

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY: MOROCCO



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NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to consumer protection policy. UNCTAD promotes the United Nations guidelines for consumer protection and encourages interested Member States to create awareness of the many ways in which Member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services. UNCTAD seeks to further the understanding of the contribution of consumer protection law and policy to development and to create an enabling environment for the efficient functioning of markets. The work of UNCTAD is carried out through intergovernmental deliberations, capacity-building activities, policy advice, and research and analysis on the interface between consumer protection, competition and development.

Voluntary peer reviews of consumer protection law and policy conducted by UNCTAD are mandated by the General Assembly in its resolution 70/186 of 22 December 2015 adopting the guidelines for consumer protection. The guidelines seek, among other things, to assist countries in achieving or maintaining adequate protection for their population as consumers.

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Voluntary peer reviews on consumer protection law and policy are conducted by UNCTAD at the annual meetings of the Intergovernmental Group of Experts on Consumer Protection Law and Policy or at the United Nations Conferences to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The report was prepared by the Competition and Consumer Policies Branch of UNCTAD under the direction of Shamika Sirimanne, Director ad interim of the Division on International Trade and Commodities (DITC). The report was prepared by Robin Simpson, UNCTAD consultant, under the supervision of Arnau Izaguerri, Associate Legal Officer, and the overall guidance of Teresa Moreira, Head of the Competition and Consumer Policies Branch.

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ACRONYMS

| | |
|---------------|---|
| DH | Moroccan dirham |
| DPC | Division de la protection du consommateur (Morocco) |
| DPCSMQ | Direction de la protection du consommateur, de la surveillance du marché et de la qualité (Morocco) |
| € | euro |
| IGE | Intergovernmental Group of Experts on Consumer Protection Law and Policy (UNCTAD) |
| MEF | Ministère d'économie et finance (Morocco) |
| MENA | Middle East and North Africa Region |
| MIIGEN | Ministère de l'industrie, de l'investissement, du commerce et de l'économie numérique (Morocco) |
| OECD | Organisation for Economic Co-operation and Development |
| SMEs | Small and medium-sized enterprises |
| UNCTAD | United Nations Conference on Trade and Development |
| UNGCP | United Nations guidelines for consumer protection |

I. INTRODUCTION

In its resolution 70/186 of 22 December 2015 on consumer protection,¹ the United Nations General Assembly reaffirmed the United Nations guidelines for consumer protection as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations as suitable for their own economic and social and environmental circumstances. The guidelines promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The General Assembly also decided to establish an intergovernmental group of experts on consumer protection law and policy within UNCTAD to provide the international institutional machinery of the guidelines.

The Intergovernmental Group of Experts on Consumer Protection Law and Policy is mandated, *inter alia*, to conduct voluntary peer reviews of national consumer protection law and policy of member States, as implemented by consumer protection authorities. In its second session, the Group encouraged interested member States to volunteer for such peer reviews.² Morocco was the first member State to volunteer.

Voluntary peer reviews in the field of consumer protection are a world novelty. As contained in the UNCTAD note entitled “Framework for voluntary peer reviews on consumer protection,”³ their purpose is to provide an external and independent assessment of the effectiveness of consumer protection law and policy in a given country; to identify the challenges to be addressed and areas to be improved in the legal and institutional frameworks, thereby contributing to enhancing quality, efficiency and consumer protection regimes; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures, designed in consideration of the economic and developmental particularities of each country, to address these challenges; and, where appropriate, to assist countries in implementing the recommendations by developing a capacity-building project in consultation with the country concerned.

The present report serves as background for the session on the voluntary peer review on consumer protection law and policy of Morocco to be held at the third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy on 9 and 10 July 2018 in Geneva, Switzerland.

¹ United Nations General Assembly, United Nations guidelines for consumer protection; General Assembly, resolution A/RES/70/186. 2015.

² Report of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, second session TD/B/C.I/CPLP/9 2017.

³ UNCTAD, Framework for voluntary peer reviews on consumer protection law and policy, Note by the UNCTAD secretariat, prepared for second session 2017. TD/B/C.I/CPLP/6.

II. POLITICAL, ECONOMIC AND SOCIAL CONTEXT

Morocco has a population of approximately 35 million inhabitants.⁴ The form of government established by the Constitution of 2011⁵ is a constitutional, democratic, parliamentary and social monarchy. Sovereignty belongs to the nation, which exercises it directly by referendum and indirectly through elected representatives. The nation chooses its representatives in elected institutions through free and regular elections. Arabic is the official language of the State. Amazighe is an official language, and the State acts to protect the Hassani language.

His Majesty King Mohammed VI is Head of State and Commander of the Faithful. He presides the Council of Ministers, appoints the Prime Minister from the most represented political party in Parliament, and appoints the members of the Government on recommendation of the Prime Minister. Mr. Saadeddine Othmani, of the Justice and Development Party, has been Prime Minister of Morocco since 5 April 2017.

Legislative authority is exercised by the Parliament, which is divided into the House of Representatives (lower house) and House of Councillors (upper house). Parliamentary elections are held every five years for the 395 members of the House of Representatives, and every nine years for the 270 members of the House of Councillors. The last legislative elections were held on 7 October 2016.

Judicial authority rests with the Supreme Court (Cour de cassation). The Supreme Court is the final level of appeal, while the Constitutional Court (Cour constitutionnelle) is responsible for upholding the Constitution. The Presidents of both institutions are appointed by the King.

One of the first decisions of Morocco as a sovereign State⁶ was to adhere to the United Nations, becoming a full Member State on 12 November 1956. Morocco is also a member of the Arab League, the Araba Maghreb Union, the Organization of Islamic Cooperation, the Community of Sahel-Saharan States, the African Union, the Non-aligned Movement, and the Group of

77 and China. Morocco has recently applied to accede to the Economic Community of West African States.

Morocco has had an association agreement with the European Union since 1996 requiring legal approximation to participate in the Mediterranean free trade zone.⁷ It is the first country of the Middle East and North Africa Region (MENA) to be accorded advanced status in that regard. The association agreement was reinforced in 2005 by the adoption of a Morocco–European Union Action Plan of integration, leading to the gradual adoption of the *acquis communautaire*.⁸ Morocco has been the principal beneficiary of the European Neighbourhood Policy relaunched⁹ in 2011, and negotiations are continuing with a view to deepening the free trade zone.

The human development index of Morocco for 2015 is 0.647 –positioning it at 123 out of 188 countries and territories. Between 1990 and 2015, life expectancy at birth increased by 9.6 years in that country, mean years of schooling increased by 2.8 years and expected years of schooling increased by 5.6 years. The gross national income per capita of Morocco increased by around 90 per cent between 1990 and 2015.¹⁰

In 2018 the World Bank ranked Morocco as a lower-middle-income economy,¹¹ with a gross domestic product of \$103.61 billion, a gross national income per capita of \$3,010, an annual growth of 1.2% and an annual inflation of 1.6%. The fiscal deficit stabilized at 3.9% in 2016 and public debt at 65% of GDP in 2017, comparable to best-performing countries. The World Bank recently reported that Morocco had made “undeniable economic progress” over 15 years, not only in terms of

⁴ World Bank, Country profile of Morocco 2016, available at http://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=MAR.

⁵ http://www.amb-maroc.fr/constitution/Nouvelle_Constitution_%20Maroc2011.pdf (accessed 15 March 2018).

⁶ Since gaining independence in 1956.

⁷ European Commission, Barcelona declaration adopted at the Euro-Mediterranean Conference, 27 and 28 November 1995, available at https://ec.europa.eu/research/iscp/pdf/policy/barcelona_declaration.

⁸ *Acquis communautaire* is the term of art for European Union body of law.

⁹ See https://eeas.europa.eu/topics/european-neighbourhood-policy-enp_en

¹⁰ Human Development Report 2016, Briefing note for countries on the 2016 Human Development Report, Morocco, available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MAR.pdf

¹¹ World Bank, Country and lending groups, country classification, available at <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

economic growth and living standards, but also access to basic services such as electricity, water and public infrastructure.¹² Morocco was ranked 69 of 190 for ease of doing business,¹³ while the World Economic Forum classified Morocco as the most competitive economy in North Africa.¹⁴

The agriculture sector remains important, the largest of all economic sectors with 15% of GDP, while accounting for 40–45% of employment and very vulnerable to unreliable rainfall as in the drought of 2016.¹⁵ Tourism is the second largest sector with 8% of GDP and 515,000 jobs and significant foreign currency earnings.¹⁶

The retail sector is rapidly evolving. Between 2005 and 2015, the number of supermarkets, mainly food stores, multiplied by six, at a rate of 15% per annum.¹⁷ Likewise, electronic commerce is accelerating, the number of online purchases more than doubled in three years towards \$ 2.5 million. The Consumer Protection Strategic Plan of the Ministry of Industry, Investment, Commerce, and Digital Economy (MIICEN) refers to “radical changes in terms of both supply and the modalities of purchase, delivery and regulation”. Nevertheless, traditional purchasing still dominates the market, with 87% of transactions.¹⁸

Interest in consumer protection issues developed early in the history of Morocco, favoured by its open and dynamic economy. For example, regarding dispute resolution between consumers and traders, the traditional institution of *mohtassib* can be described as municipal magistrates or masters of the souq, and has existed for centuries.¹⁹ Mohtassib sometimes assumed powers currently associated with public officials including supervising inspectorates who carried seals to certify the conformity of foodstuffs products and supervising weights and measures used by water carriers, a role which has been compared to the globally widespread ombudsman or mediator.²⁰

Law 02-82 on the powers of mohtassib was enacted in 1981 to recognize the role of traditional mediators.²¹ The law allows for quality control functions and price supervision and the mohtassib can call upon technical support services and impose fines.

The same law envisages a role for *oumanas des corporations*, trade guilds with representatives, *amins*, elected by members of the guild, with powers to assist the mohtassib in the conciliation process, not unlike some modern systems of self-regulation. Emerging modern legislation in such regards has its antecedents.

¹² World Bank *Country economic memorandum: Morocco 2040-emerging by investing in intangible capital*. 2017.

¹³ World Bank, *Doing Business 2018*, available at <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf>

¹⁴ World Economic Forum. *African Competitiveness report 2014-15*. See also : World Bank, *Maroc : la Banque mondiale soutient l'élargissement de l'accès aux soins médicaux et les énergies vertes*.

¹⁵ World Bank, *The World Bank in Morocco*. <http://www.world-bank.org/en/country/morocco/overview> April 2017.

¹⁶ Information from Ministry of Tourism. UNCTAD mission December 2017.

