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# The Obligation to Ensure the Safety of Genetically EngineeredProductsA Comparative Study between Algerian and French Law

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## Abstract

This study examines the legal obligation to ensure the safety of genetically engineered products through a comparative analysis of Algerian and French frameworks. It underscores the need for clear consumer information, robust regulatory mechanisms, and balanced legislation that safeguards public health while supporting innovation and sustainable development in the biotechnology sector.

Keywords: Safety, Guarantee, Obligation, GMOs

## Introduction:

Genetically modified products represent a significant breakthrough in agriculture and the food industry, offering considerable potential to enhance productivity and meet the growing demands of a rising global population. However, these innovations also raise serious concerns regarding their safety and potential impact on human health and the environment.

In this context, legislation emerges as a crucial instrument for ensuring the safety of these products and protecting consumers. Algerian and French legal systems strive to establish comprehensive legal frameworks that regulate the production and commercialisation of genetically modified products while

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defining the obligations imposed on producers and suppliers to guarantee their safety.

This study aims to analyse and compare Algerian and French legislation concerning the safety of genetically modified (GM) products by addressing the following key dimensions:

- The legal frameworks governing the production and marketing of genetically modified products.
- The obligations imposed on producers and suppliers to ensure the safety of these products.
- Mechanisms of oversight and liability in the event of harm or damage.

Specifically, the study seeks to:

- Conduct a legal analysis of the regulatory frameworks overseeing the production and commercialisation of genetically modified foods in Algeria and France, with particular attention to their effectiveness in ensuring product safety.
- Undertake a comparative, in-depth examination of the Algerian and French legislations about genetically modified foods.
- Assess how French legislation has influenced or been reflected in Algerian legal texts.
- Contribute to the academic discourse on biotechnology regulation and food safety.

Through this research, we aim to offer a comprehensive perspective on the regulatory efforts undertaken in Algeria and France to ensure the safety of genetically modified products while evaluating their effectiveness in protecting consumers and the environment.

The significance of examining the legal obligations related to genetically modified product safety in Algerian and French legislation is underscored by several critical considerations:

**Public Health Protection:**

Genetically modified products are an increasingly integral part of the global food system. Ensuring their safety is, therefore, essential to safeguarding public health. Analysing the legal frameworks facilitates the identification of potential risks and the implementation of effective precautionary measures.

**Consumer Protection:**

Consumers have the right to accurate and transparent information about the products they consume, particularly when it comes to genetically modified foods. This study evaluates the effectiveness of labelling mechanisms and protects consumers' right to knowledge and choice.

**Economic Development:**

A thorough understanding of the legal frameworks fosters a stable and transparent legal environment that supports biotechnology innovation while maintaining stringent safety standards.

**Environmental Protection:**

Genetically modified products may pose potential environmental risks. Thus, examining the legal provisions governing their production is essential for assessing and mitigating these risks. Regulatory frameworks also serve to control the environmental impact of these products.

**Legal Liability:**

It is essential to clarify the legal responsibility of producers and suppliers in the event of harm caused by genetically modified products. The study highlights the importance of effective compensation mechanisms and legal remedies to protect consumer rights.

This research is timely and necessary, given the rapid advancements in biotechnology. It seeks to contribute to developing robust legal mechanisms that ensure consumer safety, environmental sustainability, and economic progress.

The central research problem of this study revolves around the following key questions:

- How can an effective balance be achieved between promoting innovation in biotechnology and enforcing strict standards to ensure the safety of genetically engineered foods?
- Are the current legislative frameworks particularly those of Algeria and France capable of keeping pace with the rapid advancements in this domain?
- Addressing this issue necessitates a comparative analysis of Algerian and French legislation, considering the relevant legal standards and judicial applications in the field.

To answer these research questions, the study adopts a comparative legal methodology deemed most suitable for examining the regulatory approaches of both Algerian and French legal systems. The study is structured into two main sections: the first explores the concept of the obligation to ensure the safety of genetically engineered products. In contrast, the second analyses the legal provisions governing this obligation within each legislative framework.

