

The Provisions of the Consumer Loan in Light of Executive Decree No. 15-114 related to the terms and conditions of offers in the field of consumer loans

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Abstract---The consumer loan contract is an effective tool in reviving economic mobility in the country. However, its adoption in the legal system of the latter aims to achieve certain objectives, including, in particular, enabling the consumer to acquire goods through bank financing, within the framework of legal guarantees that take into account the consumer's position as a weak party in the contractual relationship. However, the provisions of Executive Decree No. 15-114 dated May 12, 2015 exceeded the consumer's protection footprint to ensure the protection of locally produced goods to ensure a foothold in light of the raging competition for the imported product. Necessarily, this contract is a tool to stimulate the creation of investments on the national territory.

Keywords---consumer, finance, lender, borrower, national product.

1. Introduction

One of the most prominent manifestations of the modern era is the abundance and acceleration of inventions and the race of professionals and manufacturers to provide diverse products and services in a competitive manner, whether in terms of quality or price. In addition, the propaganda and publicity in its various forms and the remarkable development of e-commerce; all factors that made the rules of the economic game describe that the intervener is in an attack position as opposed to a motive position for the consumer. The latter, on an ongoing basis, enters into consumer contracts, whether traditional or electronic. However, these consumer contracts may make it impossible for the consumer to pay for

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them in cash or in real time, either due to the high cost of the product or his wishes to pay the price in installments.

In an attempt to respond to this, banks and financial institutions intervene for the purpose of providing the consumer loan product on the basis of the provisions of Executive Decree No. 15-114 related to the terms and conditions of offers in the field of consumer loan¹. Despite the passage of a decade since the issuance of this regulatory framework, the latter still poses a deep problem regarding its ability to reconcile the interests of its parties and protect the national product and thus the national economy?

To answer this problem, we address in the first section the concept and scope of the consumer loan contract; then the scope of application of the contract in terms of its parties, place and duration through the second section. This is done by using the appropriate analytical approach to determine the meaning of the relevant legal provisions, including those contained in the general rules.

The first chapter: The concept and scope of the consumer loan contract

The consumer loan contract has a prominent and fundamental position in the Algerian legal and economic system, and this explains the legislative attention to this contract through the general rules initially, through the provisions of the Consumer Protection and Fraud Suppression Law,² up to the provisions of Executive Decree No. 15-114 dated May 12, 2015.

In order to understand the specificity and characteristics of this contract, it is necessary to define its conceptual framework through the definitions provided by the legislator, and to indicate its legal nature, which we will detail in this section.

First section: Definition of Consumer Loan Contract

The consumer loan contract received legislative attention through the general rules, then the provisions of the law on consumer protection and the suppression of fraud, along with a specific view of the contract through the provisions of Executive Decree No. 15-114 dated May 12, 2015.

Sub-section one: The legislator's view of the consumer loan contract within the framework of the general rules

The provisions of the civil codification recorded the³ precedence in addressing the consumer loan contract within the range of contracts related to ownership⁴, through nine (9) articles from 450 to 458. Article 450 of the Law includes a definition of the consumer loan contract to the effect that: A contract by which the lender is obligated to transfer to the borrower the ownership of an amount of money or any other similar thing, provided that the borrower returns to him at the end of the loan his counterpart in kind, destiny and capacity. "

It follows from the above definition the tendency of the legislator towards merely stating the link between the parties to the contractual relationship, which is to oblige the lender to transfer the ownership of an amount of money or anything similar to it, in exchange for the borrower's obligation to refund its counterpart at the end of the loan contract.⁵

¹ Executive Decree No. 15-114 dated May 12, 2015, relating to the terms and conditions of offers in the field of consumer loan, c. R. Issue 24 dated 13 May 2015.

² Law No. 09-03 of February 25, 2009, relating to consumer protection and the suppression of fraud, (c. R. No. 15 of March 08, 2009), amended and supplemented by Law No. 18-09 of June 18, 2018, c. R. Issue No. 35 dated 13 June 2018.

³ Order No. 75-58 of September 26, 1975, containing the Civil Code, (c. R. No. 78 of 30 September 1975), amended and supplemented.

⁴ See Chapter Four of Chapter Seven of Book Two of the Civil Code.