¹⁷ World Bank, 2017, *Morocco's economic outlook – October 2017*.

¹⁸ MIICEN, *Strategy for the protection of the consumer* (forthcoming).

¹⁹ E Tyan, *Un magistrat musulman : le mohtasib*, in G Demombynes, *Histoire de l'organisation judiciaire en pays d'Islam*, *Journal des savants*, 1947.

²⁰ World Bank and Islamic Development Bank Group: *Islamic Finance, a catalyst for shared prosperity?* World Bank Group, 2016.

²¹ Dahir 1-82-70 (28 chaabane 1402) portant promulgation de la loi n° 02-82 relative aux attributions du mohtassib et des oumana des corporations, *Bulletin Officiel*, 7 July 1982.

III. SUBSTANTIVE LEGISLATION

The Moroccan constitution of 2011 refers to various issues related to consumer protection. Article 8 establishes “the defence and promotion of socioeconomic rights and interests”, although this is expressed as a matter for business and professional organizations and labour representatives to pursue. Article 12 of the Constitution deals with the rights of civil society to participate in public life with consultation mechanisms mentioned in article 13, while article 151 lists the Economic Social and Environmental Council with its remit for sustainable development. Article 24 deals with privacy, and article 27 with the right to information. Article 31 details citizens’ rights, which includes issues that touch on or are directly addressed by provisions for consumer protection: social protection, education, decent housing, access to water and a clean environment and sustainable development. The office of mediator refers to “users” of services under public administration and article 166 to the Competition Council.²²

Consumer protection is a transversal policy: it cuts across a range of legislation both vertical (sectoral) and horizontal (cross-cutting). The main piece of legislation and the focus of the present report is Law 31-08: *Edictant des mesures de protection du consommateur* (ordering consumer protection measures).²³ Other relevant pieces of legislation cover the issues of competition,²⁴ electronic exchanges of legal data,²⁵ product safety,²⁶ data protection²⁷ and transport.²⁸

A. LAW 31-08 ON CONSUMER PROTECTION

Law 31-08, Ordering Consumer Protection Measures, is predominantly horizontal legislation, consisting of 206 articles. The Law establishes the fundamental

consumer rights, as well as scope and relevant definitions. It regulates in detail the obligations of businesses to provide information; it provides protection against unfair contract terms and sets out business obligations in relation to specific business practices, such as guaranties and warranties, and deals with consumer indebtedness, consumer associations, infringements and penal sanctions.

The present section describes the content of Law 31-08, in particular in light of the United Nations guidelines for consumer protection, as a defining set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations in accordance with their own economic and social and environmental circumstances, as well as promoting international cooperation among Member States including the sharing of experiences.²⁹ It is important to note that the guidelines contain only recommendations and are thus non-binding on Member States. Further, the guidelines portray comprehensive consumer protection policy recommendations, which are usually addressed in various pieces of legislation at the national level.

Preamble

The preamble to Law 31-08 sets out the fundamental rights of consumers, as follows:

- Right to information.
- Right to protection of economic rights.
- Right to representation.
- Right to retraction.
- Right to choose.
- Right to be heard.

This list echoes the provisions of the Constitution mentioned above (information, representation, economic rights). Furthermore, it also incorporates some of the key ‘legitimate needs’ of guideline 5 of the United Nations guidelines, their most frequently

²² Royaume du Maroc, Secrétariat Général, *La Constitution*, Edition 2011, Série: Documentation juridique Marocaine.

²³ The analysis is complicated by the prospect of further amendments, which are currently in the form of a draft law, which is still under preparation at the time of writing.

²⁴ Law 20-14 relative to the Competition Council.

²⁵ Law n° 53-05 on electronic exchanges of legal data.

²⁶ Laws 24-09 on safety of products and services, 28-07 on food product safety, 25-08 on National Office for Food Product Safety, 13-83 on fraud repression on sold products, 18-88 on expiry date labelling, and 75-291 on sanitary and qualitative inspection on livestock.

²⁷ Law 09-08 on personal data protection.

²⁸ Law 52-05 on traffic regulations.

²⁹ United Nations General Assembly, *United Nations guidelines for consumer protection*; General Assembly, resolution A/RES/70/186, 2015.

quoted text.³⁰ (The right to retraction is a specific issue not featured in either the Constitution or the guidelines. Some of the legitimate needs listed in the United Nations guidelines are dealt with in other Moroccan legislation, such as consumer product safety³¹ and data protection).³²

Scope (title I, articles 1–2)

Article 1 sets out the objectives of the law and reinforces the rights to information, already mentioned in the preamble, and to guarantees. It also highlights the protection against unfair contract terms, notably in financial services. It lists the representation of consumer interests through the work of consumer protection associations and is thus consistent with the right to representation and the right to be heard as set out in the preamble.

The objectives contain high-level principles, such as the pro-consumer principle: “all other legislative provisions on the same subject are applicable if they are more favourable to the consumer”. Article 2 addresses the question of definition of a consumer as follows: “all physical or moral persons who acquire or use products, goods or services, for purposes unrelated to work, for personal or familial use”.

³⁰ Guideline 5: The legitimate needs which the guidelines are intended to meet are the following:

- (a) Access by consumers to essential goods and services;
- (b) Protection of vulnerable and disadvantaged consumers;
- (c) Protection of consumers from hazards to their health and safety;
- (d) Promotion and protection of the economic interests of consumers;
- (e) Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (f) Consumer education, including education on the environmental, social and economic consequences of consumer choice;
- (g) Availability of effective consumer dispute resolution and redress;
- (h) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
- (i) Promotion of sustainable consumption patterns;
- (j) A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce;
- (k) Protection of consumer privacy and global free flow of information.

³¹ Laws 24-09 on product and service safety, 28-07 on food product safety, 25-08 on National Office for Food Product Safety, 13-83 on fraud repression on sold products, 18-88 on expiry date labelling and 75-291 on sanitary and qualitative inspection on livestock.

³² Law 09-08 on personal data protection, Royaume du Maroc, Secrétariat général, Edition 2010, Série: Documentation juridique marocaine.

Another significant element of scope is the application of consumer protection to State-owned enterprises, where the Moroccan legislation seems to have anticipated the international trend towards including these types of businesses under the application of consumer protection law.

Information to consumers (title II, articles 3–14)

Information is listed as a right in the preamble and dealt with in detail in articles 3, 4, 5 and 12. The modalities of information are set by regulation, and article 3 lays down the principle that information be provided in a form that enables a “rational choice” to be made by the consumer according to “needs and means”. Certain detailed regulatory obligations regarding information were set out by MIICEN in its decision of 2 January 2014.³³

Unfair contract terms (title III, articles 15–20)

Article 18 sets out the kind of contract term to be avoided in a non-exhaustive list, while article 16 demonstrates a certain flexibility in terms of the judgment of the extent to which a contract term can be considered abusive. Article 16 states that such considerations take in “the circumstances at the moment of the conclusion of the contract”.

One new and growing trend in this regard is to address the position of authorized agents (as opposed to salaried staff) in the supply chain, a matter of importance in the domain of financial services as set out in the United Nations guidelines.³⁴ It may not necessarily need amendment of the law, as a statement of clarification of responsibility of service providers for their agents may be sufficient to resolve any ambiguity. Such vertical responsibility is, for example, envisaged in article 25 of Law 09-08 on protection of private data.³⁵

Business practices (title IV, articles 21–64)

Title IV regulates in detail various business practices, including advertisement, distance contracts (which include electronic commerce), doorstep sales, discount sales, bonus sales, tie-in sales, Ponzi schemes, abuse of vulnerability and lotteries.

³³ MIICEN Decision 6-14 of 2 January 2014 on compulsory disclosure, form and modalities for labelling of goods.

³⁴ See United Nations guideline 66(e) and G20/OECD G20 High level principles on financial consumer protection, OECD 2011.

³⁵ Royaume du Maroc, Secrétariat général, Law 09-08 on personal data protection, Edition 2010, Série: Documentation juridique marocaine.

One of the fundamental consumer rights enshrined in Law 31-08 is the right to retraction, identified both in the preamble and in the text under distance contracts (articles 25–43). This is particularly relevant for online sales as it is considered to entice consumers to trust electronic commerce.

A potential reinforcement of the right to retraction could be to extend that right significantly in the case of its non-notification to the consumer by the supplier. Businesses may also be required to spell out the modalities of retraction (refunds, delivery charges, non-validity of cancellation fees, etc.). The right to retraction could also be extended to consumers not purchasing at distance.

The chapter on business practices contains a provision against the abuse of weakness or ignorance. Article 59 states that such abuse can result in the nullification of the contract and requires repayment to the consumer plus such damages as may apply. This article is ahead of many other jurisdictions and is in line with United Nations guideline 5 on the protection of vulnerable and disadvantaged consumers.

Guarantees (title V, articles 65–73)

Title V addresses legal and voluntary guarantees, including spare-parts policies. Article 65 sets out the concept of a legal guarantee during a certain period (two years for immobile goods, one year after delivery for mobile goods). Although there is extensive regulation of the disclosure requirements, related to voluntary guarantees, Law 31-08 might benefit from greater precision regarding measures for replacement, repayment or repair of goods under commercial (voluntary) guarantee, as well as legal guarantee.

Indebtedness (title VI, articles 74–150)

Title VI devotes over 75 articles to consumer indebtedness, including consumer and housing credit. Articles 74–150 provide particularly detailed regulation of the issue, which is more commonly found in sectoral legislation. The protection of consumers of financial services is relatively recent, since the enactment of Law 31-08. In the past, the governance of the sector came through the service itself, essentially a form of self-regulation, or through arbitration based partly on custom and practice and relating to 27 different laws. Law 31-08 relates specifically to consumer credit and housing loans rather than financial services in general.

There is a growing international trend to address the issue of over-indebtedness and responsible lending

in consumer protection laws, which is featured in guideline 66(f) of the United Nations guidelines. This could include the obligation on lenders to carry out checks of credit-worthiness before entering into a credit agreement.

Associations for the protection of consumers (title VII, articles 152–165)

Title VII regulates the role of consumer protection associations. The nature, functions and funding of the associations are covered in detail in Law 31-08, and they are further developed by Decree 2-12-462 of 14 November 2012 for purposes of implementation. Their main functions are to ensure information and the promotion of consumer interests and to contribute to uphold the Law.

The requirements for consumer protection associations are detailed in article 153 of Law 31-08: to be non-profit and without business subsidy, to have no commercial advertising and no political activity and to concentrate solely on the defence of consumer interests.

