



THE LEGAL FRAMEWORK FOR THE PARTIES TO THE CONSUMER RELATIONSHIP "CONSUMER AND PROFESSIONAL"

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Abstract:

The consumer and the professional are considered the two main parties in the consumer relationship, and defining their concepts is of great importance because it entails knowing the scope of application of consumer legislation in terms of individuals. Therefore, defining the concept of the consumer must be justified, especially since we are talking about an exception so that consumer rules do not replace general rules in terms of application and function.

Consumer protection laws primarily target these two parties and also determine the responsible person in dealing with the injured party.

Key words: consumer, professional, producer, injured party.

Introduction:

Defining the parties of the consumer relationship contributes to unifying national legal texts so that they align with international laws and ease the difficulty of distinguishing between consumer and professional. This has led us to attempt to define the concept of consumer and professional in comparative law and assess the extent to which domestic law complies with these comparative systems. It also questions whether in some cases a professional can be considered a consumer, especially when contracting outside his specialization, or if he is classified under another category.

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Section One: The Concept of Consumer

To define the concept of the consumer, we present the legislative concept (first branch), the jurisprudential concept (second branch), and the judicial concept (third branch).

First Branch : The Legislative Concept of the Consumer

The concept of consumption has two meanings: one economic and the other legal. The concept initially appeared as purely economic, referring to the final stage of the economic process distinct from the previous stages of production and distribution.

The concept of consumer emerged first in the economic field and later in the legal field, beginning in the early 1970s in French law. (• Jaroud Al-Yaqout. "Sales Contract and Consumer Protection." Master Thesis in Contracts and Liability)

Unlike economists who focus on encouraging consumption and improving products to meet all varied desires, legal professionals focus on the legal acts undertaken by individuals to obtain goods or services. Legal professionals aim to protect consumers' health and wealth and to establish balanced contractual relationships whenever one party is weaker, noting that the general theory of obligations cannot be relied upon in consumer relations given the imbalance often present before and after contract formation.

The French legislator did not provide a direct definition of the consumer, but by reviewing some consumer protection laws that address the consumer incidentally, one can infer the concept of the consumer. For example, Article 2 of French Law No. 23-78 (10 January 1978) on consumer protection in certain credit operations states : "This law applies to credit operations usually granted to natural or legal persons which are not intended to finance professional activities." (• Fattak, Ali. "The Impact of Competition on the Obligation to Guarantee Product Safety." Dar Al-Fikr Al-Jamie, Alexandria, 2007.)



This article indicates that the French legislator considers the consumer to be a person whose purpose in acquiring goods or services is personal use unrelated to professional activity.

Similarly, Law No. 949-93 concerning consumer information and contract formation states in Article 1-111L that "Every professional seller of goods or service provider must give the consumer the essential characteristics of the goods or service before concluding the contract." (• Chandi, Youssef. "The Legal Concept of the Consumer." Referenced in the above source, p.143.)

The importance of including goods or services in the definition of consumer highlights the significance in defining the consumer. Article 132-1L of Law No. 95-96 (1 February 1995), related to abusive terms in contracts, defines the consumer as the party protected from abusive terms in contracts between professionals and consumers or non-professionals.

Article 132-1L of Law No. 95-96 (continued)

This article confines protection from abusive terms to consumers and non-professionals, which leads to the concept of consumer and non-professional as protected parties.

Some French parliamentarians explicitly desired a clear and specific definition of the consumer in an introductory article of consumer law. The French Minister of Justice attributed the absence of an explicit definition to the nature of the codification itself, noting that the 1993 Consumer Law includes multiple provisions with varying objectives and scope, influenced also by the impact of European Union directives that encompass different consumer definitions depending on their scope and applicable laws. This prevents a unified definition of the consumer. The absence of a precise definition aligned with French legal traditions is not an obstacle but rather a flexibility factor that allows the judiciary to apply consumer legislation rationally on a case-by-case basis.

In contrast to French legislation, the European Directive No. 93-13 issued on 9 April 1993 concerning consumer protection against abusive terms provides in Article 1, paragraph 2:

"A consumer is any natural person acting for purposes which are outside their trade, business or profession."

The directive stipulates that consumer actions must be personal and that goods or services are obtained for non-professional use.

European Directive No. 97-07 on consumer protection in distance contracts adopted a similar approach in its Article 2-2, defining a consumer as "any natural person acting for purposes that are outside their trade or profession." (• French Law No. 23-78 (10 January 1978) on Consumer Credit.)

Algerian Legislator's Approach

In contrast to French law, the Algerian legislator adopted two different consumer concepts : a broad and a narrow concept.

The repealed Law No. 89-02 did not define the consumer, but Executive Decree No. 90-39 on quality control and fraud repression defined the consumer in Article 2 as : "Any person who acquires, for a price or free of charge, a product or service intended for intermediate or final consumption to satisfy personal needs or those of another person or animal under their care."

Amended Law 04-02 defines the consumer as "Any natural or legal person acquiring goods offered for sale or enjoying services provided devoid of any professional character." (• French Law No. 23-78 (10 January 1978) on Consumer Credit.)

The Broad Concept

The first definition is broad, covering all product or service users ("any person"), thus including professional consumers and extending protection beyond just final consumers to intermediate consumers.



The Narrow Concept

The second definition excludes professionals from the consumer category by using language limiting it to non-professional persons, thus defining the consumer narrowly.

