

Overview of Legal News

June – July 2018

The purpose of this newsletter is to provide you with a summary of the latest legal news in Algeria.

1. Personal data protection law

The law No. 18-07 dated 10 June 2018 on the protection of individuals in the processing of personal data (“**Law 18-07**”) was published in the Official Gazette in early July.

(i) An extended scope of application

Law 18-07 applies to the automated processing (in whole or in part) of personal data, as well as to the non-automated processing of personal data contained or to be included in manual files.

Personal data cover any information, irrespective of its medium, concerning a person identified or identifiable, in a direct or indirect manner, in particular by reference to an identification number or to one or more specific elements of its physical, physiological, genetic, biometric, psychic, economic, cultural or social identity.

In terms of **territoriality**, Law 18-07 applies to the processing:

- carried out by a natural or legal person whose head is established in Algeria or in the territory of a State whose legislation is recognized as equivalent to the Algerian legislation on the protection of personal data;
- when the personal data controller is not established in Algeria but uses, for the purpose of processing personal data, automated or non-automated means, located in Algeria (excluding processing used for transit purposes in Algeria).

Automated processing of personal data for the purpose of research or studies in the **field of health**, evaluation or analysis of practices or activities of care or prevention are subject to Law 18-07 (with exceptions such as the individual therapeutic or medical follow-up of patients).

(ii) Prior consent of the relevant person

The processing of personal data may only be carried out with the express consent of the relevant person.

Such prior consent is not required in certain cases exhaustively listed in Law 18-07. For example, when the data processing is needed:

- to comply with a legal obligation applicable to the relevant person or to the personal data controller; or
- to perform a contract to which the relevant person is a party or to perform pre-contractual measures taken at the request of the relevant person.

(iii) Key players

a. National authority

Law 18-07 created, with the President of the Republic, an independent administrative authority for the protection of personal data.

This national authority is responsible for ensuring that the processing of personal data takes place in accordance with Law 18-07.

In particular, it will have to authorize cross-border transfers of personal data and develop cooperative relations with similar foreign authorities, subject to reciprocity.

b. Personal data controller

The personal data controller is responsible, under the supervision of the national authority, to ensure compliance with the provisions of Law 18-07, in particular to ensure that personal data are:

- treated lawfully and fairly;
- collected for specified, explicit and legitimate purposes, and will not be further processed in a manner incompatible with those purposes;
- adequate, relevant and not excessive in relation to the purposes for which they are collected or processed;
- accurate, complete and, if necessary, updated;
- kept in a form permitting the identification of the persons concerned for a period not exceeding that necessary to achieve the purposes for which they were collected or processed.

He must also ensure the confidentiality and security of the processing of personal data.

The personal data controller must be registered on a national data protection register kept by the national authority.

c. The person concerned

Law 18-07 grants the person concerned the following rights:

- Right to prior information (Articles 32 and 33 of Law 18-07).
- Right of access (Article 34 of Law 18-07).
- Right of rectification (Article 35 of Law 18-07).
- Right of opposition (Article 36 of Law 18-07).

(iv) Procedures prior to the data processing

Any processing operation of personal data, is subject to a declaration or prior authorization of the national authority.

a. Prior declaration

The prior declaration is filed with the national authority. A deposit receipt is given at the latest, within 48 hours. The personal data controller may, under his responsibility, implement the processing, upon delivery of the deposit receipt.

The national authority will define the list of processing of personal data that can be the subject of a simplified declaration.

b. Prior authorization

When it appears to the national authority, upon examination of the declaration provided to it, that the processing envisaged presents obvious dangers for the respect and protection of privacy and the fundamental rights and freedoms of individuals, it decides to submit the said processing to the prior authorization regime.

The national authority must issue its decision within 2 months of its referral; this period may be extended, by reasoned decision of its chairman, for the same duration.

To note :

The processing of **sensitive data** (such as racial origin or trade union membership) is prohibited except in certain cases such as public interest, express consent or authorization of the national authority.

(v) Sanctions

Law 18-07 provides for criminal sanctions (imprisonment and fines) in case of violations of its provisions.

It should be noted that the national authority may carry out on-site investigations in the premises where the processing took place and may, for the performance of its duties, access the processed data and any information and documents regardless of their medium.

(vi) Transitional provisions

Persons carrying out a personal data processing activity on the date of the publication of Law 18-07 must comply with its provisions within a **maximum period of one year** from the date the national authority is set-up.

To date the national authority is not set up since its members have not been appointed yet.

2. Modification of the law on consumer protection and fraud prevention

Law No. 18-09 of 10 June 2018, amending and supplementing Law No. 09-03 of 25 February 2009, on Consumer Protection and Fraud Prevention (“**Law 18-09**”), was published in the Official Gazette in early July.

The key points of Law 18-09 can be summarized as follows:

(i) Consumer’s right of withdrawal

Law 18-09 introduces a consumer’s right of withdrawal claimed by the Algerian Federation of Consumers for a long time.

The withdrawal will allow the consumer to retract, without cause, for the acquisition of a product subject to the contract and without paying additional fees.

The terms and conditions of the right of withdrawal (as well as the list of products concerned) will be fixed by regulation.

(ii) Tougher sanctions

Law 18-09 now provides for a fine of up to one million dinars for violations of packaging requirements, date of manufacture, expiry date, method of use, etc.

These fines are also extended to breaches of the instructions for use, user manual, and other information provided by the regulations in force.

(iii) Suspicion of counterfeiting

Law 18-09 extends temporary withdrawal measures to products suspected of counterfeiting.

(iv) Supervision of the after-sales service

Law 18-09 announces the fixing by forthcoming regulations of the terms and conditions of the after-sales service, which expresses a desire to supervise this activity.

3. Modification of the law on the conditions for carrying out business activities

Law No. 18-08 of 10 June 2018, amends and supplements Law No. 04-08 of 14 August 2004 on the conditions for carrying out business activities (“**Law 18-08**”).

In the context of improving the business climate desired by the government, Law 18-08 introduces two measures to facilitate the creation of companies, namely:

(i) Creation of an electronic portal dedicated to the incorporation of a company

This electronic portal will be managed by the National Center of Trade Register (“**CNRC**”).

This portal will provide for a unique form which, once validated by the CNRC, will open the right to registration with the trade register, tax authorities, statistics and social security administrations.

(ii) Facilitating the registration of regulated activity codes

Henceforth the registration with the trade register for the exercise of a regulated activity is carried out without the prerequisite related to the obligation to obtain the necessary authorization or the approval (which remain mandatory for the actual exercise of these activities).

The introduction of this measure has the merit of accelerating the process of registration of a company carrying out a regulated activity.



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