Consumer protection associations can be recognized by the State as being of public interest (*utilité publique*) on condition of meeting certain criteria listed in article 153 and mentioned above. Those consumer protection associations which are recognized as being of public interest must unite under a national federation of consumer protection, which is to be regulated by decree. Currently, there are no consumer protection associations recognized as being of public interest.

However, Law 31-08 requires that to represent consumers judicially, consumer protection associations must achieve the status of public interest (articles 157 and 154). Article 157 goes further in envisaging the possibility for non-recognized associations to enter judicial proceedings having been authorized to do so by the consumer “and according to conditions set down by regulation”. While article 6 of Decree 2-12-462 lists the expected objectives of consumer associations, including that of representation, it is not explicit that this is of the judicial kind. A decision of the Ministry of Justice to detail the modalities for delivering the authorization to consumer protection associations to stand in country is currently under consideration.

One of the salient features of this law is the possibility for consumer associations to receive public funding. Article 156 refers to the development of a national fund to be administered by MIICEN with a view to

“developing consumer culture”. This is an important step towards propping up consumer associations funding sustainability, and a pioneering initiative in the region. MIICEN has invested DH 10 million (approximately \$ 1.1 million) in this fund.

In line with guideline 45, Decree 2-12-462 also lists consumer education as an objective of consumer associations, accompanied by “orientation and awareness of sanitary, nutritional, environmental and commercial aspects”. This covers a lacuna of Law 31-08, which does not refer directly to education campaigns by consumer associations. Education and information campaigns are directly undertaken by the Ministry and by consumer protection associations funded by the national fund.

Penal sanctions (title IX, articles 173–195)

Title IX foresees penal sanctions of a pecuniary nature for breaches of Law 31-08. Article 173 imposes sanctions regarding information (or its absence) provided to consumers, articles 174–177 deal with publicity, articles 178–180, distance selling; articles 181–182, discount sales; article 183, pyramid sales; article 186, guarantees and after-sale services; and articles 187–195, consumer credit. Article 181 imposes sanctions that are generally more severe than in other domains for exploitation of weakness and ignorance on the part of consumers, discussed elsewhere.

Consultation mechanisms

Article 204 calls for the institution of a high advisory consumer council, as an independent institution, in charge of proposing and rendering opinions on measures aiming to promote the consumer movement and to increase the level of consumer protection. This institution has not been established yet, although it is currently one of the priorities of MIICEN for 2018–2021.

Regulatory development of Law 31-08

Law 31-08 foresees regulatory development of various provisions, through government regulations known as implementing texts (*textes d’application*).³⁶ The Moroccan legal tradition allows for long delays between the adoption of the laws and their regulatory developments, which can, in some instances, impair the effects of legal provisions. Due to its cross-sectoral nature, consumer protection is particularly vulnerable

to such delays, as consumer protection authorities rely on other ministries to establish the modalities of application. In the case of Morocco, the application of Law 31-08 requires action to be taken by a dozen ministerial departments.

Despite these difficulties, Law 31-08 has been applied through a series of 15 implementing texts: two decrees (*décrets*) and thirteen decisions (*arrêtés*). These have emanated mostly from MIICEN but also from the Ministry of the Economy and Finance, and the Ministry of the Interior.³⁷ Many regulations apply to the technical and judicial functions of inspectorates, for example, methods of financial calculation relating to specific forms of transaction. Examples are given in the table below.

In the view of MIICEN, Law 31-08 has so far been partially implemented.³⁸ The main limitations identified by MIICEN for the adequate enforcement of the Law include:³⁹

- ✓ Absence of administrative sanctions.
- ✓ Need to set up simple tools for compensation for damages outside of judicial procedures.
- ✓ Restricted application of the law with focus on for example certain commercial practices such as misleading advertising.
- ✓ Need to reinforce the protection of consumer in relation to credit.
- ✓ Need to reinforce the protection of the vulnerable population.

These limitations could be addressed in future amendments of Law 31-08, along with international best practices in line with the United Nations guidelines.

B. OTHER RELEVANT LEGISLATION

Law 31-08 does not deal directly with other consumer protection domains such as: financial services in general, product safety,⁴⁰ consumer privacy and standardization. Following MIICEN’s request to focus

³⁷ MIICEN, *La loi 31-08 Edictant des mesures de protection du consommateur et ses textes d’application*, 2017.

³⁸ MIICEN, *Strategy for the protection of the consumer. 2017-22. 2017*, op. cit.

³⁹ MIICEN, *Strategy for the protection of the consumer. 2017-22. 2017*, op. cit.

⁴⁰ Law 28-07 on food product safety, *Bulletin officiel* 5822, 18 March 2010; Decree 2-10-473 for application of Law 28-07, *Bulletin officiel* 5984, 6 October 2014; Law 24-09 on safety of products and services, *Bulletin officiel* 5984, 6 October 2011; Decree 2-12-502 in respect of application of Law 24-09, *Bulletin officiel* 6158, 6 June 2013.

³⁶ Articles 3, 4, 12 and 61.

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Articles of Law 31-08 that require implementing texts

| Article | Subject | Implementing text |
|--------------------------------------|---|---|
| 3 | Display of retail prices of goods or services Display of retail prices of pre-packaged goods | Title II information for consumers according to Decree 2.12.503 of 11 September 2013 implementing certain provisions of Law 31-08 |
| 4 | Compulsory disclosure for invoices, receipts (including from cash registers) or any other equivalent document | Title II of Decree 2.12.503 of 11 September 2013 (see above) |
| 6 | Content and form of product labelling for trade and industry sectors | Title III of Decree 2.12.503 of 11 September 2013 (see above). MIICEN decision 06-14 of 2 January 2014 on compulsory disclosure, form and modalities for labelling of goods |
| 12 | Price thresholds and dates of delivery | Title IV of Decree 2.12.503 of 11 September 2013 (see above) |
| 47 | Doorstep sales | MIICEN decision 3-14 du of 2 January 2014 on the content of the detachable form to facilitate the right to retraction in doorstep sales |
| 56 | Premium rates and benefits | MIICEN decision 4-14 of 2 January 2014 setting maximum values for samples and goods of low value offered at premium or discount |
| 63 | Sweepstakes | MIICEN decision 05-14 of 2 January 2014 on the standard model for documents, advertisements and regulations of sweepstakes |
| 72 | Voluntary guarantees and spare-parts | MIICEN decision 07-14 of 2 January 2014 on the standard model for written exchanges between suppliers and consumers about voluntary guarantees and/or spare parts for certain goods and services |
| 79 83 104 106 124 132 | Indebtedness | <ul style="list-style-type: none"> – Joint MIICEN and MEF decision 4030-14 of 29 December 2014 setting out characteristics, including content, of the document responding to amendments proposed by the lender in the event of renewal of a credit contract – Joint MIICEN and MEF decision 4031-14 of 29 December 2014 setting out standard models for initial offers of consumer credit, including detachable forms to exercise right to retraction – Joint MIICEN and MEF decision 4032-14 of 29 December 2014 setting maximum interest rates imposed on arrears due in the event of default or arrears on the part of the consumer – Joint MIICEN and MEF decision 4033-14 of 29 December 2014 setting method of calculation for present-value of rent not yet due – Joint MIICEN and MEF decision 4034-14 of 29 December 2014 setting the maximum level of processing fee that a lender can retain or demand in the event of a housing loan that is not concluded – Joint MIICEN and MEF decision 4035-14 of 29 December 2014 setting the amount of anticipated charges for interest foregone in the event of early redemption of housing credit by the consumer |
| 154 | Recognition of the public interest status of consumer protection associations | Decree 2-12-462 of 14 November 2012 on the model statutes of consumer protection associations recognized as having public interest status |
| 157 | Authorization for consumer protection associations not recognized as having public interest status, to participate in legal proceedings | Draft decision under consideration |
| 166 | Commissioning of investigators to ascertain infringements | MIICEN Decision 2-14 of 2 January 2014 on MIICEN inspectors investigating and admonishing infringements of Law 31-08 Ministry of Interior Decision 965-17 of 30 November 2017 for the commissioning of inspectors; various joint initiatives of concerned ministerial departments |

Source: DPCSMQ, MIICEN.

the present exercise on Law 31-08; these domains are not directly under review. Nevertheless, they are part of the consumer protection legal framework of Morocco and are briefly described below.

Financial services

Since implementation in 2015 of the new Banking Law 103-12, there is a universal right to have a bank account. Today there are 20 banking services available free of charge.⁴¹ Sixty per cent of the Moroccan population now has bank accounts. The law provides for bank deposit guarantees up to the value of DH 80,000 (approximately \$8,800) and requires price indications, portability of accounts, mandatory complaints services within the banks, a register of defaults (*incidents de paiements*) and sanctions in cases of non-conformity with the law. Banks must be licensed, and informal loans are forbidden.⁴² Interest rates for loans are regulated using interest rate caps.

Protection of consumers against risks to health and safety

Law 28-07 on food safety proceeds by way of determination of prior conditions of production and treatment of foodstuffs in addition to information and labelling of foodstuffs. It should be noted that the law includes the precautionary principle, also known as the precautionary approach. This principle is recognized in article 5.7 of the Sanitary and Phytosanitary Agreement of the World Trade Organization. It relates to situations in which the state of scientific knowledge may be insufficient to make a definitive judgment whether to block a product but allows for a precautionary approach to be taken in the meantime, while the risk level is clarified.⁴³

Law 24-09 on the safety of goods and services does not invoke the precautionary principle.⁴⁴ It “defines the respective obligations of the different responsible parties regarding the placing on the market of goods and services”. This general safety obligation is imposed on producers and importers of products as much as on service providers. The

law does not distinguish between manufacturers and distributors and envisages penalizing them for exposing other parties, including consumers, to risks arising from non-observance of regulations. The law indicates that the penalties apply when the risk was undertaken knowingly or where the providers had a responsibility to know. This obligation avoids the problem, common in various countries, of proving prior knowledge of risk, which is very difficult exercise for enforcers. The law, which supplements general civil law obligations, does not extend to strict responsibility of producers and distributors, as is the case in other countries.⁴⁵

Protection of consumer privacy

The rights of consumers to the protection of their privacy are strengthened by the Moroccan Constitution, revised in 2011, which states in article 24 that “all persons have the right to protection of their private lives”. Law 09-08 on the protection of physical persons regarding the processing of personal data⁴⁶ establishes the following rights:

- Requirement of express consent as a condition of data collection.
- Information regarding use of data.
- Right to access to data held, as well as their origins and destinations.
- Right to rectification without charge in the event of error within a deadline; right of appeal to the Personal Data Control Commission (CNDP).⁴⁷
- Right to express opposition to the collection and treatment of the data.

