



***The legal status of the consumer before contracting according to Law  
09/03***

**Imen Aoun<sup>1</sup>**

**<sup>1</sup>University of Sheikh Larbi Tebessi (Algeria), imene.aoun@univ-tebessa.dz  
Laboratory of Comparative Law and Prospective Social and Foresight Studies.**

**<https://orcid.org/0009-0003-2756-4826>**

**Sonia Ben Tiba<sup>2</sup>**

**University of Sheikh Larbi Tebessi (Algeria), sonia\_bent@hotmail.fr  
Laboratory of Strategic studies and development in the Arab world**

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**Abstract:**

Consumption is the primary driver of production and the inevitable end for all goods and services. It has existed since the presence of humans on Earth and is in continuous change due to the development of social and economic life.

The concept of consumption no longer only includes food and clothing or the basic necessities and needs of humans, but it expands in line with ongoing development in all fields.

The legislator takes upon themselves the responsibility to protect the weaker party in the consumer relationship; therefore, they establish a set of guarantees aimed at achieving contractual balance. However, they have overlooked a very important stage, which we will clarify through this study.

**Keywords:** Before contracting consumer; Consumer protection; Legal status; Prevention.

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\*Corresponding author

## I. INTRODUCTION

Defining the concept of the consumer has contributed to clarifying concepts, resolving confusion, and avoiding mixing similar terms. This has encouraged legal systems to pay attention to consumers' interests and protect their rights regarding the goods and services they need in their daily lives, along with factors related to quality, safety, and appropriate pricing.

As previously mentioned, the legislator has defined the consumer without referring to the pre-contractual stage, which led us to raise the following issue: Who is the consumer before contracting? And what is their legal position in the consumer relationship?

We will address this issue through the following points:

- Definition of the consumer before contracting
- Justifications for consumer protection
- Strengthening the legal position of the consumer before contracting through imposing the obligation of pre-contractual information.

### 1. Definition of the Consumer Before Contracting

The consumer at the pre-contractual stage is the natural person who deals with a professional with the aim of concluding a contract related to a good or service, for purposes that do not fall within the scope of their professional or commercial activity. At this stage, the consumer benefits from special protection that imposes on the professional an obligation of transparent and complete disclosure regarding the essential elements of the offer presented, with the goal of enabling the consumer to make an informed contractual decision.

From a deep jurisprudential perspective, scholars such as Philippe Malaurie and Laurent Aynès affirm that the consumer at this stage is still only in the position of a "potential party." However, the law grants them early protection that even precedes the formation of the contractual relationship, because the moment of decision-making is sensitive and requires a balance of information between the consumer and the professional. (Malaurie & Aynès, 2016, p. 125)

Jurisprudence also points out that the definition includes two essential conditions:

- a. That the person is natural (because French law excludes legal entities from the status of consumer except in very rare cases).
- b. That the purpose of the contract is personal and not professional.

Therefore, jurisprudence focuses on the preventive (Court of Cassation, First Civil Chamber, February 25, 1997; Court of Cassation, First Civil Chamber, July 3, 1996) function of the legislation at this stage and considers that the status of the consumer is established from the moment negotiations begin or the offer is received, even before the contract is concluded.

From what has been discussed, we notice how French courts (Court of Cassation, First Civil Chamber, February 25, 1997, No. 95-14287):

Expand the scope of protection granted to the consumer at the pre-contractual stage and emphasize that the pre-contractual information must be clear and complete, not merely a formal procedure. This is aligned with the Algerian legislator's approach known as the obligation of contractual information (Haddouche, 2012, p. 167), where many scholars believe that the professional must detail the information and present it in an understandable manner.

### **1.1. Definition of the Consumer:**

From the perspective of the Algerian legislator, as with other comparative legislations, there has been an interest in defining the concept of the consumer within the framework of the Consumer Protection and Fraud Control Law. This aims to identify the applicable rules in the consumer relationship deserving protection, while omitting any reference to the consumer before contracting.

