

Commitment of economic agents to the invoice in Algerian law

إلتزام العون الاقتصادي بالفاتورة في القانون الجزائري

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Abstract:

Further to the adoption by Algeria of the trend of free economy and economic market system policies, and the freedom of trade and industry principle, the interest of the private economic agents, both natural and moral, for the practice of economic activities such as production, distribution and services providing, was brought to light.

However, the lack of transparency and integrity exercised by certain economic agents whilst conducting their commercial transactions, led to the intervention of the legislator in order to restore the balance and transparency of commercial practices and to preserve the rights of economic agents and consumers alike, through the invoicing obligation to which shall abide the economic agent. The issuance of invoices has therefore been surrounded by a set of rules and terms became controlled through the determination of its scope of application and the alternative methods thereto.

Key words: The Invoice - Economic Agents - Transparency - Commercial Practices.

Introduction:

The economic system in Algeria relying previously on economic activities monopolized for the government, has witnessed a considerable regression of this latter's intervention in economy direct management and the transition to a free market economy system, as believed to be a better and a more effective mechanism than the command economy, proven to be limited on different scales.

It became therefore, a necessity to amend the domestic and foreign trade mechanisms and policies and to readapt the legal system thereof in order to comply with this trend, through the issuance of an arsenal of legal texts. An example of these texts is the Competition Act, issued by virtue of order 95-06¹, that has enshrined the freedom of competition and ascertained the integrity and transparency of commercial practices. It has been however subsequently repealed by Article 73 of order 03-03², dated July 19th, 2003 bearing the competition Act, which set the conditions for the exercise of market competition whilst controlling the economic clusters, with the purpose of gaining in economic effectiveness and attaining a better living conditions for the consumer. Statute 02-04³ has been then issued, which set the rules of commercial practices. It has been later amended and supplemented by statute 06-10⁴ that has determined not only the rules and principles in matter of transparency and integrity in commercial practices, amongst

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" Commitment of economic agents to the invoice in Algerian law"

economic agents and between them and the consumers, but also those pertaining to the consumer protection and to

The obligation of the economic agent to provide customers with information regarding the sale terms and the products and services prices and identification And has also instituted the obligation to deliver invoices for all provided services and sale transactions, since invoicing is the true manifestation of transparency in commercial practices.

Considering what preceded and since the invoice is an effective instrument of protection of the economic agents interests in the market and a tool that carries all payable taxes and duties information, then how is it regulated by the legislator and what effectiveness does it provide in attaining transparency in commercial practices?

In order to answer this question, we have adopted both the descriptive and analytical methods through the description of the scope of application and the required conditions of the invoice, and the analysis of the legal texts pertaining thereto.

Therefore, the research paper is divided in two (02) sections:

Section I : Obligation to Invoice

Section II: Illegal invoicings and violation of Invoicing Rules

1- Obligation to invoicing

Due to the fast-paced and credible nature of the business world, the legislator has imposed on economic agents the use of the invoice as an expression of transparency in commercial practices. It is framed by a set of rules and conditions, delimiting the scope of application and specifying the means of compliance. To explain this, we will address the scope of application of the invoice, the importance of the invoice, and finally, the alternatives to the invoice.

1.1. Scope of invoicing

Any sales of goods or provision of services between economic agents must be accompanied by an invoice. The seller is obliged to deliver it, and the buyer is obliged to request it. The invoice must be delivered as soon as the sale or provision of services is completed⁵. The scope of application of the invoice is materialized by a series of controls related to the persons obliged to write it and the activities subject to this invoice.

1.1.1. Persons concerned

According to Law No. 04-02 of June 23, 2004, which sets the rules applicable to commercial practices, the economic agent is any:

- Producer;
- Trader;
- Craftsman;
- Service provider, regardless of their legal status, who exercises their activity within the framework of their usual professional activity or with the aim of achieving their statutory objective.⁶

The seller or service provider is required to issue the invoice or equivalent document, and the buyer is required to request, as the case may be, one or the other document, which must be issued as soon as the sale or service provision is completed.⁷

The exercise of a professional activity is also considered as one of the elements contributing to the definition of the economic agent, whether the activity is of a commercial, craft, or service provision nature. This must be done within the framework of their usual profession and in accordance with the requirements of each profession.⁸