Data users – in this context, businesses – are required to ensure that the data are collected fairly, legally and transparently. They must:

- Abide by the stated use of the data, which must be communicated to CNDP; (this includes any change of use, any interconnection of data files or requests to transfer data abroad).

⁴¹ MEF mission November 2017, Law 103-12 regarding credit establishments and linked organizations, *Bulletin Officiel*, 5 March 2015.

⁴² In 2017 for example, an agreement (license to operate) was issued for participative (Islamic) banks following the 2015 decree.

⁴³ See chapter 9 of the UNCTAD *Manual on Consumer Protection* (advance version), 2016.

⁴⁴ The Sanitary and Phytosanitary Agreement applies to foodstuffs, but not to manufactured products or services.

⁴⁵ The law does not extend to strict responsibility, which was introduced into European Union law by the Product Safety Directive of 1985 (modified in 1999), available at https://ec.europa.eu/growth/single-market/goods/free-movement-sectors/liability-defective-products_fr Directive 85/374/CEE.

⁴⁶ *Bulletin Officiel* 5714, 5 March 2009, Law 09-08 on personal data protection.

⁴⁷ La Commission nationale de controle de la protection des donnees a caractere personnel.

- Respect the principle of limitation of use (proportionality).
- Ensure the quality of the data.
- Respect the time limits on the retention of the data, linked to the final use.
- Ensure the security and confidentiality of the data.

Standardization

The development of an arms-length relationship between the State and standards institutions is key to the development of standards worldwide. Law 12-06 on standardization provides autonomy for the Moroccan Standardization Institute (IMANOR), which previously came under MIICEN.⁴⁸ The Government has retained certain powers of oversight, but article 22 demonstrates the intention to use such powers as advised by economic and social partners, and technical committees of the Institute. The governing body, under the aegis of the Prime Minister, is the Conseil supérieur de normalisation, de certification et d'accréditation (CSNCA),⁴⁹ which brings together a wide range of stakeholders, including consumer representatives all serving as representatives of the State. The Executive Committee (le conseil d'administration) also brings together a wide range of interested parties under the terms of article 23.

Morocco maintains a strong link between standardization and regulations. Article 33 of Law 12-06 also envisages the transition from voluntary standard

to mandatory standard, when that is “deemed to be necessary by the competent governmental authority”. Articles 7 and 40 call for decisions on legal standing to be published in the *Bulletin Officiel* (official journal). As soon as a standard becomes a legal obligation, article 34 envisages controls over the conformity of products to be exercised in the usual way. In practice, the majority of standards remain voluntary. However, of 14,400 adopted standards, only 280 are mandatory.

State of substantive legislation

Morocco enjoys a solid legislative framework on consumer protection. Law 31-08 on consumer protection contains the basic features of a modern consumer protection law: objectives and scope, rights of consumers, obligations of businesses, regulation of concrete business practices and regulation of consumer associations and sanctions. It goes into great detail regarding consumer credit and housing loans.

The consumer protection legislative framework of Morocco is completed by other sectoral laws and regulations. In some areas, such as data protection, Morocco is in line with international best practices in legislative terms. In terms of results, the same appears to be true of the evolution of public services in infrastructure, although that derives in part from contractual law as much as statute law and so is not elaborated here. The flexible mix of statute law, some contract law, good practice standards, and both voluntary and mandatory and stakeholder participation appears to serve consumers well.

⁴⁸ Law 12-06 relating to standardization, certification and accreditation, *Bulletin Officiel* 5822, 18 March 2010.

⁴⁹ High Council for Standardization, Certification and Accreditation.

IV. INSTITUTIONAL FRAMEWORK

A. PUBLIC INSTITUTIONS

Government

The Ministry of Industry, Investment, Trade and the Digital Economy (MIICEN) is responsible for the conception and implementation of government policy in the areas of industry, commerce and new technologies, except where these are assigned to other ministerial departments by laws or regulations in force.⁵⁰ The responsibilities of the Ministry go beyond consumer protection, although they have a bearing on it, in particular where they include strategies for new technologies, industrial development strategies, relations with relevant national and international institutions, promotion and development of innovation, training, proposals for the regulation of industry, commerce and new technologies, and promotion of quality and safety, to name some of those listed by MIICEN. The most explicit mention of consumer protection is as follows: “Ensure control in the domains of metrology, accreditation, quality, safety in the enterprise, surveillance of the market and consumer protection”.⁵¹

Other government ministries that have a stake in consumer protection are the Ministry of Energy, Mines, and Sustainable Development; the Ministry of the Interior; the Ministry of Economy and Finance; the Ministry of Housing, Urbanism and City Policies; the Ministry of Agriculture and Sea Fishing; the Ministry of Equipment, and Transport; the Ministry of Tourism; the Ministry of Handicrafts; the Ministry of Health; the Ministry of General Affairs and Governance; and the Ministry of Justice.⁵² As discussed below, within MIICEN, the DPC invests a great deal of effort in establishing bilateral cooperation arrangements with other relevant ministries.

Consumer protection authority

Within MIICEN, the Directorate of Consumer Protection, Market Surveillance and Quality (DPCSMQ), hosts the Department for Consumer Protection (DPC), which is the Moroccan consumer protection authority.

DPC is charged with strengthening the legal framework, overseeing the application of the consumer protection law in the market, communicating with consumers and raising awareness of their rights in the market place, along with other relevant stakeholders, in particular, consumer protection associations and businesses and finally developing the consumer movement. DPC consists of only about 10 staff. MIICEN further disposes of more than 70 qualified and certified inspectors on the ground. The Ministry of the Interior is training 400 inspectors with the assistance of MIICEN, and these should be operational throughout Morocco by May 2018.

The DPC activity report January 2017 to March 2018 details the most salient institutional activities, which include:⁵³

1. Strengthening the regulatory framework of Law 31-08

- The publication of the order relating to the appointment of investigators of the Ministry of the Interior is ascertaining infringements of the Law 31-08 (*Bulletin Officiel* of 30 November 2017).
- The finalization for a forthcoming publication in the *Bulletin Officiel* of the joint order with the Ministry of Justice setting the conditions for filing and examining applications for special authorization for consumer protection associations to represent the consumer interest in court.
- The drafting of seven joint orders with concerned ministerial departments (handicrafts, tourism, energy and mines, housing, etc.) concerning the training and appointment of their inspectors.
- The drafting of seven draft joint orders with the Ministries of Energy, Mines, and Sustainable Development; General Affairs; Handicrafts and Social Economy; Housing; and Equipment and Transport for the regulation of certain sector-specific aspects (display of prices and labelling).

⁵⁰ <http://www.mcinet.gov.ma/en/content/missions>

⁵¹ See <http://www.mcinet.gov.ma/fr/content/missions-du-ministère>.

⁵² See <http://www.khidmat-almostahlik.ma/portal/fr/acteurs/administration-etablissement-publique>.

⁵³ MIICEN report of DPC activities January 2017–March 2018, 2018.

2. Enforcement of Law 31-08

MIICEN investigators that were trained and officially sworn in began field inspections in 2016. These operations focused on raising awareness among businesses regarding their legal obligations. In addition, a multi-year enforcement framework programme 2017–2019 was developed, including various enforcement plans for different types of products based on consumption peak times, such as: January discount sales, or sales around religious festivities. Similarly, documentation has been produced and a procedure has been established to facilitate the inspectors' discharge of functions and to detail the steps to be followed in inspections.

To take two examples of sectoral inspection programmes, DPC has carried out one for textile products and another for the advertising of household appliances. The balance sheet of the control operations carried out until 31 December 2017 is as follows:

- 836 controlled establishments, mainly at the grocery, retail and specialty stores stages.
- 11,636 controlled aspects; (labelling, display, invoices).
- 2,429 instances of non-conformity found, mainly in relation to price display, labelling and invoices.
- 105 warnings sent to offenders for compliance.
- 10 minutes of operations were produced.

The electronic commerce inspection within DPC carried out 120 surveillance operations, including 20 websites that were inspected in 2016 and received admonitions. These operations led to sending more than 100 admonition letters to concerned businesses with a view to encouraging compliance with the Law.

3. Support to the national consumer movement

In 2017, MIICEN signed new financing agreements with three federations of consumer protection, namely:

- Moroccan Federation of Consumer Rights (FMDC).
- National Federation of Consumer Associations (FNAC).
- Southern Federation of Consumer Protection Associations (FSAC).

In an effort to professionalize consumer counters or advice points (*guichets consommateurs*), run by the consumer protection associations, DPC provided technical assistance. This led to the drafting of a standard operating manual for the consumer counters.

4. Information, awareness-raising and training

DPC carried out several information, awareness-raising and training activities, in particular:

- Consumer portal: www.khidmat-almostahlik.ma is an online platform available in Arabic and French. It aims to increase citizens' awareness of their rights. A wide range of information is available, including regulations, fact sheets, guides and contact details of consumer protection associations.

The portal provides information to consumers about their legal rights and serves as an entry point to several institutions and organizations concerned with consumer protection. The portal received 41,770 visits in 2017, a year-on-year increase of 14%.

The portal also allows consumers to file online claims on unsatisfactory products or services or unfair business practices. The applicant is informed of the filing of the claim, and a number is assigned to enable follow-up. The claim is directed to the competent institution for its processing depending on the nature of the claim, be that regulatory (non-compliance with legal requirements) or private (dispute between consumers and businesses). Regulatory claims are directed towards public administrations, while private claims are directed towards consumer protection associations.

In 2017, the portal received 791 admissible claims, representing an increase of 64% in relation to 2016. The most concerned sectors were telecommunications (29%) and general retail (22%), followed by agriculture and fishery and financial services.

Regarding the telecommunications sectors, the main reasons for complaints included quality of service, issues such as lower

internet speed than contracted, delays in activation of the Internet connection and deceptive advertising (especially on unlimited Internet claims). Another concern was electromagnetic fields emitted by telecommunication stations.

Regarding the type of claim, 27% related to non-compliance with legal and voluntary/conventional warranties, defective goods and after-sales service, and 24% related to a lack of information on price, labelling and undue delays in delivery.

- National consumer days: DPC organized several annual meetings gathering all relevant stakeholders aiming to promote consumer protection culture in Morocco. These meetings are organized in close collaboration with the concerned partners, in particular consumer protection associations and ministerial departments concerned by the application of the Law 31-08 enacting measures on protection of the consumer.

