economy policy and strives to achieve the principles of this orientation, including trade freedom and the movement of capital, along with an openness to global markets. Consequently, citizens can now easily acquire these products, significantly contributing to their well-being.

However, the ease of such transactions must be accompanied by a range of legal guarantees to protect consumers. Consumers must receive goods and services that meet the agreed specifications and be free from hidden defects. Furthermore, there should be a fundamental right for consumers to withdraw from such transactions, given that these products often conceal defects and cause harm, whether physical affecting health or material losses.

This situation has driven Algerian legislators to intervene and establish effective mechanisms for protecting consumers from such products. Several laws have been enacted in this regard, including Law No. 09/03 on Consumer Protection and Fraud Prevention, as well as amendments to the Civil Code through the introduction of Article 140 bis, which addresses producer liability previously governed by general rules.

Additionally, Law No. 18/05, dated May 10, 2018, on Electronic Commerce, applies to electronic contracts when at least one party is Algerian, whether a natural or legal person. Through these measures, legislators have aimed to provide protection for consumers by establishing effective preventive and remedial mechanisms.

To delve further into this context, the following issue can be posed: What is the effectiveness of the mechanisms and rules established by Algerian legislators to protect consumers during the execution of electronic contracts?

Answering this issue requires addressing the following sub-questions:

- What are the consumer rights during the execution of the contract under the general theory of contracts?
  - What are the consumer rights during the execution of the contract under the newly introduced texts?
- To illuminate this topic and address the study issue and related questions, we propose dividing the work into two main sections. The first section will focus on consumer protection under the general theory of contracts, while the second will address consumer protection under the newly introduced texts, all within the context of contract execution. In summary, analyzing the aforementioned issue will lead to substantive conclusions, which will be accompanied by relevant suggestions presented in the conclusion of this study, employing descriptive and analytical methods.

## **Study Plan**

### **Introduction**

#### **Section 1: Consumer Protection under the General Theory of Contracts**

- Subsection 1: Guarantee of Hidden Defects
- Subsection 2: Guarantee of Exposure and Entitlement

#### **Section 2: Consumer Protection under the Newly Introduced Texts**

- Subsection 1: Right to Information and Delivery of Conforming Goods
- Subsection 2: Right of Withdrawal and Recourse to Protection Bodies

## **Conclusion**

### **Section 1**

#### **Consumer Protection under the General Theory of Contracts**

(During the Contract Execution Phase)

The execution phase of a contract is a critical stage in electronic contracting where each party is obligated to fulfill their commitments. Therefore, it is essential that consumer protection, given that consumers represent the weaker party in the contract, extends to this phase. In the context of the general theory of contracts, consumer protection during the execution phase is reflected through the seller's obligations, including the guarantee against hidden defects and the guarantee of exposure and entitlement (1). These guarantees will be applied to the modern form of contracting through the forthcoming points.

### **Subsection 1**

#### **Guarantee of Hidden Defects**

When a consumer navigates through internet pages for shopping and selects a particular service or product, an electronic contract is formed. It is necessary that the service or product offered is free from defects and suitable for its intended purpose. Had the consumer been aware of such defects, they would not have entered into the contract or agreed to the price (2).

A defect in a product refers to an imperfection that affects the product or service, whether in its descriptions or characteristics. It is defined as a flaw that renders the product unsuitable for use or poses a danger to its user. Therefore, the defect is directly related to the consumer's safety, as the defect that establishes the producer's liability is one that jeopardizes the physical or material safety of the user. Consequently, the consumer's misuse of the product, which makes it unsuitable for its intended purpose or leads to damage or reduction in its value, does not fall under this liability. Defects can arise from design flaws, manufacturing defects, or inadequate instructions and warnings (3).

Most legislations establish a legal claim for hidden defects in the product. Some argue that consumers have the right to seek recourse from the seller for such guarantees.

Regarding defects in products, Article 140 bis of the Algerian Civil Code states: "The producer is responsible for damage resulting from a defect in their product even if there is no contractual relationship with the harmed party." (4)

Thus, the responsibility for damage caused by defective products unquestionably falls on the producer, defined as any natural or legal person engaged in their usual activity of producing movable goods intended for marketing, whether as a final product, components, or through manufacturing or assembly. The producer could be a farmer, livestock breeder, industrialist, or pharmacist (5).