⁵ Civil Code, Article 213

Sub-section two: Definition of the Consumer Loan Contract through the Consumer Protection and Fraud Suppression Law

It should be noted at the outset that the first legal text explicitly devoted to consumer protection is Law No. 89-02 on General Rules for Consumer Protection;⁶ however, the position of the legislator through this text was characterized by avoiding addressing the definition of legal terms, including the consumer loan contract. However, under Article 3 of the Law on Consumer Protection and Suppression of Fraud, he defined the consumer loan contract⁷ as: " ... Every sale of goods or services in which payment is in installments, deferred or expedited. "

Through this definition, it is clear that the legislator linked the loan process to a previous process of selling goods or providing services, in addition to emphasizing an important feature related to the method of payment and payment of the financial consideration, which may be in installments, postponed or even accelerated in cases. This definition also reflects the modern view of the consumer loan as a mechanism for financing the acquisition of goods and services alike, and highlights its functional role in facilitating consumer transactions.

Sub-section three: Definition of Consumer Loan under the provisions of Executive Decree No. 15-114

The legislator explicitly approved the consumer loan contract under the provisions of Executive Decree No. 15-114 related to the terms and conditions of offers in the field of consumer loan in application of the provisions of Article 75 of the Supplementary Finance Law of ⁸2009 and Article 20 of the Consumer Protection and Fraud Suppression Law, within the framework of a legislative vision aimed at reviving economic activities.⁹ This decree formed a detailed regulatory framework for consumer loan offerings. Article 2 of the above decree included a definition of the consumer loan contract as: "... Every sale of a commodity in which payment is made in deferred or piecemeal installments. "

Contrary to the position of the legislator through Article 3 of the Consumer Protection and Fraud Suppression Law, it is clear that the "services" are excluded from the scope of the consumer loan and the financing of goods¹⁰ is maintained, and this opens the question of the purpose behind the exclusion of services from the scope of the consumer loan?

However, what can be deduced from the previous definitions is the development in the legislative concept of the consumer loan, from a definition that is described in generality through what was included in the general rules to a more accurate definition that is in harmony with the consumer reality, the objectives of the Consumer Law and its regulatory framework. More precisely, other objectives are the great desire to create real economic mobility and promote the national product in some important economic sectors in the eyes of the political authorities of the country at the time, and this can be a preliminary answer to the above question.

It is also clear that the legislator is keen to determine how the financial consideration will be paid as it is an essential element in determining the legal nature of the consumer loan.

From the above, it can be said that the features of the consumer loan in Algerian law are characterized by the basic elements of the existence of two parties, namely the intervening lender and the borrowing consumer, in addition to the object of the contract, which is an amount of money for the purpose of financing a good or service. The reason for concluding the contract is to meet the personal non-

⁶ Law No. 89-12 of February 07, 1989, on General Rules of Consumer Protection, c. R. Issue 06 dated February 13, 1989, (Repealed).

⁷ Article 3 Clause 20 of Law No. 09-03 of February 25, 2009, on Consumer Protection and Suppression of Fraud, as amended and supplemented.

⁸ Order No. 09-01 dated July 22, 2009, incorporating the Supplementary Finance Law of 2009, c. R. Issue 44 dated 26 July 2009.

⁹ Article 1 of Law No. 09-03 of February 25, 2009, on Consumer Protection and Suppression of Fraud, as amended and supplemented.

¹⁰ Benmoussa Nawal and Bassem Chehab, Provisions of the Consumer Loan Contract in Algerian Law in Light of Executive Decree No. 15-114 Concerning the Terms and Conditions of Offers in the Field of Consumer Loan, *Journal of Legal and Social Sciences*, Zayan Ashour University in Djelfa, Volume VI, First Issue, March 2021, p. 54.

professional needs of the borrower, and a specific payment mechanism, which is predominant in the payment of installments.

Taken together, it is these elements that give the contract specificity, and call for the application of its own protective provisions.

The second section: The legal nature of the consumer loan contract and its characteristics

A consumer loan contract is a contract of a complex legal nature, combining being a civil contract in its essence, a commercial contract for the lender intervener, and a consumer contract governed by special protective rules. This results in a set of characteristics that distinguish it from other similar contracts.

Sub-section One: The Legal Nature of the Consumer Loan Contract

The consumer loan contract is one of the so-called contracts, and *jus cogens* rules occupy an important part of its provisions, given the nodal imbalance between its parties, along with what may amount to compliance with it.

First: The consumer loan contract is a named contract governed by the public order officer

The consumer loan contract belongs to the category of contracts called in Algerian law, as the legislator has assigned it to a special regulation within the framework of general rules, as well as the provisions of the law related to consumer protection and the suppression of fraud, in addition to a regulatory framework for this contract represented in Executive Decree No. 15-114 dated May 12, 2015.

This is a true translation of the importance of the consumer loan contract in terms of its spread among the consumer audience, and its impact on economic mobility, including the activity of banks and financial institutions.