National consumer days are an opportunity to discuss the many developments happening in this field and the role that all actors should play in the application of the regulations in force.

- The 2017 event was organized under the leadership of the Secretary General of the Ministry of Industry, Trade, Investment and Digital Economy, from 13 to 17 March 2017, under the theme “What role for consumer protection associations to promote the culture of consumerism?”. This edition highlighted the role of consumer protection associations in raising awareness, informing, directing and defending consumer interests and in promoting the national consumer movement. In this context, 30 local events were organized in 28 cities of the country, gathering a total audience of more than 3,224 participants and about 145 speakers.
- The 2018 national day under the theme “Which national strategy to strengthen the protection of the Moroccan consumer?” took place from 13 to 16 March 2018, under the leadership of

the Secretary of State to the Minister of Industry, Investment, Trade and Digital Economy (MIICEN), who stressed the sustained commitment of the Ministry and its partners in relation to consumer protection: “This is a priority project that places the citizen at the heart of the action and for which the Government has launched a series of concrete measures”.

- Training: DPC undertook a major training effort for stakeholders affected by Law 31-08, aimed at strengthening their technical and administrative capacities, in particular those of ministerial departments, regulatory authorities, judges, consumer associations and businesses. More than 600 State officials and consumer protection association staff have been trained.

In this context, DPC has developed training and instruction documents (operational memoranda for inspectors) to better equip its inspectorates. Volume 1 sets out the powers of inspectors and the modalities of warning notices and notifications of infractions. Other recent documents cover the range of possible measures including those applicable by the ‘territorial administrations’ (see below), the administrative police and the *parquet* – the public prosecution service. Volume 2 clarifies the provisions of Law 31-08 regarding the obligation of suppliers to provide information to consumers and deals with misleading or false advertising and deceptive commercial practices.⁵⁴

Local markets are also inspected by provincial (29) and regional (12) authorities. The expansion of DPC activities in the regions would necessitate appropriate resources for training and regrading staff in line with guideline 15. Different ministries also contribute to the strengthening of consumer protection enforcement, where their functions overlap, and again necessitating training courses for the officers concerned. Local governorates

⁵⁴ MIICEN, Operational memorandum for inspectors (volume 2) regarding the application of certain provisions of Law 31-08 and Decree 2-12 503 of 11 September 2013. Twinning programme MA/34, “Protéger le consommateur marocain”, May 2017

and prefectures also have powers in this area, notably checking regulated prices for staple products. The regions have their own economic divisions, which carry out price comparisons for basic goods and services such as butane gas, sugar, flour, transport, water and electricity.

The Ministry of the Interior sets up interministerial monthly committees to consider reports on particular sectors and price reports are considered by a committee under the Governance Ministry involving 11 ministries in all. DPC is gradually briefing each ministry in respect of the provisions of Law 31-08 in particular, and consumer protection in general.

Electronic commerce

Electronic commerce is supervised by the Centre for Surveillance of Electronic Commerce, a new unit operating since January 2017. In the past, public administrations struggled to exercise their powers under Law 31-08 to inspect Internet sites.⁵⁵ MIICEN has raised the question of whether the current institutional framework allows for adequate monitoring platforms. Problems have emerged around anonymous sites and online advertising, and in such cases the identification of the businesses concerned has been problematic.

One feature of electronic commerce in Morocco, and a considerable advantage for the consumer, is the prevalent practice of payment on delivery. As a result, fewer than 5% Internet purchases are paid online. This presents Morocco with a period of grace during which it can improve consumer protection regarding Internet sales while they are still a minority of purchases.

DPC has also been active in electronic commerce, publishing a brochure which explains the right to retract as contained in Law 31-08, also clarifying that it does not apply to transactions agreed in shops. For distance sales, the deadline for retraction is seven days after delivery of the goods, or seven days after an order is placed, in the case of door-to-door sales. Reimbursement must take place 15 days after retraction in both cases.⁵⁶ The right is also triggered by failure by the supplier to provide the required information, including the supplier's identity.

⁵⁵ MIICEN, *Strategy for the protection of the consumer*, 2017-22, op. cit.

⁵⁶ DQSMCP, *Acheter sur internet en toute confiance: (Buy on the internet with complete confidence)*, 2017.

Such a right is a potentially powerful safeguard for consumers, and the preamble of Law 31-08 elevates it to one of the fundamental rights. Perhaps this has led to the widespread misconception noted by DCPSMQ that the right applies generally. As is the case with other rights, it works best when it is not invoked because the sellers know that a purchase can be revoked and so do not sell dubious goods or contracts. However, should the right only apply to one part of the market, other consumers (still the great majority) may attract disreputable traders.

National food safety

The National Office for Food Product Safety (ONSSA) started business in 2010 as an agency independent from Government. The Office is responsible for a wide range of food safety measures, including inspection of abattoirs and is empowered to seize non-conforming products and destroy them if necessary, as well as to levy fines. Inspectors working from the regional governor's offices can close premises. Inspectors reporting to the governorates are independent, and their powers are being brought in-house within ONSSA.

The Office periodically mounts campaigns to warn consumers against risks, particularly during national festivities, and it runs a blue-line telephone alert system.

Competition and regulation

Morocco has evolved towards the liberalization of prices, although price controls continue in place for certain sectors. Sometimes regulation and competition go together as with the National Agency for Regulation of Telecommunications (ANRT). The sector has been liberalized since 2001, with three operators, and virtually 100% coverage. Regulation of prices continues, while ANRT monitors competition. The Agency has voluntarily assumed the role of mediator between supplier and consumer and reaches agreements on model contracts, with consumer protection associations, for example, on the resolution of long-term contracts without penalty.

Former Law 99-06 on competition and price liberalization granted a horizontal power to the Ministry of Interior to control prices. This power still holds under Law 31-08 for price display.

Law 104-12 of 2012 concerning freedom of prices and competition envisages control of commercial

practices by the Ministry of the Interior.⁵⁷ Law 31-08 also envisages this situation, although it does not designate a clear authority. At the regional level, local governorates lead coordination commissions, while at the national level, DPCSMQ and the Directorate for coordination of economic affairs lead coordination efforts. Nevertheless, it might be advisable to determine a clear consumer protection authority to take the lead in enforcing Law 31-08.

Personal data protection

The National Commission on the Control of Private Data Protection (CNDP) is an autonomous authority charged with ensuring that the use of personal data does not prejudice personal privacy. CNDP has authority over private and public institutions and their conformity with Law 09-08 (*relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel*). The Commission can take judicial action and apply financial and penal sanctions.⁵⁸

The Commission was set up in 2010 following the passage of Law 09-08 and has seven members appointed by the King. Its functions are:

- Treating of individual complaints, of which 64% concern commercial canvassing, 20% electronic commerce
- Treating requests for authorization by data users; CNDP is empowered to withdraw permits to gather and keep data, thus in effect acting as granter of license to treat .
- Keeping the public register; all data users must notify CNDP. This involves regulatory decisions regarding options for example concerning the use of opt-in/opt out, for which CNDP has favoured opt-in within its jurisdiction, applying sanctions in the event of non-compliance.
- Responding to requests for advice from government and parliament.

In his most recent report, the President of CNDP stated: "The independence of the institution must be preserved at all cost, as it is absolutely necessary for the credibility of CNDP before data users and subjects.

⁵⁷ Law 104-12 regarding freedom of prices and competition. Decree 1-14-116 June 30 2014

⁵⁸ La Commission Nationale de Contrôle de la Protection des données à Caractère Personnel, *Guide @CNDP*.

It must never be forgotten that protection of privacy and personal data is a fundamental human right".⁵⁹

CNDP has reported the above, through an 'adequation' procedure, followed in accordance with the advanced status of Morocco in the context of convergence with European Union Law.⁶⁰ The same process is under way regarding Convention 108 of the Council of Europe.⁶¹ The principles elaborated by the recently legislated European Union General Data Protection Regulation (GDPR) have already been incorporated into Moroccan law.⁶² The same principles have also been discussed by UNCTAD.⁶³

While most of the data concerned is collected by business (call centres, 22%; banks and insurance companies, 20%), it is significant that the public sector also collects 22% and is bound by Law 09-08 reflecting the global tendency to apply consumer protection legislation to State-owned enterprises, in line with United Nations guideline 2.⁶⁴

Standardization

Morocco is very active in the domain of standard setting, which is considered to increase competitiveness, while strengthening consumer protection.⁶⁵ The Moroccan Institute for Standardization (IMANOR) works beyond the national level, having represented Morocco as an active member in ISO since 1963, as well as other relevant bodies such as the Institute for Standardization and metrology of Islamic countries.

IMANOR's functions include the development of Moroccan standards and information and training concerning processes of certification of national or international standards for a product (for example the label *halal*) or with respect to good practices in production or distribution such as food safety or environmental practices.⁶⁶ Recent work has included

⁵⁹ CNDP *Rapport d'activité 2010–2013*.

⁶⁰ CNDP *Rapport d'activité 2010–2013*.

⁶¹ *Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel*. 1981, revised 2001.

⁶² Regulation 2016/679 of 27/4/16 regarding data protection and free circulation of data. The GDPR must be implemented in European Union member States by May 2018.

⁶³ UNCTAD, 2016, *Manual on Consumer Protection* (advance copy), chapter 13, Privacy and data protection. See also UNCTAD, 2016, *Data Protection Regulations and International Data Flows: Implications for Trade and Development*

⁶⁴ CNDP *Rapport d'activité 2010–2013*.

⁶⁵ IMANOR, *Tous ensemble pour un Maroc compétitif* (All Together for a Competitive Morocco).

⁶⁶ IMANOR, *Formation: Votre partenaire pour acquérir des compétences vous aidant dans votre démarche de progrès* (Training: your partner in acquiring the skills to move forward).

issues as varied as the characteristics of honey, energy labelling, the labelling of handmade products, which addresses the problem of false crafts in tourist markets.

IMANOR is a public body under the supervision of MIICEN, which assumes the secretariat function and acts as rapporteur for the High Council for Standardization, Certification and Accreditation (CSNCA) which is presided over by the Prime Minister. CSNCA includes representatives of economic partners, such as sectoral chambers of commerce, labour unions, CPAs and representatives of bodies carrying out research on standardization.