1.1.2. Activities concerned

According to Article 10 of Law No. 10-06⁹ of August 15, 2010, amending and supplementing Law No. 04-02 of June 23, 2004, which sets the rules applicable to commercial

" Commitment of economic agents to the invoice in Algerian law"

practices¹⁰, any sale of goods or provision of services carried out between economic agents engaging in the activities mentioned in Article 02 of the same law, which are:

- Production activities;
- Agricultural and livestock activities;
- Distribution activities, including those carried out by importers of goods for resale, agents, livestock dealers, and hide dealers;¹¹
- Service, craft, and fishing activities carried out by any economic agent, regardless of their legal nature, must be accompanied by an invoice or an equivalent document.

1.1.3. Mandatory information in the editorial of an invoice

In its third article, Executive Decree No. 05-468 of December 10, 2005, which sets the conditions and modalities for the establishment of the invoice, transfer note, delivery note, and summary invoice, indicated the mandatory information that must be included in the invoice.

a) Information relating to the seller

Here is the translation of the mandatory information that must be included in the invoice:

-Seller's mandatory information:

- Name and surname(s) of the natural person;
- Name or corporate name of the legal entity;
- Address, telephone and fax numbers, and, where applicable, email address;
- Legal form of the economic agent and nature of the activity;
- Share capital, where applicable;
- Trade register number;
- Statistical identification number;
- Payment method and invoice payment date;
- Date of issuance and invoice number;
- Description and quantity of the goods sold and/or services provided;
- Unit price exclusive of tax of the goods sold and/or services provided;
- Total price exclusive of tax of the goods sold and/or services provided;
- Total price inclusive of all taxes, expressed in figures and words.

b) Information relating to the buyer

The mandatory information for the buyer is as follows:

-Buyer's mandatory information:

- Name and surname(s) of the natural person;
- Name or corporate name of the legal entity;
- Legal form and nature of the activity;
- Address, telephone and fax numbers, and, where applicable, email address;
- Trade register number;
- Statistical identification number.

If the buyer is a consumer, the invoice must mention their name, surname(s), and address.

1.2. The importance of invoicing

The legislator has regulated the invoice as a document for daily commercial transactions. It is an official document given to the consumer with the goods or services they receive after the completion of the purchase process or service provision. It is a written document issued at the conclusion of the contract¹². Its importance is manifested through the data it contains, contributing to the transparency of commercial practices and playing an essential role in providing evidence.

1.2.1. A way to establish the principle of transparency

The transparency of commercial practices is one of the foundations of Law 04-02, aiming to protect consumers and promote competition among economic agents. The invoice is an effective means of protecting the rights of economic agents in the market. Through the data it

" Commitment of economic agents to the invoice in Algerian law"

contains, it also serves as an informative document for the consumer on all charges and fees, as well as the amounts they have paid or will pay¹³

1.2.2. A proof

Law No. 04-02 as well as Executive Decree No. 05-468 did not stipulate that the invoice is considered as a means of proof, but with reference to article 30 of the code of Algerian commerce¹⁴ which states that "All commercial contracts are observe:

By authentic acts,

By deeds under private signature,

By an accepted invoice..."

1.2.3. A control tool

Opening the way for economic agents to freely conduct economic activities in the market is followed by the state's establishment of legal mechanisms to protect the market from harmful practices due to the selfish nature of certain economic agents who may resort to practices that undermine the integrity and transparency of commercial practices, which often have a negative impact on the consumer and the national economy in general.¹⁵

1.3. Invoice alternatives

Commercial transactions between economic agents can be regular and recurring with the same customer, and invoicing in such cases can be a cumbersome process, given that the operations are based on mutual trust. In light of the aforementioned circumstances, Law No. 04-02 has provided that the invoice could be replaced by another document.

1.3.1. The delivery note and summary invoice

a) The delivery note

According to Articles 14, 15, and 16 of Executive Decree 05-468, the invoice can be replaced by a delivery note for repetitive and regular commercial transactions involving the sale of goods to the same customer. The authorization to use the delivery note is expressly granted to economic agents by decision of the administration responsible for commerce. The delivery note must include:

- The number and date of the decision authorizing the use of the delivery note;
- The name and surname(s);
- The identity card number of the delivery person or carrier, as well as the mandatory information mentioned previously that must be included in the invoice.

b) The summary invoice

According to Article 17 of Executive Decree 05-468, when using the delivery note, a summary invoice of the transactions carried out must be established. It must include the sales made by the seller with each customer during a period of one (1) month and subject to delivery notes, and must refer to the numbers and dates of the established delivery notes.