Given the nature of the subject matter dealt with by the provisions of the Executive Decree, most of its provisions have acquired an imperative character, which means that the parties may not agree to violate it. This feature falls within the framework of the protection that the provisions of the Consumer Law seek to provide to the consumer as the weak party. The peremptory nature of these provisions is understood through the obligations imposed on the lender, including the obligation to inform, advise and warn, and to give the consumer a period of reflection and deliberation before concluding the contract, and to enable him to exercise the right of revocation after its conclusion.

Second: The consumer loan contract involves a structural imbalance between its two parties

The consumer loan contract is an expressive model of consumer contracts characterized by a structural imbalance in economic and knowledge power between its parties. It is a contract that combines two parties, one of which is the bank or financial institution that owns the technical and legal expertise and is able to develop and draft the terms of the contract. This is in the face of a¹¹ borrowing consumer who is looking for financing a consumption contract and lacks the technical and legal information related to obtaining the bank's financing and the potential risks surrounding this step.

It is this imbalance that justifies the legislator's intervention to impose protectionist rules aimed at restoring the nodal balance and ensuring informed consumer satisfaction. State intervention also remains imperative to rebalance and impose mechanisms or obligations that help.¹²

Third: The consumer loan contract is often a contract of compliance

As a result of the aforementioned imbalance, the consumer loan contract often takes the form of a deed of adhesion. The lending institution (bank or financial institution) offers its services and provides its operations to the public according to predetermined conditions, and it does not accept discussion of

¹¹ For details on jurisprudential, judicial and legal opinions regarding the concept of consumer, see: Mohamed Ahmed Abdel Hamid Ahmed, *Civil Protection for Traditional and Electronic Consumers*, New University House, Egypt, 2015, p. p. 17 et seq.

¹² Bin Musa Nawal and Bassem Shihab, *op. Cit.*, P. 56.

them, and it is likely that these conditions are printed in the interest of the offeror, that is, the¹³ lending institution, and the consumer can only accept the conditions in their entirety and acquiesce to the will of the lending institution in concluding the contract or rejecting the contract.

Because adhesion contracts often contain terms that are detrimental to the interest of the adhering party who cannot amend the terms, the legislator has been keen to protect him through the general rules in two ways: the first relates to the authority of the judge towards arbitrary terms that may be included in the contract; the second¹⁴ relates to the interpretation of the contract. The nature of the compliance requires that the suspicion be interpreted in the interest of the submissive party (consumer) in the event of ambiguity,¹⁵ and justifies the intervention of the judge to amend or cancel the unjust conditions.

Fourth: Traditional Characteristics of the Contract (Reciprocal, Countervailing, Compensatory, Sequential Execution)

In addition to the above, the consumer loan contract has the general characteristics of contracts, in that it is a contract binding on two sides, the lending institution and the borrowing customer, and necessarily entails reciprocal obligations on both the lending institution and the borrower. It is a netting contract in nature, as the entity obtains interest in exchange for the loan granted, and the borrower obtains the required financing. One of its characteristics is that it is a specific contract where the amount of the obligations of each party is known at the time of contracting¹⁶. As a last feature, it is considered a term contract or a contract with continuous implementation, where the obligations to pay loan installments are implemented in installments over a known period of time.

Fifth: Distinguishing between an allocated loan and an unallocated loan

Jurisprudence and law distinguish between two basic types of consumer loans, a dedicated loan, and an unallocated loan. An earmarked loan is a predetermined destination loan, that is, it is granted to finance the purchase of a particular good or service, such as a car, electro home equipment, or household furniture. This means that there is a legal link and agreement between the loan contract and the sale or service contract that will take place after the loan is availed. As for the unearmarked loan, it is granted to the borrower without the requirement to specify the destination to which the borrowed money will be directed or the purpose of its use.

This distinction is of great importance in terms of the legal effects resulting from it, so the legislator intervened with peremptory rules that respond to the consumer's desire for a reciprocal link between the loan contract and the main contract. This desire is that the consumer has no intention of being bound by one of these contracts without the other.¹⁷

By the way, it should be noted that the Algerian legislation, especially through Decree No. 15-114 of May 12,¹⁸ 2015, focuses its attention on loans earmarked for financing locally produced or installed goods, reflecting a trend towards supporting national production.

¹³Muhammad Sabri Al-Saadi, *The General Theory of Obligations, Sources of Contract Obligation and Single Management, A Comparative Study in Arab Laws*, Dar Al-Huda, Algeria, 2007, p. P. 123-124.