The experience of CSNCA can serve as a basis for exploring the development of consultation mechanisms on consumer protection issues, which may be led by DPC. The Council can call in experts (including ministerial departments) and ask them to give their views and advice.⁶⁷ Consumer protection associations recognize the positive role of standardization as a contribution to consumer protection although, in practice, their participation may be hindered by the availability of suitable personnel.⁶⁸

Tourism

Tourism is the second largest economic sector in Morocco. The National Office for Tourism deals with and supervises tour operators and contributes to the development of associated services such as air travel, tourist guides and even artisanal products. The tools for policymakers are both regulatory and voluntary. Among the latter are international benchmarks such as those of the World Tourism Organization. Legislation passed in 2003 (Law 61-00 on the status of tourist establishments)⁶⁹ sets out controls and sanctions, and a new draft law is being prepared. The Office can act as mediator but does not have powers of injunction.

Technical committees develop good practice guides, for example for tourist agencies and guides. There is also a compensation fund for tourists in the event of bankruptcy of a tourist agency. Moroccan law applies to Moroccan agencies regarding their operations abroad, for example providing for the 17,000 pilgrims from Morocco to Mecca in 2017 that were customers

of tourist agencies. Sanctions (including removal of licences) can be applied to agencies, subject to the verdict of the relevant technical committee composed of representatives of the Ministry of Transport, the Ministry of Tourism, the Ministry of the Interior and the agencies.

Financial services

The Central Bank (*Banque du Maroc*) has sought to “build a bridge” (*passerelle*) between government departments concerned with consumer protection such as DPC and the Competition Council. Consumer associations have been able to develop model contracts with the banks incorporating international good practices such as the United Nations guidelines and the G20 high-level principles.⁷⁰ The model contracts are published in the *Bulletin Officiel*, and the Central Bank revises particular clauses.

Two strategies are moving ahead by consensus based on the law. One is consumer education in financial services. Consumer education is seen as a priority, as in many jurisdictions the world over. Interministerial committees exist on consumer education involving the Moroccan Foundation for Financial Education. Activities are coordinated by the Ministries of Finance and of Education, the Central Bank, professional associations, the stock exchange and the banks themselves.

Another priority concerns the mechanism of alternative dispute resolution that is being set up in this sector. There is a mediation centre for financial services, organized by the Central Bank and the banking associations, currently receiving 500 cases per annum. The consumer has the right to go directly to the Central Bank in case of dispute, for example concerning early redemption of a loan. The decisions of the mediation service are binding on the banks. The recommendations of the service have contributed to the development of good practice, for example, a procedure for the transfer of bank accounts without fees.

Many complaints in this area relate to procedures on early redemption of loans, where consumers wish to pay off their outstanding debts. Annual resetting of variable rates is not always carried out as it should be, “orphan” accounts are problematic for banking and insurance, and there is a lack of a definition of over-indebtedness.

⁶⁷ IMANOR, Law 12-06 relating to standardization, certification and accreditation, April 2013.

⁶⁸ *Commission Droits et Exigences des Consommateurs*, Report on the rights and needs of consumers FNAC/UMAC (National Federation of Consumer Associations/Union of Moroccan Consumer Associations (October 2017)

⁶⁹ *Bulletin Officiel* 5030, 15 August 2002.

⁷⁰ UNGCP guideline 66 and G20 *High-level principles of financial consumer protection*, OECD, Guide 2011.

Public prosecution and the judiciary

The “parquet” is the Office of the Public Prosecutor, which deals with criminal cases and operates under the supervision of the Ministry of Justice; it has an autonomous status and its own budget.

The magistrates from the judicial branch have issued a range of judgments on Law 31-08 strengthening it as an instrument of protection of the consumer. This has proved to be the case particularly in the field of consumer credit. Among the significant interpretations in favour of the consumer have been the following:

- Article 9: interpretation of Law 31-08 to be presumed to favour the consumer.
- Article 34: the burden of proof to reside with the supplier.
- Article 202: the delineation of the competence of a court in function of the residence of the consumer.
- Article 59: exploitation of the ignorance or weakness of a consumer as a criminal offence leading to the nullification of a contract.
- The primacy of consumer protection over commercial law regarding bank loans.

This indicates the potential significance of the present law, 31-08, even without further amendment. It also raises issues about its limited application due to the lack of relevant *textes d'application*, as some have not been completed and relates also to the reported failure of the courts to apply the law.

Institutional framework

The institutional framework for consumer protection in Morocco is vast and complex. Because of the horizontal nature of consumer protection, consumer protection responsibilities are shared among various public authorities, as is the case in many other countries. An interministerial approach is thus essential, reinforced by training and briefing in all the relevant ministries. This pedagogical approach, adopted by DPC, is widely endorsed by the other ministries and reduces the risk of overlapping competences.

The multitude of responsible authorities may pose challenges for the coherence of policy formulation and implementation, so it is important to ensure coordination. To consolidate its leading role on consumer protection issues, DPC may need not only

to receive express legal powers, but also to strengthen its public profile.

B. OTHER STAKEHOLDERS

Business

The notion of business ethics has a long history in Morocco. The modern and global version of this tradition is to be found in codes of good conduct and mechanisms for dispute resolution. With the declining use of *muhtassibs*, there is a risk that consumers in the more traditional sectors will find themselves more exposed. Despite considerable efforts by the consumer protection authorities, there will always be a limit to what public institutions can do without the reinforcement coming from self-imposed ethical constraints by business.

Chambers of commerce

There are 12 regional chambers under the supervision of MIICEN. The scope of the chambers is variable; there are committees for agriculture, artisans, trade, industry and services. The chambers participate in a national quality week organized by DPCSMQ and in events with consumer protection associations, devoted, for example, to briefings on Law 31-08. The Federation of Chambers of Commerce takes part in consultative councils such as those on competition, exports and social responsibility. The chambers also offer services of mediation/arbitration between professionals.

The Federation of Chambers of Commerce has expressed the need for training in consumer protection matters particularly at the regional level, and in developing links with consumer protection associations and financial support to allow for those activities. They look forward to taking part in the high advisory consumer council envisaged under article 204 of Law 31-08.⁷¹

This council, once established, has the potential to become a forum for the development of self-regulatory codes. Dialogues already exist, as noted above for example in the field of standardization, but the development of a code would go beyond the sometimes-vague notion of consultation and move towards a distinct output.

Since the Federation of Chambers of Commerce has limited authority over particular chambers, the

⁷¹ As noted in the MIICEN *Strategy for the protection of the consumer. 2017-22*, op. cit.

presence of DPC could strengthen the status of any such negotiation, as is commonly the case in other jurisdictions where the development of codes of self-regulation (or co-regulation) often takes place in the presence of officials from the relevant ministries, that may reserve the right to fall back on regulatory measures if negotiations on codes do not succeed or if the codes are too weak.

Consumer protection associations

There are 90–100 consumer protection associations currently operative at the local level, 38 of which operate a consumer counter (*guichet*) as an advice point. There are three federations recognized by MIICEN, through a convention of financial support amounting to DH 10 million (about €1 million) since 2016, of which 40% had been disbursed at the time of writing.

The roles of the consumer protection associations are summed up as follows by the report of the Commission on Consumer Rights and Needs drawn up by the consumer protection associations:⁷²

- To inform consumers through the work of the consumer advice points (*guichets* as already mentioned); to listen to consumers at the consumer counters, take note and represent consumers.
- To take part in public debate, including radio and TV, and newspaper articles.
- To help train citizens to become more demanding in terms of quality.
- To acquaint consumers with appropriate quality notifications such as standards and labels.
- To identify and if necessary denounce, gaps in consumer protection.
- To carry out surveys and comparative studies.
- To promote regulatory frameworks that improve the quality of products based on consumer needs.

The decree on consumer protection associations' qualification of public interest is listed in the

⁷² *Commission droits et exigences des consommateurs* (Report on the rights and needs of consumers), FNAC/UMAC (National Federation of Consumer Associations/Union of Moroccan Consumer Associations, October 2017.

aforementioned table.⁷³ Article 5 of the decree defining the limits of the activities of consumer protection associations for purposes of official recognition is strict, which is justified, as such recognition involves the disbursement of public funds in support of the work of consumer protection associations to complement that of public services.

However, there is no explicit mention of the potential role of consumer protection associations in the development of public policy. This role is recognized by the mention of their intended inclusion within the high advisory consumer council envisaged in Law 31-08, and yet to be established. Although article 6 of the relevant decree refers to consumer representation, there is little detail.

In principle, since 2015, consumer protection associations have the right to intervene in consumer disputes relating to contractual or tort claims, even without recognition of their public interest (*utilité publique*).⁷⁴ Article 6 of the Decree (objectives and missions) states that a major objective is “to contribute to extrajudicial dispute resolution”. Article 24 requires that such resolution be accompanied by attempts to reach an amicable solution in default of which court proceedings can be envisaged. In fact, the National Federation of Consumer Associations estimates that 72% of disputes brought to them are settled out of court. The completion of the relevant decision (*arrêté*) is needed to resolve this issue.

Consumer protection associations already participate in consultative bodies such as the Economic, Social and Environmental Council, and the High Council for Standardization, Certification and Accreditation. Consultations between ministerial departments and the federations also have follow-up committees (*comités de suivi*). There have already been seven national consumer rights days (around 15 March) with joint activities organized by DPC in partnership with consumer protection associations since 2011.⁷⁵

As indicated above, advice services for consumers are growing and now incorporate an important role for consumer associations, in particular the consumer

⁷³ Decree 2-12-462 of 14 November 2012 on the model statutes of consumer protection associations recognized as having public interest status.

⁷⁴ The *texte d'application* regulating this possibility has not yet been issued.

⁷⁵ MIICEN, *Strategy for the protection of the consumer*, 2017-22, 2017, op. cit.

counters (*guichets*). These advice points are run by consumer protection associations in partnership with DPC.⁷⁶ The consumer counter in Kenitra, for example, offers service five days a week from 5 p.m. to 7 p.m. Consumer protection associations in Morocco have autonomously sought cooperation with different ministerial departments and other relevant bodies to establish contacts with designated interlocutors to resolve problems without having recourse to the courts.

In addition to the relevant government agencies, contacts of consumer protection associations include the Medical Association, the Youth Secretariat, and the National Electricity Office. The counter in Kenitra has had over 17,000 contacts in an eight-year period.

The main sectors for which advice is sought are housing and telecommunications, a finding that is fully consistent with the pattern of contacts with the online portal.

Civil society

Morocco enjoys a vibrant network of public institutions, businesses and consumer protection associations. As is the case in most countries, consumer protection concerns various public authorities that are dependent on different ministries. DPC has invested considerable efforts in ensuring coordination among public institutions and in raising awareness and capacities among businesses and consumer associations. This has led DPC to be recognized as the focal point for consumer protection issues in Morocco.