1.3.2. The transfer voucher

When an economic agent transfers their goods to their storage, processing, packaging, and/or marketing units without a commercial transaction, they are required to justify the movement of their products with a transfer note.

The transfer note serves a specific purpose, which is to ensure complete transparency of the goods' transportation and to provide operators with a simple and fast document to justify the movement of their goods. Therefore, it must accompany the goods during their transfer and be presented upon the first request by judicial police officers and/or authorized control agents.

1.3.3. The electronic invoice

By way of derogation from the provisions of Executive Decree 05-468, it is permitted to establish and transmit the invoice by telematic means, which constitutes a system of telematic transmission of invoices comprising a set of hardware and software allowing one or more persons to exchange invoices remotely. The use of the process must take place in accordance

with the modalities and procedures defined by a joint order of the ministers responsible for commerce, finance, and telecommunications. As for the conditions and information that must be available in the electronic invoice, they are the same conditions and information that must be provided in the traditional invoice, but the legislator has stipulated in the same executive decree 05-468, in the binding data of the invoice, that the email address of the seller and the buyer be added, if necessary, i.e., in the case of an electronic contract.

2. Illegal invoicings and violation of Invoicing Rules

2.1. Illegal invoicings

2.1.1. The non-compliant invoice

Any violation of the provisions of Article 12 of Law 04-02 is considered a non-compliant invoice and is punishable by a fine of ten thousand dinars (10,000 DA) to fifty thousand dinars (50,000 DA), provided that the non-compliance does not relate to the name or business name of the seller or buyer, their tax identification number, their address, the precise denomination and unit price, excluding taxes, of the products sold or services rendered.

2.1.2. The false invoice or the invoice of convenience

The law n°04-02 has not specified this type of invoices, nor has the executive decree 05-468. However, in application of the provisions of article 65 of the 2003 finance law¹⁶ and article 219 bis of the direct taxes and related taxes code¹⁷, a decision of the Minister of Finance dated August 1, 2013¹⁸ was issued to close one of the legal loopholes used by economic agents to defraud in tax payment operations, by reducing them. Therefore, the elaboration of false invoices and complaisance invoices has been clearly defined.

a) The false invoice

The false invoice is an invoice established without having carried out any delivery or service, for the purpose of:

- Understating the tax bases for various taxes;
- Concealing operations;
- Transferring and laundering capital;
- Diverting funds from assets and financing illicit or licit operations;
- Obtaining certain benefits such as the right to deduct VAT, and loans from banks for the purpose of financing investment projects.

b) The invoicing of convenience

According to Article 3 of the aforementioned decree, a "facture de complaisance" refers to the act of concealing or disguising the identity or address of suppliers or customers on an invoice, or knowingly accepting the use of a fictitious identity or a straw man, with the aim of reducing the amount of taxes to be paid and diverting a company's or an individual's own funds for various purposes. It corresponds to a real purchase, sale, or service provision, but with modified conditions.

2.1.3. Failure to invoicing

According to Article 10, 11, and 13 of Law 04-02, any violation is considered a billing default and is punishable by a fine equal to 80% of the amount that should have been invoiced, regardless of its value. Additionally, under Article 65 of the 2017 Direct Tax and Related Taxes Code, the failure to invoice or present an invoice results in the application of fines as follows:

- 50,000 DA for retail traders;
- 500,000 DA for wholesale traders;
- 1,000,000 DA for producers and importers.

In the case of a repeat offense, the fines are doubled.