¹⁴ Article 110 of the Civil Code stipulates that the judge may amend these conditions in the interest of the compliant party, or exempt him from them altogether. It should be noted that the wording of this article is imperative so that the judge may not be deprived of this exceptional power, and any agreement to the contrary shall be null and void.

- To elaborate on this part, see: Muhammad Sabri Al-Saadi, *op. Cit.*, P. 125.

¹⁵ It is known that the general rule in the field of contract interpretation is that doubt is interpreted in the interest of the debtor in accordance with the text of Article 112, paragraph 1 of the Civil Code; and in order to protect the submitting party, the legislator acknowledges that the interpretation of ambiguous terms in the contracts of adhesion is always in the interest of the adhering party, even if it is a creditor.

¹⁶ It should be noted that the interest resulting from the consumer loan contract may be variable in some cases under specific conditions.

¹⁷ Nabil Ibrahim Saad, *Features of Consumer Protection in the Field of Credit (in French Law) A Study of Substantive and Procedural Rules*, New University House, Egypt, 2017, p. 31.

¹⁸ This is referred to through Article 1 of Executive Decree No. 15-114 dated May 12, 2015, related to the terms and conditions of offers in the field of consumer loan.

The second chapter: The scope of application of the consumer loan system

After determining the concept, legal nature and characteristics of the consumer loan contract, it is necessary to determine the scope in which its special provisions apply. This scope includes the identification of the eligible parties to the contract, the credit operations concerned, in addition to the conditions related to the duration and amount of the loan, which will be detailed in this section.

The first section: The parties to the consumer loan contract

The parties to the consumer loan contract are the lending institution on the one hand, and the borrowing party on the other; the consumer who can receive financing. The Algerian legislator has set specific conditions and obligations for each party.

Sub-section One: The Lender in the Consumer Loan Contract

The Algerian legislator limited the process of granting credit within the framework of the consumer loan contract to the legally qualified institutions represented in banks and financial institutions. This principle was established by the Algerian legislator through the provisions of Law No. 90-10 of April 14, 1990, related to cash and loan (canceled)¹⁹, as well as the provisions of Order No. 03-11 of August 26, 2003, related to cash and loan (canceled),²⁰ or the current monetary and banking law.²¹

As an intervener, the financial institutions and banks authorized to provide financial financing within the framework of the consumer loan contract adhere to a set of essential obligations aimed at protecting the consumer, the most prominent of which is the obligation to inform and warn, including the provision of an advance offer of the loan that includes the provision of correct and impartial information clarifying in particular the elements of the offer and how to obtain it, as well as the rights and obligations of the parties to the loan contract.²² The advance offer of the consumer loan must also allow the borrower to assess its nature and the extent of the financial obligation that it can subscribe to, as well as the conditions for the implementation of the contract.²³

The lending institution shall establish rules and criteria for evaluating and following up risks, especially loan risks,²⁴ and respect the management standards directed to ensure its liquidity and balance of its financial structure.²⁵ Lending institutions should also engage in risk centralization and provide them with the information necessary for their proper functioning.²⁶ On the other hand, the latter puts at their disposal the financial information necessary to manage the risks related to their customers that they may be exposed to²⁷ from families, for the purpose of using this information in the framework of granting and managing loans, including consumer loans.²⁸

As for the language used in the media in its broad sense, as well as the submission of the advance offer, it is the Arabic language in accordance with the provisions of Law No. 91-05, which includes the generalization of the use of the Arabic language²⁹,

¹⁹Articles 110, 112, 114 and 120 of Law No. 90-10 of April 14, 1990, on cash and loan, c. R. No. 16 of April 18, 1990, revoked.

²⁰Articles 66, 68, 70, 71 and 76 of Order No. 03-11 of August 26, 2003, containing the Monetary and Loan Law, (c. R. Issue 52 dated 27 August 2003), amended and supplemented, repealed.

²¹Articles 68, 75, 78 and 83 of Law No. 23-09 of June 21, 2023, containing the Monetary and Banking Code, c. R. Issue 43 dated 27 June 2023.

²²Article 5, paragraph 1, and Article 7 of Executive Decree No. 15-114 of May 12, 2015, relate to the terms and conditions of offers in the field of consumer loan.

²³Article 6 of Executive Decree No. 15-114 of May 12, 2015, relates to the terms and conditions of offers in the field of consumer loan.

²⁴Article 109 of Law No. 23-09 of June 21, 2023, contains the Monetary and Banking Code.

²⁵Article 106 of Law No. 23-09 of June 21, 2023, contains the Monetary and Banking Code.

²⁶Article 110, paragraph 4, of Law No. 23-09 of June 21, 2023, contains the Monetary and Banking Code.