The concept of the consumer has evolved under the Algerian legislator, similar to other legislations worldwide, through the new legal texts introduced. For instance, Article 2, Paragraph 9 of Executive Decree No. 90/39 related to quality control and fraud repression, as amended, defines the consumer as:

“Any person who acquires, for a price or free of charge, a product or service intended for intermediate or final use to satisfy their personal needs or the needs of another person or an animal under their care.” (Law No. 02/04 of June 23, 2004)

From the above text, it is clear that the Algerian legislator adopted a broad concept of the consumer. The consumer mentioned in the legal text is not only the final consumer but also the intermediate consumer, who some consider to be the professional acquiring a product for exploitation.

However, with the enactment of Law No. 02-04 dated June 23, 2004, which defines the rules applicable to commercial practices, as amended, the consumer was defined in Article 3, Paragraph 2 as:

“Any natural or legal person who acquires goods offered for sale or benefits from services offered, devoid of any professional character.”

Through this definition brought by the legislator, the concept of the consumer includes all natural or legal persons who are devoid of professional character.

Furthermore, Article 3, Paragraph 1 of the new Consumer Protection and Fraud Control Law No. 09-03 dated February 25, 2009, defines the consumer as:

“Any natural or legal person who acquires, for consideration or free of charge, a good or service intended for final use to satisfy personal needs or the needs of another person or an animal under their care.” (Article 3, Law No. 03/09, 2009)

By reviewing these legal texts and the legislative position, it becomes clear that the legislator emphasizes maintaining the status of the consumer for personal or family use, while expanding the scope of protection to include legal persons and considering them consumers who benefit from the legally established protection.

The Algerian legislator thus considers legal persons as consumers under the 2004 and 2009 laws. However, with regard to Decree No. 306/06 related to protection against abusive terms, there is an inconsistency in adopting a single term regarding the professional, who is referred to as the "economic assistant."

### **1.1.1 Observations on the Definition of the Consumer Set by the Legislator:**

Based on the definition provided by the legislator to determine the concept of the consumer, the following observations can be made (Boudali, 2006, p. 27; El-Sadiq, 2014, pp. 37–38):

- The Algerian legislator restricted the scope of jurisprudence and judicial interpretation by setting a specific definition for the consumer, which was originally their exclusive domain.
- The legislator can be criticized for using the term "acquires", which excludes the "user" from protection. The user often utilizes the good or service, so what if it is used by a third party for a non-professional purpose? The legislator should address this drafting flaw to ensure protection includes both the acquirer and the user.
- The consumption contract is not limited to just the professional and consumer parties but extends to persons contracted to perform work or services for the consumer or to meet the needs of another person.
- The consumption contract is a contract of exchange, meaning each party receives compensation for what they provide in goods or services, whether the buyer pays or receives the service free of charge—hence the phrase “acquires for consideration or free of charge.”

## **2. Justifications for Consumer Protection**

In the digital economy, consumers have become vulnerable to manipulation of their interests, fraud, and deception through misleading or false claims of benefits. Due to the risks threatening the consumer's weak position in contractual relationships, sufficient means must be found to protect them.

With developments in communication methods and the spread of electronic transactions, consumers are no longer bound by spatial or temporal barriers. Since one party in commercial contractual relationships—namely the professional or business provider—holds a position of power, imposing their terms on the consumer, and the goods may not physically be in the consumer's possession but only seen through various advertising media, the consumer is the weaker contracting party, dominated by a state of weakness that creates an imbalance between the parties.

Ironically, some legislations still rely on traditional legal rules to regulate consumer

activity.