## Section One: The Legal Concept of the Obligation to Ensure the Safety of Genetically Engineered Products

The obligation to ensure the safety of genetically engineered products is primarily intended to protect the consumer. However, questions arise regarding the nature of this obligation (Subsection One), and its legal enforcement requires fulfilling a set of conditions (Subsection Two).

## Subsection One: The Nature of the Obligation to Ensure the Safety of Genetically Engineered Products

French jurisprudence has established an objective principle under which the producer is liable for damages resulting from product defects, regardless of their knowledge. Nonetheless, a central question remains: Is the producer merely obliged to take reasonable precautions to ensure safety during the production and use of genetically engineered materials? Or does the obligation extend to preventing and eliminating risks, in line with the duty to guarantee safety?

Determining the nature of this obligation is crucial, as it directly affects the burden of proof necessary to establish liability, which raises a fundamental issue in legal responsibility for such products.

### 1. The Obligation as a Duty of Care

If the producer's obligation to ensure the safety of genetically engineered food products is classified as a duty of care, then the injured party must prove that the product caused the damage and demonstrate the producer's negligence in failing to take adequate precautions. The French Court of Cassation has, in one of its rulings, supported this view by stating that the professional seller's obligation toward the buyer does not amount to a duty to achieve a specific result but rather a duty to exercise care.

However, this approach has sparked extensive debate, as it distinguishes between liability for breach of the safety obligation and liability for defective objects under custody. In the former, the buyer cannot claim compensation without proving the producer's fault. At the same time, in the latter, liability arises upon the mere occurrence of harm caused by the object and may only be rebutted by proving an external cause.

Critics argue that this approach contradicts the prevailing legal framework, which treats the obligation to ensure safety as a legal

duty primarily governed by the provisions on latent defects. Defining this obligation as a mere duty of care unfairly places the burden of proof on the buyer, potentially undermining consumer protection and nullifying the very essence of the safety guarantee especially when compared to third parties, who enjoy more excellent protection under Article 1384(1) of the French Civil Code.

Nonetheless, as jurisprudence evolved, French courts abandoned the duty-of-care classification to recognise safety guarantees independent of latent defect provisions. The rationale behind this shift is to strengthen consumer protection, ensuring it is at least as robust as the protection provided under the rules on latent defects.

In this context, the Court of Cassation affirmed that a professional seller must deliver products free from defects or faults that may pose risks to individuals or property. This reinforces the notion that the obligation to ensure safety is not limited to exercising due care but constitutes a duty to achieve a specific result (Cass. 1re civ., 1948), strengthening the consumer's position in claims for damages arising from defective products.

**2. The Obligation as a Duty to Achieve a Specific Result**

Most legal scholars agree that ensuring product safety should be considered a duty to achieve a specific result. French case law has consistently confirmed that a professional seller cannot evade liability simply by demonstrating that reasonable precautions were taken. Instead, the producer must ensure the product's safety under normal conditions of use.

In a ruling dated 22 January 1991, the Court of Cassation stated that "producers or sellers are bound to deliver products that, under normal usage and in adherence to recommendations, pose no danger to consumers." This implies that liability does not arise automatically with the occurrence of damage but rather depends on the product's dangerous attribute or manufacturing defect.

Based on this reasoning, the Court of Nanterre held a pharmaceutical company liable for damages caused by the drug Coup Faim, which induced pulmonary arterial hypertension in a patient, ruling that the producer could only be exonerated by proving an external cause. The Court of Cassation reiterated that "the manufacturer is required to deliver products free from any defect that may pose a threat to persons or property," reinforcing the notion of a result-based obligation (Cass. 1re civ., 1989).

However, this approach has also faced criticism. Some argue it could have adverse economic consequences, especially in cases involving inherently risky or complex products, such as genetically engineered foods. Damage may sometimes result from consumer misuse or negligence rather than a product defect. Imposing liability in all such cases could stifle innovation and hinder economic activity.

Proponents of a more balanced approach suggest that the producer's obligation should involve ensuring safety and providing clear, sufficient information about the product's characteristics, proper use, and potential risks. Liability should then arise only if the duty of disclosure is breached.