²⁷Article 110, paragraph 5, of Law No. 23-09 of June 21, 2023, contains the Monetary and Banking Code.

²⁸Article 110, paragraph 6, of Law No. 23-09 of June 21, 2023, contains the Monetary and Banking Code.

²⁹Law No. 91-05 of January 16, 1991, which includes the generalization of the use of the Arabic language, c. R. No. 3 of January 16, 1991, amended and supplemented by Order No. 96-03 of December 21, 1996, c. R. Issue No. 81 dated December 22, 1996.

Sub-section Two: The borrower as a concept is more narrow than the consumer concept contained in the Consumer Protection and Fraud Suppression Law

The second party in the consumer loan contract is the borrower, who must first be a consumer. The latter, according to the prevailing concept in the Algerian Consumer Protection Law,³⁰ is every natural or legal person who acquires goods or services for his personal or family use, that is, for purposes that do not fall within the scope of his professional or commercial activity, which is what goes into the Algerian legislator's adoption of a narrow concept in determining the consumer.

However, the provisions of Executive Decree No. 15-114 not only embrace the narrow concept of the consumer referred to above, but further narrow it by making it directed exclusively to families wishing to acquire goods for the purpose of reviving economic³¹ activities, which leads to the exclusion of legal persons such as companies and associations; natural persons borrowing for professional purposes;³² This is why lending for investment purposes remains outside the provisions of Executive Decree No. 15-114 dated May 12, 2015.

The legislator adds another restriction to the scope of the lender to be limited to resident citizens only.³³ This restriction leads to the exclusion of what could have been a consumer within the meaning of Article 3 of the Consumer Protection and Fraud Suppression Law, for natural persons who are non-resident citizens and resident foreigners, whether they are legal or illegal residents. If the situation is logical and justified for an illegal resident, it is not so for a foreigner residing legally for a period commensurate with the duration of the loan or exceeding it, especially since in this case it serves the endeavor to revive economic activities.

The second Section: The place and duration of the consumer loan contract

The consumer loan contract is linked to the financing of the acquisition of a locally produced or installed commodity, and must necessarily be limited to a specific time frame.

Sub-section One: Fundable goods within the framework of the provisions of Decree No. 15-114

The provisions of the consumer loan do not apply to all types of financing operations, but the Algerian legislator has specified a certain scope for credit operations that are subject to this special system, with the aim of focusing protection on certain categories of transactions in which the consumer is in dire need.

One of the most prominent determinants of the scope of the consumer loan in light of Executive Decree No. 15-114 is its linkage to the financing of certain goods. A consumer loan is used to finance the purchase of a "good" in which payment is deferred or fragmented. More importantly, this decree, and subsequent joint ministerial decisions, especially the joint ministerial decision of December 31, 2015, specifying the terms and conditions of offers in the field of consumer loan,³⁴ have limited the goods eligible to benefit from the consumer loan to products manufactured by institutions practicing production activity on national territory. On the other hand, this step aims to urge foreign companies to embody real and effective investments in Algeria, and not to consider Algeria only as a market for products manufactured in other countries. This vision included, in particular, the payment of foreign companies in the field of manufacturing cars, motorcycles, electro-domestic products, telephones and

³⁰Article 3, item 1 of Law No. 09-03 of February 25, 2009, relating to consumer protection and the suppression of fraud, amended and supplemented: "– Consumer: Every natural or legal person who acquires, for a fee or free of charge, a good or service intended for end use in order to meet his personal needs or meet the needs of another person or animal sponsored by him."

³¹Article 1 of Executive Decree No. 15-114 of May 12, 2015, relates to the terms and conditions of offers in the field of consumer loan.

³²as traders and professionals who borrow for professional purposes.

³³Article 5, paragraph 2 of Executive Decree No. 15-114 of May 12, 2015, relates to the terms and conditions of offers in the field of consumer loan.

³⁴Joint Ministerial Decision dated December 31, 2015, Determining the Terms and Conditions of Offers in the Field of Consumer Loan, c. R. Issue 1 dated 06 January 2016.

electronic panels...³⁵to open factories in Algeria. If the legislator has equated the commodity manufactured or installed in the national territory, he did not mention the requirement of a certain integration rate for the products installed in Algeria.

It should be noted that the list referred to in the annex attached to the aforementioned joint ministerial decision remains subject to update whenever the need arises and in accordance with specific procedures.³⁶

With reference to the integration rate, it can be said that it appears more clearly in the regulatory texts of some industrial sectors, such as the vehicle manufacturing activity, where Executive Decree No. 22-384 included³⁷ through Article 5 a reference to the obligation of those concerned to achieve a minimum integration rate starting from the date of obtaining the accreditation, according to the following development:

- At the end of the second year: 10%.
- At the end of the third year: 20%.
- At the end of the fifth year: 30%.