It is noted that the legislator has not defined who is responsible for defective products in the mentioned article. However, referring to the Consumer Protection Law (09/03) and related regulatory decrees, the following definition is found: "Any natural or legal person involved in the process of offering products for consumption (6)." This implies that responsibility encompasses all stages of production, importation, storage, transportation, and distribution, both wholesale and retail (7).

Another definition states: "The producer, manufacturer, intermediary, craftsman, importer, or distributor, or generally anyone involved in the profession of offering products or services for consumption." (8)

From this, it is clear that liability for defective products affects various individuals through multiple stages, from the initial producer of raw materials to the final seller of the product. Thus, those considered responsible include the visible producer, the importer, the service provider, and the final seller of the product.

The harmed party refers to anyone who suffers material or physical damage due to the defective product, even if they have no contractual relationship with it (9). Hence, the harmed party, also referred to as the consumer in Law No. 09/03 on Consumer Protection and Fraud Prevention, includes anyone affected by the defect.

The harmed party may have a direct or indirect contractual relationship with the product, or no contractual relationship at all. The key consideration is the damage resulting from the defective product.

The Algerian legislator has defined what constitutes a product in Article 140 bis, stating: "A product is considered any movable property, even if connected to immovable property, including agricultural products, industrial products, livestock, food industry products, fisheries, and electrical energy." (10).

## Subsection 2

### Guarantee of Exposure and Entitlement

In the context of product liability, "product" refers to any movable property, including those connected to real estate, whether tangible or intangible, natural or industrial, excluding services. Real estate itself is excluded, as it remains governed by specific provisions. However, real estate specifically allocated for service remains considered a product if dealt with independently of the real estate it serves. Additionally, it is not necessary for the product to be in its final form (11).

The Algerian legislator has provided several definitions of a product through various laws. For example, Article 2, Paragraph 2, of Executive Decree No. 90/266 concerning the guarantee of products and services defines a product as "...anything purchased by the consumer, whether material or service." Similarly, Article 3, Paragraph 10, of Law No. 09/03 on Consumer Protection and Fraud Prevention defines it as "...any goods or services that may be subject to transfer, whether for a price or free of charge." Thus, any defect affecting the product is the responsibility of the supplier, who is also liable for any damages suffered by consumers, provided that the defect was present at the time the product was released for consumption (12).

## Subsection 2

### Guarantee of Exposure and Entitlement

In electronic contracts, the consumer benefits from the same guarantees as a traditional contract, specifically the assurance of the product's ownership and the right to enjoy this ownership peacefully and completely. This means the consumer should not face any personal challenges to their rights, nor should others interfere with them.

The guarantee of exposure entails the seller's responsibility for any actions taken by them or by others. This includes:

1. **Personal Exposure Guarantee:** The seller must refrain from any actions (whether physical or legal) that could impede the buyer's enjoyment of the product. Failure to do so constitutes a breach of contractual obligations, leading to legal claims for prevention and compensation for damages (13).
2. **Third-Party Exposure Guarantee:** The seller is responsible for any claims made by third parties, even if such claims arise from rights established after the sale. This means that any legal claims by third parties related to the product are covered, provided they are due to reasons attributable to the seller, who must address and resolve such claims (14).

Material exposure in electronic contracting could be exemplified by a situation where a consumer purchases a software program, and the seller then introduces a virus to the system, thereby disrupting the consumer's use of the software.

Legal exposure could involve a scenario where a product is purchased with an encumbrance or contested security interest.

## Section 2

### Consumer Protection under Newly Introduced Texts

Traditional consumer rights under general rules, including guarantees against hidden defects and guarantees of exposure and entitlement, no longer adequately protect consumers from defects in modern products acquired through various online networks and electronic contracts (15). This has necessitated additional consumer protections, including prior and post-sale guarantees such as the obligation to inform the consumer, provide goods conforming to agreed terms, and enable the right of withdrawal from the contract. These aspects will be detailed in the forthcoming subsections.

## Subsection 1

### Right to Information and Delivery of Conforming Goods

Typically, consumer information and guidance occur before the contract is concluded. However, in electronic contracting, which involves remote transactions via various communication methods, several legislations have emphasized the need for additional safeguards (16).

**Article 10 of Law No. 18/05**, dated May 10, 2018, on electronic commerce, stipulates that every electronic transaction must be preceded by an electronic commercial offer documented in an electronic contract and confirmed by the consumer (17).

**Article 11** of the same law further specifies that the electronic offer must be presented in a visible, readable, and understandable manner and must include a method for confirming the order (18).