⁷⁶ For an account of their evolution, see R Soudaigu and B Badreddine, *Guichets conseils de Kenitra*, AMPOC, Marrakech, October 2016.

V. INTERNATIONAL COOPERATION

MIICEN and DPC have proved very active in strengthening international cooperation with neighbouring countries through the twinning programme with the European Union under the European cooperation agreement. This programme, “*Protéger le consommateur Marocain*” is a part of the programme “*Réussir le statut avancé*”, which was financed by the European Union.

The above twinning programme linked MICIEN with a Franco-Belgian consortium, consisting of the Directorate General for Competition, Consumer Protection and Fraud Repression (DGCCRF - France), the National Institute of Consumption (France) and the Belgian Association for Research and Training of Consumer Organizations.⁷⁷ The programme started in May 2015 and continued for 27 months. Stakeholder groups included consumer associations, other ministerial departments in charge of monitoring Law 31-08 on measures of consumer protection, and key actors such as magistrates and businesses.

The objective of the twinning programme was to improve the level of protection of consumer rights and the promotion of consumer culture in Morocco by strengthening the legal and institutional framework of consumer protection and support to the consumer movement of Morocco, considering the requirements of the European Union *acquis* and European best practices. The programme was based mainly on the exchange of expertise, experience and good practices between public administrations in Morocco and the European Union.

Furthermore, Morocco is one of eight beneficiaries⁷⁸ of the UNCTAD MENA technical cooperation programme funded by Sweden. The programme promotes regional economic integration through improved competition and consumer policies and aims to contribute positively to gender balance, good governance and anti-corruption (2015–2019).

Since MENA remains one of the least integrated regions of the world, due to the high level of tariff protection and non-tariff measures that restrain intraregional trade

and an extremely limited trade in services,⁷⁹ regional cooperation is crucial for economic growth and development and will benefit from greater participation from all relevant stakeholders, including business. The UNCTAD MENA programme will certainly contribute to these goals in the field of consumer protection. Indeed, the programme aims to improve the legal and institutional frameworks of Morocco, and to provide training and the strengthening of capacities of public bodies and stakeholders such as business, consumer associations, the judiciary, academia, above all with a regional focus. Hence, the project privileges instruments and initiatives that gather together experts and stakeholders from the beneficiaries, paving the way for the sharing of experiences and increased cooperation.

The guidelines for MENA contained in the UNCTAD publication, *Guidelines on Consumer Protection: Agency Structure and Effectiveness*,⁸⁰ were drafted in 2017 based on the international benchmarks for consumer protection and take into consideration the legal framework and institutional architecture of consumer protection agencies in the region. The guidelines were presented and validated with the beneficiaries' consumer protection agencies and relevant stakeholders in a regional workshop in Cairo in 2018. Other guidelines on complaints handling, electronic commerce investigations and product safety are being finalized, as these issues are of utmost importance for better consumer protection and increased cross-border trade. The topics of business engagement for consumer protection and of the role of consumer associations have also been discussed with MENA stakeholders, providing guidance to the consumer protection agencies and establishing a framework that will facilitate the stakeholders' interaction with them.

The two regional training centres on consumer protection (Beirut, 2017 and Cairo, 2018) launched under this programme will set up a network that will contribute to reinforcing the capacities of MENA beneficiaries in the field of consumer protection

⁷⁷ Twinning programme MA/34 Morocco–European Union, *Protéger le consommateur marocain*. ENPI/2011/022-778, April 2015–July 2017.

⁷⁸ Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia, Yemen and the State of Palestine.

⁷⁹ M Rouis and S Tabor, *Regional Economic Integration in the Middle East and North Africa: Directions in Development - Trade* (World Bank, 2012), available at <http://documents.worldbank.org/curated/en/813531468052157933/pdf/Non-AsciiFileName0.pdf>.

⁸⁰ UNCTAD/DITC/CPLP/2017/4.

through training and the dissemination of materials, data and working tools developed for this programme.

The web platform, which is under development, will connect the beneficiaries' representatives, facilitating regional cooperation with the support of UNCTAD and allowing consumer agencies to exchange information and data in a confidential and protected way, encouraging coordinated actions and law enforcement.

Finally, the participation of MENA country representatives in different international and regional events and in study visits to more experienced consumer protection agencies has contributed to knowledge sharing and networking among the relevant MENA beneficiaries and with other partners. This has also led to enhanced capacities, awareness and commitment at both the national and regional levels.

The revision of the United Nations guidelines for consumer protection in 2015 highlighted the importance of international cooperation in this field, conferring the Intergovernmental Group of Experts on Consumer Protection Law and Policy an important role in this matter, which is being explored.

At the same time, there are other forms of cooperation that can be envisaged by DPC, as outlined in *Guidelines on Consumer Protection: Agency Structure and Effectiveness* for MENA.⁸¹ For example, Morocco is seeking greater involvement and communication with the European Union system relating to the notification of dangerous non-food products, RAPEX.⁸² Also in the area of product safety and more recently, OECD has developed the global recalls portal,⁸³ a worldwide network for notification of products withdrawn from national markets, which is not restricted to OECD member States. The portal is regularly updated and includes information on mandatory and voluntary consumer product recalls that were issued by a government body and were made available to the public. Consumers and businesses have access to the portal, and global coverage is a future objective.

Other sophisticated mechanisms have been developed to alert consumer protection agencies to dangerous products and dishonest business practices across borders. The International Consumer Protection and Enforcement Network (ICPEN)⁸⁴ is composed of organizations in over 50 countries (Morocco is currently not a member) aiming to share information about cross-border commercial activities that may result in consumer detriment and to encourage global cooperation among law enforcement agencies. While membership is predominantly from OECD countries, it spreads further afield to a wide range of countries in all regions. Another active and relevant network for regional exchange of experiences and best practices is the African Consumer Protection Dialogue, supported by the United States of America Federal Trade Commission.

Many sectors are intrinsically cross-border matters, and United Nations guideline 82 calls for increasing cross-border cooperation, even on an informal voluntary basis. Several ministries indicate the need for such cooperation, which will increase as electronic commerce becomes ever more prevalent. Hence, there are several other forums and avenues for international cooperation than can provide the Moroccan consumer protection agency with important insights and knowledge sharing.

As recommended in *Guidelines on Consumer Protection: Agency Structure and Effectiveness*, there is much that can be done by consumer protection agencies in MENA without first requiring legislation. In many cases, an enquiry or a warning may be enough to deter further malpractice. Cross-border legal action may not be necessary if the consumer protection agencies in both countries can work in parallel. Jurisdictions in MENA are encouraged to explore the above initiatives with a view to further their cooperation.

⁸¹ Op. cit.

⁸² See https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/.

⁸³ See [https:// globalrecalls.oecd.org](https://globalrecalls.oecd.org).

⁸⁴ See <https://www.icpen.org/>.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

The Moroccan legal and institutional framework for consumer protection is well established and fully operational. Morocco has been ahead of other jurisdictions in endeavours such as enacting a comprehensive consumer protection legislation, covering basic rights and obligations of consumers and businesses, and providing an enabling environment for consumer protection organizations. The Directorate for Consumer Protection (DPC) has been discharging its functions effectively and is increasingly recognized as the focal point on consumer protection issues at the national, regional and international levels.

The recently revised United Nations guidelines for consumer protection provide valuable guidance on possible future improvements both at the legal and institutional levels to create a more robust system for the protection of consumer rights and interests that will ultimately enhance overall welfare and increase the competitiveness of the national economy. Further, UNCTAD issued two sets of guidelines on consumer protection for MENA in the following publications, which may be useful when strengthening the legal and institutional frameworks of Morocco: *Guidelines on Consumer Protection: Agency Structure and Effectiveness*,⁸⁵ and *Guidelines for Consumer Protection: Business Engagement*.⁸⁶ A forthcoming UNCTAD publication for MENA, *Guidelines for Consumer Protection: Consumer Associations*, will soon be available.

In particular, *Guidelines on Consumer Protection: Agency Structure and Effectiveness*⁸⁷ contains various recommendations to improve the legal and institutional frameworks in MENA, for example:

- The United Nations guidelines for consumer protection could serve as inspiration for the design of consumer policies, consumer laws and consumer institutions. Member States are free to go beyond the requirements of the Guidelines should they wish to do so.
- Constitutional law can be used to establish or reinforce fundamental consumer rights,

as well as provide some guiding principles. Constitutional provisions can be a tool for leveraging much needed improvement in levels of access to essential goods and services.

- The MENA countries, having found the “legitimate needs” of the United Nations guidelines (guideline 5) to be a useful reference point for their framework legislation, should continue to apply those principles and update their texts in the light of the 2015 revision.
- Attention should be paid to the necessary separation of roles in the development of agency structures, while maintaining the involvement of a wide range of stakeholders in advisory and consultative roles.
- Accountability in the budgetary process is important in increasing transparency of the consumer protection authority. In addition, such transparency is an important aid in the constructive involvement of consumer associations and through them, the general body of consumers.
- Consumer protection authorities should develop public profiles by reporting on their own activities and on the state of the nation in consumer terms. They should report on the issues emerging from analysis of the problems being brought to their attention by their complaints-handling service. They should then have the right to propose administrative or regulatory solutions. This can happen either through the advisory councils to which they report or in their own right. In any event, such reports, which may take the form of presentation of options, should be made public.
- The consumer protection authority, which covers the entire consumer landscape, should have the right to consult and to be consulted, as appropriate, by other departments stated in its mandate.
- Consumer protection authorities need to identify the seriousness of consumer

⁸⁵ UNCTAD/DITC/CPLP/2017/4

⁸⁶ UNCTAD/DITC/CPLP/2017/3.

⁸⁷ UNCTAD/DITC/CPLP/2017/4.

detriment and the likely results of intervention before engaging their scarce resources at the expense of other alternative actions. The OECD Consumer Policy Toolkit⁸⁸ also presents options in an evaluative logical structure and is, therefore, worth considering as a means of helping consumer protection agencies make judgments regarding the scope for, and effectiveness of, intervention.

Apart from the general guidance mentioned above, the following recommendations are aimed at improving various aspects of promotion of the consumer movement and the protection of consumer rights and interests in the marketplace at the legal and institutional levels.

B. RECOMMENDATIONS

The Government of Morocco may wish to consider the recommendations listed below, aimed at strengthening the country's legal and institutional framework relating to consumer protection.