If the positive identification of the goods covered by the consumer loan system in accordance with the provisions of Executive Decree No. 15-114 is justified by the protectionist justifications of the national economy, on the other hand, it leads us to say that the legislator tends to exclude the products referred to above in the event that they are manufactured or installed outside the national territory, even if the final product includes components of products manufactured in Algeria.

In addition to the above, the legislator excludes from the scope of the consumer loan real estate loans intended to finance the acquisition, construction or restoration of real estate; and subjects them to other financing products provided by banks and financial institutions, including the possibility of financing through traditional loans or through Islamic banking operations, especially through the Murabaha contract for purchase order.

The field of consumer loan is also excluded from loans benefiting interventionists and professionals for purposes related to their commercial or craft activities, even if they relate to financing the purchase of goods referred to in the annex attached to the joint ministerial decision dated December 31, 2015, specifying the terms and conditions of offers in the field of consumer loan, such as cars and office furniture.

Sub-section Two: Conditions related to the duration of the contract and the maximum value of the monthly installment

In addition to identifying the parties and goods covered by the consumer loan system, the Algerian legislator has also established some controls related to its duration, and sometimes its amount, with the aim of protecting the consumer from excessive or unjustifiably long-term obligations.

First: The consumer loan is linked to a specific time range

Article 3 of Executive Decree No. 15-114 dated May 12, 2015 stipulates that the period of repayment of the consumer loan exceeds three (3) months and does not exceed sixty (60) months. This limitation of the repayment period to a minimum and maximum takes into account the beginning of the nature and price of the commodity subject of the loan contract.³⁸ It also aims to ensure that the consumer's

³⁵It should be noted that the aforementioned joint ministerial decision included through the appendix a reference to these products along with office appliances and industrial production of all wooden furniture for home use, porcelain and sanitary porcelain.

³⁶Article 5 of the joint ministerial decision dated December 31, 2015 specifying the terms and conditions of offers in the field of consumer loan: "The list of goods eligible for the loan shall be updated, when needed, based on the requests submitted by the institutions, and approved by an inter-ministerial committee (Finance, Industry, Mines and Trade) established for this purpose."

³⁷Executive Decree No. 22-384 dated November 17, 2022, specifying the conditions and modalities for the practice of vehicle manufacturing activity, (c. R. No. 76 of 17 November 2022), amended and supplemented by Executive Decree No. 24-159 of 12 May 2024.

³⁸It is possible to buy a television, for example, through a consumer loan and pay its installments within a short period of time, for example, six (6). As for financing a car loan, it makes sense that its duration will be longer, provided that

indebtedness is not overly prolonged, while allowing sufficient flexibility to suit the value of the financed commodity and the consumer's ability to pay. This limitation of the period is also an important guarantee for the consumer, as it prevents lending institutions from imposing very short repayment terms that burden the consumer, or very long terms that increase the cost of the loan significantly. The importance of this guarantee is increased by the *jus cogens* rule that enables the borrower to repay all or part of the loan in advance, before the expiry of the loan contract.³⁹

Second: Setting a ceiling for the monthly installments paid to the credit institution

Families' desire to obtain bank financing for the purpose of acquiring some goods may not be studied by them, and they may be accepted carelessly or carefully. This may constitute a burdensome financial burden after acquisition, given the bank deductions that include the amount of the loan in addition to the total cost of the loan, which is represented in its total costs, including interest and other expenses directly related to the loan contract.⁴⁰

In order to avoid this imposition, the legislator has enabled the consumer to have important legal guarantees in favor of the consumer at all stages of the contractual relationship, including during the stage of its formation. It is within the scope of the latter to prohibit⁴¹ any false advertising or that would cause the consumer to make a mistake⁴². It is within the framework of these guarantees that the consumer is granted a period of reflection and deliberation⁴³ before concluding the contract, which is deduced from the phrase "advance offer" referred to in Article 20 of Law No. 09-03, and the phrase "advance offer of the loan" used in the text of Article VI (6) of Executive Decree No. 15-114 dated May 12, 2015. Although this wording implies that the obligation to grant an advance offer lies with the lender, the possibility of thinking and deliberation, although in the interest of the consumer, is binding on both parties. It should be noted that the legislator did not refer to a specific period of time in which the advance offer of the loan continues.