We should also note the importance of electronic contracts and negotiations since most of these contracts are automated and concluded remotely. This raises concerns, ambiguity, and uncertainty regarding some aspects of the contractual process, which drives each party to negotiate with the other before concluding the final contract. This is done through one or more modern electronic communication methods, such as contracting via online auctions, through websites (websites), email, or others (Dhaif & Larqat, 2018, p. 5)

There are several reasons that have led to the focus on protecting the interests and rights of consumers, including (Dhaif & Larqat, 2018, p. 5; Bouchnaf, 2018, p. 58):

- a. The increased demands of consumers from producers to obtain services that align with their individual desires, resulting from the rise in consumer income, living standards, education level, and welfare, while producers offer their products to a large market without considering the specific desires of each individual. This has left consumers in a state of incomplete satisfaction.
- b. Consumers' expectations for high-quality products or services despite the decrease in real income and purchasing power due to rising prices, which has led to consumer frustration and anger.
- c. The lack of sufficient information about the characteristics and prices of services.
- d. The emergence of the problem of low-income consumers suffering from fraud, price inflation, and low quality, due to their lack of awareness of the importance of their protection, low education levels, lack of experience, and lack of awareness of their rights.
- e. The change in legal and political perspectives regarding consumer protection, with governments accepting intervention to protect consumers' interests, and politicians supporting consumer protection as a means to gain more votes.
- f. The psychological harm some consumers suffer from due to the use of certain goods and services.
- g. Many consumers' lack of knowledge about the legal aspects of the marketing system for goods and services, which they can resort to when necessary for their protection.

### **3. Strengthening the Legal Position of the Consumer Before Contracting Through Imposing the Obligation of Pre-Contractual Information**

No one can deny the judiciary's important role in establishing the obligation of information (disclosure), but this has not prevented scholars from showing interest and researching the topic itself. The French scholar "Juglar" is considered one of the first commentators to address the obligation of information in contracts through the study of legal texts and judicial decisions (Suleiman, n.d., p. 375)

The obligation of information has been a widely discussed topic recently, and it can be divided according to its place in the contractual process into two types, the first occurs

in the pre-contractual phase, meaning it arises during the formation of the contract, and is referred to in jurisprudence as the **pre-contractual obligation to inform** and the second occurs in the post-contractual phase, meaning the obligation to provide information during the execution of the contract (Court of Cassation, First Civil Chamber, 1984; Articles L.111-1 & L.121-1, French Consumer Protection Code). The latter is not part of our study, so we will focus on the first type, where we study its concept, which requires us to investigate its definition and conditions.

### **3.1. Definition of the Pre-Contractual Obligation to Inform**

The obligation to inform serves as a means to counteract the risks posed by advertising and promotion through providing information placed on goods and services. Information about products refers to all data related to the product directed to the consumer on a label or any other accompanying document, or by any other means, including modern technological methods or even oral communication (Paragraph 15, Article 3 of Executive Decree No. 13-1378 dated November 9, 2013, which specifies the conditions and methods related to consumer information).

It is noteworthy that the legislator, through the Consumer Protection and Fraud Control Law, has obliged participants to inform the consumer in the following ways:

- Information about prices
- Information about the essential characteristics of the product and sales conditions
- Information about the expected limits of liability

The method of fulfilling the obligation to inform is clearly through labeling. Article 7 of the aforementioned Consumer Protection and Fraud Control Law states:

*"Every participant must inform the consumer of all information related to the product they place on the market through labeling, marking, or by any other appropriate means."* (Article 07, Law No. 09-03, n.d.)

This is also confirmed by Article 4 of Executive Decree No. 13-1378, which states:

*"The consumer shall be informed through labeling, marking, advertising, or any other appropriate means when the product is placed on the market, and the essential characteristics of the product must be provided in accordance with the provisions of this decree."* (Article 04, Executive Decree No. 13-378, 2013)

According to Paragraph 4 of Article 3 of the same Consumer Protection and Fraud Control Law, labeling means data, writings, instructions, marks, pictures, statues, or symbols related to a product that appear on every packaging, document, sign, feature, sticker, card, seal, hanging tag, or attached indicator that indicates the nature of the product, regardless of its form or medium, and regardless of how it is placed. The information is not limited to the labeling or the product's specifics only but also includes the method of use, the user manual, warranty conditions, and any other

information specified by the applicable regulations. Thus, labeling plays a role in both informing and advertising. (Para. 03, Art. 04, Law No. 09-03, n.d.)