The Paris Court of Appeal supported this view by stating that contract performance must not expose the other party to unforeseeable risks and that the obligation to ensure safety goes beyond the guarantee against latent defects. Consequently, the producer is presumed liable unless an external cause is proven (Cass. 1re civ, 1989).

In another ruling, the Court of Seine held a producer civilly liable for the explosion of a sparkling water bottle during everyday use, provided the buyer had not misused it and the defect rendered everyday use hazardous (Cour d'appel, 1963).

Over time, French courts have consistently applied the safety guarantee across contractual and tortious contexts. Consequently, legal scholars have advocated a middle ground: requiring proof of product defect as the basis of liability while preserving flexibility in determining fault.

Thus:

- The obligation to ensure safety may be a more adaptable alternative to the guarantee against latent defects.
- It does not absolve the producer of the burden of proof; instead, the producer must show that the product was not defective or that the harm resulted from an external cause.
- Industrial innovation must be protected by requiring consumers to follow usage instructions while holding producers liable for failure to warn or provide adequate protection.

This obligation is regarded as a subsidiary contractual duty derived from Article 1135 of the French Civil Code. It means that the producer is liable for damages unless it is proven that the harm was caused by force majeure, consumer fault, or a third party. Jurisprudential development has gradually expanded the scope of this obligation to encompass contracts beyond sale.

Algeria's Consumer Protection and Anti-Fraud Law enshrines the obligation of safety. Article 4 stipulates that “any party involved in the provision of food products for consumption must comply with the safety requirement, ensuring the product does not harm the consumer’s health.” Article 9 further requires that product safety be ensured under normal or foreseeable usage conditions.

Algerian jurisprudence has shown variability in its interpretation. In 1983, the Supreme Court ruled that the operator of a public bath (ḥammām) is strictly liable for clients' safety. Yet, in other cases, courts have treated the obligation as one of due care, exempting liability if the victim contributed to the harm (Algerian Supreme Court, Civil Chamber, 1983). In the absence of explicit legislative guidance on this obligation, judges exercise discretionary power in classifying it as a duty of care or a duty to achieve a result, depending on the circumstances and agreements between parties.

## 3. The Unique Nature of the Obligation to Ensure the Safety of Genetically Engineered Foods

French courts have consistently held professional producers liable for damages caused by product defects, regardless of their knowledge. The safety guarantee, including that for genetically engineered foods, is a general obligation that extends to all persons, irrespective of contractual ties, to protect public health.

This obligation requires that the product be free from any defect that may endanger consumer safety or harm their interests post-purchase. Liability may arise without conclusive harm, provided there is a strong presumption that the defect caused the damage. This presumption is rebuttable, allowing the producer to deny liability by proving the absence of a defect or causal connection.

The Court of Cassation has confirmed that the safety obligation applies to all products, regardless of origin, nature, or inherent risk, and does not depend on a contractual relationship.

Given the complexity of modern products, particularly genetically modified foods, it is necessary to balance consumer protection and industrial innovation. Imposing liability on producers without solid evidence of causation would be unjust, as this may discourage innovation. Conversely, consumers should not bear the burden of proving hidden defects something even experts may find difficult due to the technical sophistication of production processes (Hallagan & Hall, 1995, pp. 59–69).

In this light, the safety guarantee is best described as a mitigated duty to achieve a result whereby harm is presumed to arise from a defect or hazardous feature of the product. The producer remains liable unless they can prove otherwise.

Accordingly, the traditional dichotomy between duties of care and duties to achieve results appears outdated in the context of product safety. This view aligns with modern French jurisprudence, which has dissolved the distinction between contractual and tort liability. Consequently, all victims of

genetically engineered food products contractual or otherwise may seek compensation, ensuring equitable treatment.

**Section Two: Legal Provisions Governing the Obligation to Ensure the Safety of Genetically**

The obligation to ensure the safety of genetically engineered products necessitates the establishment of legal mechanisms for its implementation. This obligation has been codified in Algerian legislation, influenced by developments in French law (Subsection One). Recognising this obligation as independent from the guarantee against latent defects also carries significant legal consequences (Subsection Two).