This guarantee has also been strengthened by the right of the consumer to withdraw⁴⁴, which is considered one of the public⁴⁵ order and one of the most prominent developments of the 2018 amendment to the Consumer Protection and Fraud Suppression Law⁴⁶, and one of the most prominent

it remains within acceptable time limits. It is an appreciated position for the Algerian legislator to set it at five years to suit the price of the car and its depreciation.

³⁹Article 15 of Executive Decree No. 15-114 of May 12, 2015, relates to the terms and conditions of offers in the field of consumer loan.

⁴⁰Article 2 Clause 3 of Executive Decree No. 15-114 of May 12, 2015, relates to the terms and conditions of offers in the field of consumer loan.

⁴¹Aware of the great role played by commercial advertising in guiding the choices of the consumer audience, in light of the fierce competition between the interveners, the legislator approved a protective system that includes the need for advertising to be with clear and accurate information.

⁴²Pursuant to Law No. 09-03 of February 25, 2009 on Consumer Protection and Suppression of Fraud, as amended and supplemented;

⁴³Some jurists argue that there is no point in informing the consumer about the data without giving him time or an opportunity to think before entering into a contract. In this way, thinking is complementary to the media.

- See: Abdel Fattah Bayoumi Hijazi, Consumer Protection Online, Legal Books House, Egypt, 2008, p. 41.

⁴⁴In light of the multiplicity of definitions, it can be said that the right to renounce the contract is a newly established right, and it is an innovative way to protect the consumer by allowing him to express two successive but conflicting wills in order to avoid the negative consequences that reflect on him because of his haste in contracting.

- Voir : BOSCD D., Le droit de rétraction, Meem. DEA Aix-Marseille, 1999, p. 3.

⁴⁵Mohamed Elmen Nouri and Abdelhak Lakhdari, The right of the consumer to withdraw from the consumption contract under Law No. 18-09 - between necessity and restriction -, Algerian Journal of Legal Sciences, Political and Economic, Volume 57, Issue 2, Year 2020. 223.

⁴⁶Law No. 18-09 of June 10, 2018, amending and supplementing Law No. 09-03 of February 25, 2009, on Consumer Protection and Suppression of Fraud, c. R. Issue No. 35 dated 13 June 2018.

It should be noted that the approval of this mechanism in Algerian legislation was previously about the provisions of Law No. 18-09 amending and supplementing Law No. 09-03. This mechanism was previously referred to through:

- Article 119 bis, paragraph 4, introduced by virtue of the provisions of Order No. 10-04 dated August 26, 2010, amending and supplementing Order No. 03-11 dated August 26, 2003, containing the Monetary and Loan Law (repealed).

aspects of the protection prescribed for the consumer in the consumer loan contract, and as an additional and last opportunity to review his decision and correct any haste by him to express his acceptance, without the need to cause his retreat from the contract⁴⁷, and without paying additional expenses,⁴⁸ which do not include return expenses.⁴⁹

It should be noted that the effectiveness of the right of revocation lies in its conjunction with an appropriate time range, which was approved by the legislator through the provisions of Article 11, paragraph 2, of Executive Decree No. 15-114, which states that: "... The buyer shall have a period of eight (8) working days calculated from the date of signing the contract in accordance with the applicable legislation and regulation. " This does not correspond to the content of Article 136, paragraph 4, of Law No. 23-09, which includes the Monetary and Banking Law, which states that: "Any person who has subscribed to an undertaking can withdraw it within eight (8) days from the date of signing the contract, and this period can be reduced at the request of the beneficiary." The difference between the two texts in terms of the method of calculating the period of eight days is highlighted, to the absence of Article 1 referring to the possibility of reducing this period at the request of the beneficiary.

As an additional step in the customer protection system, the lender is obliged in all cases not to deduct monthly in excess of 30% of the net monthly income regularly received by the customer.⁵⁰ This step aims to avoid the customer falling into excessive indebtedness. This imposes on the lender the need for a careful study of the file through which it takes into account its interest as a commercial company seeking to achieve profit, while at the same time taking care not to drag consumers into the morass of indebtedness represented by the situation of accumulation of debts characterized by the clear impossibility of payment from the consumer in good faith to meet the total of his non-professional debts due and payable.⁵¹

This situation leads us to ask a question about the ceiling⁵² of financial funding?

With regard to the amount of the consumer loan, the legislator indicated through Article 10 paragraph 2 of Executive Decree No. 15-114 that the sale contract must include an indication of the extent to which the loan covers the amount of the commodity subject of the transaction in whole or in part. In contrast, the provisions of the above decree did not directly specify a maximum amount of the consumer loan in general. However, although the focus is more on the eligibility of the commodity and the duration of the loan as basic controls, logic dictates that its maximum limits will contribute to determining the price of the commodity subject of the consumer contract,⁵³ as the lender must assess the borrower's ability to repay, which may in practice lead to setting a ceiling for the amount of the loan granted for each case; or be subject to competitive controls among lenders.