1. Substantive aspects of Law 31-08

To ensure the full applicability of Law 31-08 and respond to emerging consumer protection issues, it is suggested that the Government of Morocco consider the following recommendations:

a) Regulatory development

For the effective implementation of Law 31-08, Morocco needs to complete the adoption of its implementing legislation (*textes d'application*). Although there have been notable efforts in this direction (2 decrees and 13 decisions have been issued), interministerial cooperation should be pursued to ensure there are no regulatory limitations to the full applicability of Law 31-08 by consumer protection agencies and their agents.

b) Principles for unfair business practices

Law 31-08 deals in detail with the following elements of everyday practice: information to consumers, delivery deadlines, unfair contract terms, advertising, distance selling, sales and discounts, refusal of service and linked sales, pyramid selling, lotteries, guarantees

and after-sales service. It also sets out the principle that in case of ambiguity in a contract, the benefit of the interpretation should go to the consumer. Abuse of ignorance or vulnerability on the part of consumer is also penalized under article 59, the application of which can result in the nullification of contracts and could perhaps be given more detail. This could for example be extended to aggressive marketing practices where vulnerability could take in a relatively wide range of the population.

Article 59 is a good example of principles-based legislation extending a general level of protection. A wider use of principles-based legislation is advisable. Experience in many jurisdictions suggests that highly detailed proscriptions of identified practices can generate procedures on the part of businesses simply designed to evade legal limitations. More flexible legislation based on principles such as avoidance of exploitation of the vulnerable, can provide a valuable foundation to more detailed provisions.

In particular, Law 31-08, article 16 refers to the overall context of the transaction, while article 18 lists types of contract terms considered to be abusive. It is not necessary that every example be precise, nor should the list be exhaustive in the sense that other commercial practices not listed should be admissible. Moreover, more detailed business obligations regarding contractual guarantees and spare parts policies could be developed by regulations in line with guideline 25.

It is thus recommended that Law 31-08 be amended to include common examples of unfair commercial practices applicable to all sectors of commerce and that their determination be left to regulatory, case law or enforcement practice.

c) Access to justice

Law 31-08 grants consumer protection associations the right to intervene in judicial proceedings on behalf of consumers. However, this right has not been exercised by consumer protection associations as envisaged.

One of the explanations might be the onerous conditions for the exercise of such a right (declaration of public interest or special authorization). Another explanation might be the lack of technical capacities for consumer protection associations to intervene in court.

⁸⁸ Available at <http://www.oecd.org/sti/consumer/consumer-policy-toolkit-9789264079663-en.htm>.

It is recommended that Decree 2-12-462 of 14 November 2012 setting the conditions for the participation of consumer protection associations in judicial proceeding be revised, so as to facilitate the exercise of this right. Further, DPC could provide legal training to consumer protection federations to reinforce their litigation capacities.

d) Alternative dispute resolution

Consumer dispute resolution and redress in Morocco is exercised by the judicial branch. In light of the high costs and delays involved in judicial enforcement of consumer rights in relation to the relatively low financial issues at stake for individual consumer disputes, there is a growing international trend towards developing out-of-court alternative dispute resolution for consumer-to-business disputes, such as mediation, conciliation and arbitration.

Mediation to settle consumer disputes is being introduced in Morocco in the financial services and telecommunications sectors. This initiative could be extended to other sectors in order to cover as many consumer relations as possible, ideally covering all economic sectors. United Nations guidelines 37 to 41 on dispute resolution and redress provide useful recommendations in this regard.

DPC enjoys a privileged position to encourage the development of consumer mediation in the Moroccan marketplace, as it can coordinate and ensure the participation of relevant ministries, public institutions and other stakeholders, as well as consumer protection associations and businesses. The DPC Internet portal could serve as base to develop and disseminate online dispute resolution for consumer disputes.

e) Electronic commerce

In line with United Nations guideline 63, Morocco should ensure that online consumers enjoy a level of protection that is no less than that afforded to other forms of commerce. DPC has been active in raising consumer and business awareness of respective rights and obligations in the digital marketplace. The launch of the Centre for Surveillance of Electronic Commerce within the same Ministry as DPC will ensure policy coordination.

As electronic commerce is expected to rise in Morocco, it is important that consumer protection legal

frameworks adapt to new circumstances with flexibility. Law 31-08 provides extensive provisions relating to electronic commerce, including the right to retraction, which might be reviewed in light of the revised United Nations guidelines to address new challenges such as platform obligations. In so doing, it is recommended that Morocco preserve a principle-based regulation to allow for future market developments.

f) Financial services

Law 31-08 contains very detailed provisions regarding consumer credit and housing loans, as opposed to financial services in general. However, it is silent on indebtedness, in particular its prevention and consequences; and inclusion, both of which are emerging best international practices and are featured in the revised United Nations guidelines.

In particular, it is recommended that Law 31-08 include more general provisions on the promotion and protection of the broad financial interests of consumers and include enabling regulations to promote financial inclusion and protection against over-indebtedness. It should regulate the relationship between financial services providers and their authorized agents.⁸⁹

For example, Law 31-08 could establish the obligation of verification of creditworthiness of borrowers. This would contribute to the development of responsible lending, an emerging principle that is also endorsed by United Nations guideline 66 (f). Law 31-08 could also envisage the development of debt repayment plans for cases where indebtedness is not linked to infractions by either consumers or lenders but rather to life events. Such cases should not require judicial action. Existing machinery for the recording of payment incidents in Morocco could contribute to the development of a system for assessing creditworthiness, and debt repayment plans, subject to data protection requirements.

g) Enforcement powers

Law 31-08 foresees the judicial enforcement of consumer protection. As a complement to judicial action, Law 31-08 could be amended to allow for administrative enforcement. This would reinforce DPC's market surveillance and allow it to go beyond its current admonitions to impose administrative injunctions and sanctions for breaches of consumer

⁸⁹ United Nations guidelines 11 and 66 to 68.

protection laws. Direct administrative enforcement powers could be granted to the enforcement bodies, in particular DPC, without their having to resort to the courts.

h) Codification

The extensive consumer protection legislation of Morocco encompasses most economic activities and extends through various pieces of legislation. For example, Law 31-08 deals with consumer credit, while sectoral legislation includes consumer rights, as is the case of financial services and public utilities laws.

To ensure a comprehensive and coherent regulation of consumer protection and to increase stakeholders' grasp of complex consumer issues, some countries such as Brazil⁹⁰ and France⁹¹ have developed a consumer code. Such codes gather and systematize consumer protection legislation and rationalize institutional frameworks. The legal tradition of codification in Morocco (civil, commercial and labour laws are already codified) could allow for the development of such a code. This would also provide a good opportunity to review the country's consumer protection legislation as a whole in light of the United Nations guidelines for consumer protection.

2. Institutional frameworks

The recommendations below are designed to build the institutional capacity of DPC of MICIEN as consumer protection authority of Morocco.

a) Enforcement, coordination and public profile

As stated above, Law 31-08 could be strengthened to allow for the administrative enforcement of consumer protection. As the consumer protection authority of Morocco, DPC is in a good position to assume such powers, including conducting investigations and ordering administrative sanctions and injunctions.

DPC has invested considerable efforts in ensuring coordination with other ministries and departments, as well as consultation with consumer protection associations and business representatives. Developing formalized consultation mechanisms such as the high

advisory consumer council of article 205 of Law 31-08 can prove beneficial in this sense. DPC could also assume a more active role in providing advisory opinions to draft government regulations and policies, so as to ensure that consumer interests are taken into account.

DPC should further reinforce its role as focal point for consumer protection matters by promoting its public profile. The DPC online portal provides easily accessible information for consumers and allows for e-claims to be filed. This website should be promoted and its content enriched with education and information campaigns, publications, research and studies that DPC may conduct in the future. DPC could also harness social media platforms and hotlines to build its public profile for consumers and businesses.

To ensure better enforcement, DPC should pursue its contribution to the training of enforcement officers, as it has been doing with officials from the Ministry of the Interior.

b) Building of capacities

A modern consumer protection policy requires the involvement of a wide array of stakeholders, in particular government officials, judges, consumer protection associations, businesses, academia, the media and consumers at large. DPC has undertaken various training activities that will need to be pursued and streamlined in the future.

DPC could develop standardized training for government officials and judges using UNCTAD capacity-building tools such as the *Manual on Consumer Protection*⁹² and *Guidelines on Consumer Protection: Agency Structure and Effectiveness*.⁹³ DPC could also develop a general training programme for consumer protection associations and businesses based on the UNCTAD MENA publication, *Guidelines for Consumer Protection: Business Engagement*,⁹⁴ and the forthcoming UNCTAD MENA *Guidelines for Consumer Protection: Consumer Associations*.

In this effort, DPC should seek to establish stable partnerships with the federations of consumer associations, chambers of commerce and academic institutions through train-the-trainers activities, ensuring a positive multiplier effect. DPC could also

⁹⁰ Available at http://www.planalto.gov.br/ccivil_03/leis/l8078.htm.

⁹¹ Available at <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069565>.

⁹² UNCTAD/DITC/CPLP/2017/1.

⁹³ UNCTAD/DITC/CPLP/2017/4.

⁹⁴ UNCTAD/DITC/CPLP/2017/3.

envisage mounting joint awareness raising campaigns with consumer protection associations.⁹⁵

c) Consumer protection associations

The financial support provided by the Government of Morocco for consumer protection associations is a pioneering experience in MENA, addressing the perennial problem of their sustainability. As the National Fund for Consumer Protection Associations is being deployed, it is important to ensure the accountability of consumer protection associations and assess the high-impact results of their activities through continuous evaluation and auditing procedures.

In contributing to the professionalization of consumer protection associations, DPC should also pursue efforts to provide them with training, especially if new pieces of regulation enable them to pursue new functions.

d) Resources

In line with United Nations guideline 15, Morocco should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective

compliance and to obtain or facilitate redress for consumers in appropriate cases.

DPC has established a presence in the entire territory through 29 regional delegations. However, current human and financial resources impede regional offices from discharging its functions fully, especially regarding surveillance and awareness raising. For this purpose, it is recommended that DPC staff be increased and that training be provided.

e) International cooperation

DPC has been active in accessing international cooperation and sharing of best practices at UNCTAD and with the European Union. Participation in the International Consumer Protection Enforcement Network (ICPEN) and the African Consumer Protection Dialogue may prove particularly beneficial, should DPC assume enforcement powers. DPC could also explore the possibility of concluding agreements with peer authorities to leverage on the existing international experience in line with United Nations guideline 82. DPC should take advantage of international meetings to become acquainted with international best practices to incorporate them into its own practices.

⁹⁵ Law 31-08 envisages a single federation.