**Subsection One: Implementation of the Obligation to Ensure the Safety of Genetically Engineered Foods**

Producers must adopt precautionary measures to prevent potential risks to fulfil their obligations. Moreover, competent administrative authorities must monitor the entire production and distribution chain from farm to consumer to verify compliance with legal safety standards.

**1. Product Withdrawal from the Market**

In cases where a genetically engineered food product is suspected of failing to meet safety standards, the producer must withdraw it from the market. Algerian Law No. 09-03 on Consumer Protection and Anti-Fraud emphasises this obligation(Consumer Protection Law,09-03,Official Gazette No.15 of 2009). The now-repealed Law No. 89-02 (General Rules For Consumer Protection Law, 89-02, Official Gazette No.84 of 1989 " Repealed"). " had required actual evidence of imminent danger to public health before withdrawal.

According to Law No. 09-03, product withdrawal may occur in two forms:

- **Temporary Withdrawal:**This entails suspending the sale or distribution of a product while verifying its compliance with safety standards. It may apply to a specific product,

service, or category that has raised safety concerns through inspection or sample analysis. If testing confirms compliance, the suspension is lifted; otherwise, the product is seized.

- **Permanent Withdrawal**: This is applied when it is confirmed that the product does not meet safety requirements or poses a non-remediable risk to consumer health. In such cases, the competent administrative authority issues a permanent withdrawal order. The producer or responsible entity bears the costs of retrieving the product. If deemed safe, it may be redirected to public benefit institutions; if counterfeit or unsafe, it must be destroyed.

## 2. Seizure for Destruction or Redirection

Seizure occurs if a genetically engineered product is non-compliant or the producer fails to cooperate with regulatory measures. Depending on the product's usability, a seizure may lead to destruction or redirection.

- **Destruction:**Products may be destroyed if they fail to meet environmental or health safety requirements, violate consumer rights, or lack a lawful or economically viable use. Destruction may involve altering the product’s nature (e.g., converting it from human to animal consumption). However, due to their complex risks, such measures are unsuitable for genetically engineered products. Destruction must be documented in an official report signed by the producer and inspection officers.
- **Redirection:**Products safe and fit for consumption may be redirected to public benefit institutions, but only in specific administrative non-compliance cases (e.g., improper licensing). Given their inherent risks, redirection is not

permitted for products that violate safety or legal standards particularly those involving genetically modified foods.

## Subsection Two: Legal Consequences of the Autonomy of the Safety Obligation

Recognising the safety obligation as autonomous from the guarantee against latent defects has several significant implications, primarily in enhancing consumer protection and eliminating the application of inadequate legal rules.

### 1. Enhanced Legal Protection for Consumers

Before courts formally acknowledged the independent nature of the safety obligation, French jurisprudence provided more excellent protection to non-contractual victims than buyers.Buyers could either invoke the warranty against hidden defects or rely on tort liability rules. The latter allowed for the presumption of producer liability as the de facto custodian of the product, bypassing the limitations of contractual warranty.

This disparity was eventually addressed by a landmark ruling from the French Court of Cassation, which granted contractual buyers equal standing with direct purchasers by characterising their claims as contractual. Nevertheless, non-contractual victims retained the advantage of invoking Article 1384(1) of the French Civil Code, which presumes custodian liability and offers stronger legal standing (Jemaï, 2000, p. 85).

### 2. Exclusion of Latent Defect Guarantee Rules

Initially, the obligation to ensure safety was conceptually intertwined with the warranty against latent defects. Jurisprudence and doctrine held professionals liable for safety, assuming they were aware of product defects. The obligation sometimes fell under rules governing hidden defects and

sometimes under breach of the delivery obligation. Safety and conformity were also conflated, with safety as a conformity dimension.