The Algerian Legislator's Approach in Practice

The Algerian legislator alternates between broad and narrow consumer concepts, following the latest jurisprudential trends. The consumer concept, previously restricted to contracting parties, has expanded to all acquirers according to Article 3, paragraph 1 of Law No. 09-03, which states : "Every natural or legal person acquiring..."

Executive Decree No. 90-39 and No. 90-266 emphasize that a product is anything acquired by the consumer, regardless of payment status. (• Algerian Law No. 09-03 (25 February 2009) on Consumer Protection and Anti-Fraud.)

Legal Elements of the Consumer Definition

- The consumer may be a natural or legal person.
- The consumer is not professional in the transaction.
- The contract's purpose must be to satisfy personal or third-party needs, not resale.
- The consumer is the acquirer regardless of whether they are the contracting party or user.
- Acquisition may be for consideration or free of charge.

Jurisprudential Concept of Consumer

Legal doctrine mostly agrees that the consumer is any person who obtains goods or services for personal or family needs rather than professional or commercial purposes.

Jean Calais-Auloy defines the consumer as one who owns or uses goods and services for non-professional use.

Mixed Use Example

A consumer might acquire goods for personal or professional use, like a real estate agent buying furniture for their office or personal use. Such mixed use complicates consumer

classification, but so long as consumption aims to satisfy personal needs, protection applies.

Judicial Concept of Consumption

French courts initially adopted a narrow consumer definition limiting protection to persons contracting for personal or family needs. However, later rulings broadened this to include professionals contracting outside their professional scope, recognizing them as consumers entitled to protection (e.g., real estate agent purchasing a security system for non-professional use).

Section Two: The Concept of the Professional

The concept of the professional or expert has not caused as much legal debate as the consumer concept, so we will address it jurisprudentially, internationally through international agreements (first branch), then legislatively, ending with the Algerian legislator's concept including two important phases before and after the 2005 civil law amendment and the 2009 consumer protection law (second branch).

First Branch : Jurisprudential and International Definitions of the Professional

Defining the professional is critically important to determine the scope of consumer laws, thus we first present the jurisprudential and international definitions and then some legislative definitions.

- The jurisprudential definition describes the professional as "a natural or legal person who contracts in pursuit of a professional activity, whether industrial, commercial, craft, liberal, agricultural, or other."
- Another definition includes any person regularly engaged in commercial or civil activity.
- Dr. Hamdallah defined the professional as "one who contracts for professional purposes, renting a place or shop or buying goods for resale."



From these definitions, two fundamental elements emerge:

1. Offering goods or services
2. Regular engagement in professional activity, which distinguishes professional from consumer.

Second Branch: Definition of Professional by International Agreements

The expansion of international trade due to free flow of products and services has increased risks generated by these products, making regulation of producer liability a priority for international organizations. However, common definitions of "producer" or "professional" remain fundamental.

1. Hague Convention Definition

The 1973 Hague Convention doesn't explicitly define professional or producer but enumerates responsible persons in Article 3 : manufacturers of final products and parts, producers of natural products, suppliers, persons involved in preparing and distributing products, and repairers. (• Cornu, G. "Consumer Protection," proceedings of the Association Hehti Copitant, 1973, p.136.)

The enumeration is exhaustive and broadens liability across the production and distribution chain.

2. Council of Europe Definition

Article 2(2) defines the professional as the manufacturer of the final product or components and natural products producers.

This restricts responsibility to actual producers, excluding intermediary traders.

3. European Directive Definition

Article 3 defines the producer (professional) as the manufacturer of the final product, raw materials, and components, and anyone presenting themselves as producer by marking the product.

This excludes the final seller, justified by the ability of producers to monitor production and their suitability to bear liability, including through insurance.

Legislative Concept of the Professional

The French legislator did not explicitly define the professional in consumer law, leaving this to jurisprudence and doctrine. However, the Civil Code of 1804 (Napoleonic Code) defines the producer in Article 1386-6 as :

"A producer is the maker of final products, raw materials, or components of products."

Initially, French law limited professionals to industrial, agricultural producers, making them liable only. Later, influenced by European directives, distributors and importers were also included among producers.

Algerian Legislator's Definition

The Algerian Civil Code did not mention the term producer/professional until its 2005 amendment.

Terms like "interveners" appeared in consumer protection laws, referring to producers, manufacturers, intermediaries, traders, importers, and distributors involved in offering products.

The Algerian legislator expanded liability scope by including natural and legal persons involved in product offering.

Law No. 09-03 (Consumer Protection Law) explicitly defined producer liability in Article 140 bis :

"The producer is responsible for harm caused by a defect in their product even without a contractual relationship with the harmed party."

Article 3(7) states :

"An intervener is any natural or legal person involved in the process of offering products for consumption."

Remarks on Algerian Law

- The legislator broadened the concept of actors in product offering, including legal persons.
- It adopted a broad concept of professional producer covering production and distribution stages.
- The economic agent concept (agent économique) includes all who participate in economic activities, blurring



distinctions between professional categories for wider liability.

- Unlike French law, the Algerian legislator groups producers, importers, distributors, and sellers under one term to ensure broad accountability.

Conclusion

The study concludes that defining the consumer is crucial due to its implications on the applicable legal rules. The consumer relationship parties must be clearly justified, especially since consumer rules are exceptions that should not replace general rules in application and function.

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