- The provisions of Executive Decree No. 15-114 of May 12, 2015, relating to the terms and conditions of offers in the field of consumer loan; Article 11, paragraph 02, Article 12, item 2, Article 14.

- Article 18 of Law No. 18-05 of May 10, 2018, on Electronic Commerce, c. R. Issue No. 28 dated 16 May 2018.

- Article 136 of Law No. 23-09 dated June 21, 2023, incorporating the Monetary and Banking Code, c. R. Issue 43 dated 27 June 2023.

⁴⁷Article 19, paragraph 2, of Law No. 09-03 of February 25, 2009, on consumer protection and the suppression of fraud, as amended and supplemented.

⁴⁸Article 19, paragraph 3, of Law No. 09-03 of February 25, 2009, on consumer protection and the suppression of fraud, as amended and supplemented.

⁴⁹ The right of revocation has received several definitions, including: "Granting the consumer the right to return the good or refuse the service within a certain period of time from receiving the good or concluding the contract for the service without giving any justifications." Mustafa Ahmed Abu Amr, *The Legal Regulation of the Consumer's Right to Return Comparative Study*, New University House, Egypt, 2016, p. 32.

⁵⁰This may include his monthly salary and/or the husband's salary if the latter is taken into account in the loan application file deposited with the lender.

⁵¹Article 2 Clause 5 of Executive Decree No. 15-114 of May 12, 2015, relates to the terms and conditions of offers in the field of consumer loan.

⁵²From a point of view, the minimum level of financial funding may not be practically problematic and there is no significant risk in terms of the possibility of non-payment.

⁵³It is not logical for the bank to grant bank financing that exceeds the value of the commodity concerned with the consumption contract.

Conclusion

The consumer loan contract is one of the most important mechanisms to which the consumer refers for the purpose of obtaining goods and services, either on the grounds of inability to pay the financial consideration automatically or with other justifications. Whatever the justification, the legislator was keen, through the provisions of Executive Decree No. 15-114, to provide adequate protection to the consumer as a weak party in a contractual relationship that defines a kind of superiority in favor of the intervener, especially since the consumer loan contract will be dedicated to the acquisition of goods without services, and in a concept that is specific to the consumer in terms of its restriction to the national residing on the national territory.

The outstanding element of excellence in the provisions of this decree remains that the legislator tried through it to strike two elements with one stone; the first of which is what was mentioned above regarding providing a space for the consumer to acquire through loans. As for the second bird, it is represented in the desire to make the consumer loan a means of attracting and motivating national and foreign investors and urging them to establish real and productive investments on the national soil, away from the successive promises and procrastinations of productive companies, especially foreign ones, which have always viewed Algeria as a market for the disposal of their products, not as a real investment destination.

Of course, it can be said that this trend has borne fruit from several aspects, including the entry of several foreign companies into the Algerian market as producers and not just marketers, in addition to investments with capital of economic agents and Algerian hands, which began to reserve a place in the market. This, of course, does not negate the existence of some difficulties that still need the concerted efforts of specialists and stakeholders in order to overcome them, for example, the automobile file, which was the subject of great discussions and many plans that did not result in final radical solutions to the problem of financing the market with vehicles.

As for the regulatory framework for the consumer loan contract, I believe that it will receive more attention and care in light of the trend towards an explicit approval of Islamic banking through the provisions of the Monetary and Banking Law and the previous regulations of the Bank of Algeria⁵⁴ in this regard, especially since one of its products can coexist comfortably with the general framework of the content of Executive Decree No. 15-114, with a kind of compatibility with Sharia requirements. The best evidence of this is the high demand for the acquisition of locally installed cars through the Murabaha contract for the purchase order, which is practically based on many of the items quoted from the consumer loan contract in accordance with the provisions of Executive Decree No. 15-114.⁵⁵

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⁵⁴ Regulation No. 20-02 dated March 15, 2020, specifying banking operations related to Islamic banking and its base of practice by banks and financial institutions, c. R. Issue 16 dated 24 March 2020.

⁵⁵For details on this topic, see: Bin Qaina Hanan and Farahi Mohammed, Murabaha for Car Acquisition: Reality Challenges and Regulatory Requirements, Journal of the Researcher Professor of Legal and Political Studies, Mohamed Boudiaf University in Messila - Volume 09- Issue 2 - December 2024, p. P. 357-384.

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