However, the inadequacy of latent defect rules to address all types of harm especially physical injury led to the formal recognition of an independent safety obligation. While latent defects primarily affect product utility, safety issues directly impact personal and property integrity. Courts eventually limited latent defect coverage to economic loss, while bodily harm was addressed through the safety obligation framework.

To establish a breach of the safety obligation, the buyer need only demonstrate that a defect or risk caused harm whether due to poor design or dangerous manufacturing methods. In contrast, hidden defects must render the product unfit for its intended use.

Consequently, French courts recognised the safety obligation as independent from both the latent defect guarantee and the broader conformity obligation, thereby expanding access to compensation, especially in the context of genetically modified foods (Toth, n.d., pp. 112–132).

Initially applied in tort under Article 1384, the safety obligation has since been integrated into contractual liability and extended to sales contracts, given their practical importance. French legal doctrine has relied on Articles 1135 and 1147 of the Civil Code to establish this obligation. Article 1135 states that contracts bind parties to their explicit terms and those implied by law, custom, and equity. Article 1147 imposes liability on the debtor when performance becomes impossible unless due to a force majeure event.

## 3. Complementing Preventive Legislation

French courts have increasingly treated the safety obligation as a general duty extending to both contractual and third parties. This interpretation complements regulatory efforts to prevent the circulation of dangerous products and strengthens public health measures.

The liability system based on safety violations thus plays a preventive role, applying to producers, importers, and all professionals involved in the distribution chain, including its final stages. This makes the obligation a vital component of laws designed to restrict the marketing of hazardous goods, such as the Law of 1 August 1905 and Law of 21 July 1983 on consumer health and safety. (Law No. 83-660, 1983).

Although the 1905 law primarily targeted food fraud, it laid the groundwork for regulating hazardous products. It penalised thesale of adulterated or toxic food and empowered authorities to regulate food composition and prohibit non-compliant products.

The 1983 law codified the concept of safety and extended protection to all individuals, regardless of contractual status. It authorised public authorities to take emergency measures and introduced a dedicated compensation system for damages linked to product risks.

## 4. Impact on the Legal Standing of Victims

The recognition of the safety obligation as independent from the latent defect guarantee equalised the legal positions of contractual and non-contractual victims, providing several advantages to consumers:

- **Extended Statute of Limitations:**Claims arising from a breach of the safety obligation benefit from the more extended limitation periods applicable to contractual liability, as opposed to the shorter periods under latent defect rules.
- **Clear Conceptual Distinction:**While latent defect guarantees address economic utility, the safety obligation encompasses all bodily or material harm caused by inherent product risks.
- **Improved Buyer Standing:**Acknowledging the safety obligation enables buyers to invoke their seller's rights against upstream suppliers, including the manufacturer. This grants them access to all contractual remedies, including claims for breach of the safety obligation.

This jurisprudential evolution has led French courts to affirm the autonomy of the safety obligation, its distinction from other contractual obligations, and its universal applicability to all victims. The ruling of the French Court of Cassation (First Civil Chamber, 20 March 1989) confirmed that professional sellers must deliver products free from defects that could endanger life or property (Civ. 1re, 1989).

**Conclution:**

In conclusion, regulating genetically engineered foods presents a complex legal and technical challenge that requires a delicate balance between fostering innovation in biotechnology and ensuring consumer safety.

This study has demonstrated that both Algerian and French legislation provide legal and regulatory frameworks to govern the production and commercialisation of genetically engineered foods. However, it has become evident that while French law imposes stringent safety standards, Algerian legislation remains in a developmental phase and requires substantial reform to keep pace with scientific and technological advancements.

Based on the analysis presented, several recommendations have been identified to improve the legal frameworks in both countries:

- Strengthening risk assessment mechanisms and the application of the precautionary principle.
- Developing effective product labelling systems and ensuring transparent information for consumers.
- Enhancing inspection and regulatory oversight of genetically engineered food products.
- Establishing efficient legal liability systems and compensation mechanisms for damages.
- Promoting international cooperation and the exchange of expertise in the field.

These measures can contribute to establishing more robust, transparent, and responsive regulatory systems that safeguard public health while supporting scientific progress.

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