**Article 12** outlines that any order for a product or service must go through three mandatory stages:

1. Providing terms accessible to the consumer, enabling them to contract with sufficient knowledge.
2. Verifying the details of the order by the consumer, including the nature of the product or service, unit price, total price, and quantity required.
3. Confirming the order, leading to the final contract. (19)

These stages are established to ensure that the consumer is fully informed of all details and information during the negotiation and execution phases of the contract.

Additional obligations imposed on the electronic supplier, considered consumer rights and protection guarantees, include delivering the goods as per the agreed terms. Since visual inspection or providing samples is not feasible in this type of contract except through computer screens, legislation has incorporated these additional protections. According to Law No. 18/05,

delivery must match the order, and the supplier must request the consumer's signature upon actual delivery of the product. This provides protection for both parties, especially the consumer, who should inspect the product before signing. Moreover, the legislator has granted the consumer the right to request a product replacement in certain cases, all aimed at protecting the electronic contract parties (20).

## Subsection 2

### Right to Withdrawal and Seeking Assistance from Protection Bodies

The right to withdraw from an electronic contract is a newly introduced right. This right seems to contradict the principle of contractual obligation, making the electronic contract non-binding for the consumer while binding for the supplier. The right to withdraw is a personal right subject to the consumer's discretion and includes giving the consumer an opportunity to reconsider and review their commitment (21).

**Article 23** of Law No. 18/05 specifies that if delivery is non-compliant or the product is defective, the supplier must accept the return of the goods. The consumer must return the product within a maximum of four (4) days from the actual delivery date, indicating the reason for refusal, with shipping costs borne by the supplier.

The supplier is also required to deliver a new product that conforms to the order, repair the defective product, or replace it with a similar one, or cancel the order and refund the amount paid without prejudice to the consumer's right to claim damages. The legislator has mandated that refunds must be made within fifteen (15) days from the supplier's receipt of the returned product (22).

Many legislations have also introduced new methods to protect consumers, such as establishing accredited bodies that oversee consumer protection from the production and distribution stages to advertising, selling, and delivery. These bodies may be national, like various associations, or international, such as the Arab Union for Consumer Protection. Their roles include protecting consumers from products and services that pose risks to their health and safety, as well as providing information about goods and services through dedicated channels and websites.

The Algerian legislator, like others, has aimed to establish bodies for consumer protection, reflected in the role of the Ministry of Trade, general directorates such as the General Directorate for Activity Control and Regulation, the General Directorate for Economic Control and Fraud Prevention, various councils like the National Council for Consumer Protection, the Algerian Center for Quality Control and Distribution, the Competition Council, customs administration, governors, mayors, and local and national associations active in this field.

## Conclusion

In light of technological advancements and economic developments globally, alongside producers' focus on rapid profits through new forms of contracting and neglecting consumer safety, coupled with the inadequacy of traditional protective rules established by the legislator and the emergence of numerous products with hidden defects posing risks to consumers' safety, it has become essential for the legislator to introduce new guarantees and effective rules for civil liability in this area, differing from the general rules previously established.

This involves enacting new legal texts that align with what is termed electronic contracting, characterized by speed, to provide effective consumer protection, especially during the contract execution phase due to potential risks to consumers.

This is reflected in adding some modern guarantees alongside traditional ones, such as guarantees against hidden defects and guarantees of exposure and entitlement, as well as new guarantees, including ensuring consumer information at the time of contract execution, delivering goods conforming to agreed specifications, recognizing the right to withdraw from the contract, and establishing specialized bodies for protecting against such transactions.

Based on this study, the following recommendations are proposed:

- Seek more secure methods for electronic contracting at both national and international levels to build consumer trust, and enhance regulatory oversight of producers in a broad sense.
- Develop a comprehensive legal framework to establish product liability for defective products, beyond just Article 140 bis, and ensure the legislator addresses and defines the terms "producer," "product," "defect," and "damage" adequately to activate necessary legal protection for consumers.
- Involve the state in the responsibility for products requiring prior authorization or licensing from it to further enhance protection.
- Create a portal for receiving consumer complaints related to these contracts to detect and combat fraud in such transactions.
- Activate awareness-raising measures for such commercial practices to increase trust between producers and consumers.

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## **Legal and Regulatory Texts**

### **A. Laws:**

- Law No. (09-03) dated February 25, 2009, on Consumer Protection and Combatting Fraud, published in the Official Gazette, No. (15) of 2009.
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