The Algerian legislator has mandated the labeling of food products and non-food household products under Executive Decree 13-1378 mentioned above. It also requires that labeling data, usage instructions, and user manuals be written compulsorily in Arabic, and optionally in one or more other languages that are clear and easy to understand by consumers, in a clear, legible, and indelible manner (Article 18 of the Consumer Protection and Fraud Control Law).

In addition to the producer's positive obligation to label, there is also a negative obligation to refrain from using any statement, indication, imaginary name, presentation method, labeling, or any advertising, display, labeling, or sale technique that could cause confusion in the consumer's mind (Article 60 of Executive Decree 13-1378).

Scholars, based on these legal texts, have attempted to clarify the meaning of this obligation and define it as:

*"The obligation to provide, at the time of contract formation and prior to its conclusion, all essential and influential information and data related to the good or service in question, which the creditor does not know and cannot obtain except from the debtor, in order to enable the formation of a free and informed consent when entering into the contract."* (Abdel Kafi, 2008, p. 190)

Some scholars define it as:

*"A pre-contractual obligation where one contracting party must provide the other party, at the time of contract formation, with the necessary data to create a full, enlightened, and free consent, aware of all contract details. This is due to certain circumstances related to the nature of the contract, the status of one party, the nature of the subject matter, or any other reason that makes it impossible for one party to know specific data or requires them to grant legitimate trust to the other party, who is then bound by all these considerations to the obligation to disclose information."* (Al-Mahdi, 1982, p. 15)

From this, it becomes clear that the obligation to inform in this context takes on a positive form because fulfilling it allows the consumer to begin concluding the contract with full knowledge of the contract's reality, detailed data about its elements, conditions, and suitability for the intended purpose.

### **3.2. The Role of the Obligation to Inform in Enlightening the Consumer's Will**

The obligation to inform plays an important role in enlightening the consumer's will during the pre-contractual stage. A consumer who is well informed about the offer will be able to purchase the products they truly need and that correspond with their legitimate desires.

The obligation to provide information manifests in the necessity to present data that serves the consumer's interests. This obligation is not limited to mere notification but

extends to offering purposeful advice that enables the consumer to make an informed decision, while also warning them of the risks associated with their choice. All of this aims to fulfill the consumer's legitimate desires.

Moreover, a consumer who is aware of the terms of the contract they are about to enter will be capable of defending their own interests. The professional's obligation to inform the consumer about the benefits and risks of the contract not only ensures economic transparency but also guarantees the cohesion of contracts and the stability of transactions, as it embodies the principle of good faith in the form of a legal obligation imposed on the professional in the pre-contractual phase through its broad applications. However, this does not mean creating a negotiation environment between the professional and the consumer, since consumer contracts are contracts of adhesion (take-it-or-leave-it contracts). The obligation to provide information does not change this nature but merely helps the adhering party form a well-informed conviction and make a sound decision to either accept or reject the contract as a whole.

Additionally, this obligation may serve as a strong reason to combat unfair terms, especially if consumers' refusal to contract due to the presence of abusive clauses threatens the professional's interests, forcing them to amend their standard unilateral contracts. This effect is particularly notable if the bodies responsible for consumer awareness and information play an effective role in enlightening and educating consumer groups. (Bouchareb, 2012, p. 97)

## II. Conclusion:

In conclusion, it is clear that the Algerian legislator has not explicitly addressed the consumer in the pre-contractual phase, especially in the provisions of Law No. 09/03 related to consumer protection and combating fraud, which is a point of criticism. On the other hand, the legislator has indirectly sought to expand the scope of protection granted to the consumer to include the pre-execution phase by ensuring their right to transparent and accurate pre-contractual information, and by imposing obligations on professionals to provide the necessary information that enables the contracting party or consumer to make an informed decision.

This underscores the legislator's commitment to strengthening the legal protection of all contracting parties in line with the modern requirements of contractual relationships, thereby achieving the principles of equality and fairness in commercial transactions.

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