2.2. Consequences for failure to comply with the invoicing obligation

2.2.1. Sanctions provided for by law 04-02

The law n°04-02 of June 23, 2004, which sets the rules applicable to commercial practices, as amended and supplemented, provides for fines for failure to invoice as well as administrative sanctions.

a) Fines

The non-compliant invoice is punishable by a fine of ten thousand dinars (10,000 DA) to fifty thousand dinars (50,000 DA). The failure to invoice is punishable by a fine equal to 80% of the amount that should have been invoiced, regardless of its value, in accordance with Article 34 of Law No. 04-02.

b) Administrative sanctions

The translation of the provided text is as follows:

Article 39 of Law No. 04-02 provides that goods that are the subject of infractions for (c) failure to invoice, as well as the equipment and materials used to commit them, may be seized, subject to the rights of third parties acting in good faith.

The seized goods must be the subject of an inventory report according to the procedures defined by regulatory means under Executive Decree No. 05-472.¹⁹

The judge may also order the confiscation of the seized goods in the event of a violation of the aforementioned rules.

The territorially competent wali may, upon the proposal of the wilaya director in charge of commerce, issue an order for the administrative closure of commercial premises for a maximum period of thirty (30) days in the event of an infraction of the rules established by the provisions of Law 04-02.

The closure decision is subject to judicial appeal. In the event of the annulment of the closure decision, the aggrieved economic agent may seek redress for the damage suffered from the competent court. According to Article 48 of Law No. 04-02 the territorially competent wali and the judge may order, at the expense of the offender or the convicted person, the publication of their decisions, in full or in part, in the national press or their display in a prominent manner in the places they indicate.

2.2.2. Sanctions provided for by the penal code

According to the provisions of Article 219 of the Algerian Criminal Code²⁰, any person who commits or attempts to commit a forgery in commercial or banking writings is punished with imprisonment of one (1) to five (5) years and an amendment of five hundred (500) to twenty thousand (20,000) DA.

The legislator has specified in Article 216 of the Criminal Code that the invoice is considered falsified in the following cases:

- Imitation or counterfeiting of writing or signature;
- Addition of data after invoicing;
- Supposition or substitution of persons.

Conclusion:

Invoicing is considered the second instrument, following marketing, used by the Algerian legislator to establish the transparency of commercial practices. Further of being an important substantiation mean used for the protection of the consumer rights and maintaining competition among economic agents, invoicing is also a monitoring instrument that aims to preserve the national economy in general. The legislator has made it a real embodiment of transparency as it provides protection for the economic agents and allows them to be fully aware of their rights and interests.

" Commitment of economic agents to the invoice in Algerian law"

As regard to its great importance in the economic and commercial activities, the legislator has imposed upon the economic agent, as a seller, the obligation to issue invoices or any other surrogates thereto. The issuance and deliverance thereof are as such mandatory between and among economic agents and also to the customer whenever requested. This emphasizes the role that invoicing has in the embodiment of transparency during the contract conclusion and has led the legislator to regulate it thoroughly. Regulations have been instituted in consideration to the obligation of its issuance and the civil sanctions that may be applied in case of any violation thereof, and with the purpose of protecting national economy on one hand, and consolidating market transparency and competition legitimacy among economic agents, on the other hand.

This research paper has permitted to attain the following results:

1. The legislator has instituted a set of rules that govern commercial practices, such as the legal texts regulating the invoice and invoicing and aiming to restore balance between the consumer and the economic agent. Whereas this latter, empowered by the privilege of information about the contract matter, is made by the legislator incumbent of the obligation of invoicing, thus providing the consumer with an instrument to verify that he is not victim of any form of discrimination during the sale/purchase process.

2. The legislator has also adopted the electronic invoice (e-invoicing) by virtue of Article 4 of the executive decree 468-05 and is therefore in line with the economic developments.

3. Despite the importance of the invoice, the legislator has however authorized the economic agent to use any of its surrogates - such as bills of exchange and delivery receipts - especially in case of regular and recurring commercial transactions, with the same customer or, in case of commercial transactions that are simple and do not require the issuance of an invoice that may be a burden for the economic agent and would hinder his work.

4. The legislator has also made the economic agent liable for sanctions that are depriving of liberty and sometimes financial, in case of using unlawful methods in the practice of his activities, such as issuing non-compliant, forged or courtesy invoices.

5. The invoice has become as such, the most vital instrument for the embodiment of transparency in commercial practices and the substantiation of major contracts, since it aims on one hand, to achieve a full command of the market organization and monitoring against all forms of dishonest and deceitful practices, and on the other hand, to strengthen the relationship between consumers and economic agents.

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