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## Reviewing the Organization of the Consumer Right to Withdraw in Electronic Transactions in Qatar

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# THE CONSUMER'S RIGHT OF WITHDRAWAL IN ELECTRONIC TRANSACTIONS: A COMPARATIVE AND CRITICAL ANALYSIS OF THE LAW IN QATAR

—Mahmoud Fayyad\*, & Reinhard Steennot\*\*

**Abstract** *This research identifies and analyses weaknesses in Qatar's legal regulatory framework for the right to withdraw in electronic transactions, understands the causes of consumer dissatisfaction and their impact, and conducts a comparative analysis of European law to extract insights for improving Qatar's legal regulations and organizational structure. This research employs a quantitative methodology, utilizing a survey administered to a random sample of 391 consumers. The survey will gather data on consumer perceptions, experiences, and satisfaction levels related to the right to withdraw in electronic transactions in Qatar. The results revealed a need for more confidence among Qatari consumers when purchasing from local suppliers online, attributed to various factors, including inadequate regulation of the right of withdrawal and its failure to safeguard consumer interests effectively. The study demonstrated that the Qatari Legislature could have defined electronic transactions more effectively, taking inspiration from European law. This study recommends extending the consumer's right to a withdrawal period from three to at least fifteen days. To address legal issues and enhance protection, contractual clauses restricting or diminishing this right should be invalidated. A list of exceptions should be included to safeguard traders' legitimate interests, and increased protection should be provided if the consumer needs to be properly informed about exercising this right.*

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**Keywords:** Consumer protection, right of withdrawal, electronic contracts, Qatari law, shopping online.

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I. INTRODUCTION

Qatar’s Ministry of Information and Communication Technology (MICT) published a statistical report (the Statistical Report) in March 2019, targeting a sample of 500 consumers. It aimed to monitor the preferences of internet shoppers in Qatar and measure their satisfaction with electronic contracts offered by local providers.<sup>1</sup> The Statistical Report showed that the penetration rate of e-commerce in Qatar increased from 15% in 2018 to 37% in 2019. Also, 17% of those who did not shop online expressed their intention to shop online shortly. It also demonstrated disappointing results about respondents’ confidence when conducting local suppliers compared to many other countries. The local e-sales in Qatar was only 38%, while this percentage was 92%, 78%, 84%, and 84% in the United States, the United Kingdom, Turkey, and Germany, respectively.<sup>2</sup> The Statistical Report also showed that 31% of respondents do not trust local suppliers, while 76% expressed confidence in dealing with non-local suppliers.<sup>3</sup> Also, 51% of the target group showed confidence in contracts offered by international stores, while this percentage was 14% for local stores.<sup>4</sup> The report also identified many reasons for the reluctance of the Qatari citizen to deal with local suppliers, the most important of which are: the lack of national product, the complicated payment process,

<sup>1</sup> Qatar Ministry of Transport and Communication, ‘Impact Survey Report, Preferences of Online Shoppers in Qatar’ (2019). Published online at: <https://www.mcit.gov.qa/en> Visited on: 22-3-2022.

<sup>2</sup> *The Statistical Report*, p 4.

<sup>3</sup> *The Statistical Report*, p 9.

<sup>4</sup> *The Statistical Report*, p 12.

and the absence of a refund service (the right to withdrawal) at local suppliers. According to the Statistical Report, 51% of the target group strongly supported that the right to withdraw is one of the reasons for their confidence in e-shopping, 36% reported moderate support, while 15% reported low support.<sup>5</sup> It demonstrated that the failure to organize this right appropriately was among the most critical factors affecting consumers' confidence in shopping online with local suppliers. 45% of respondents replied that it contributes significantly, while 37% responded moderately.<sup>6</sup> The Statistical Report failed to provide an explanation for the dissatisfaction of consumers regarding the exercise of the right, nor did it offer any suggestions for enhancing the legislative regulation of this right. The aim/purpose of this research paper is to achieve this goal.

It is worth mentioning that online consumption contracts usually lead to a contractual imbalance to the consumer's detriment because the consumer usually buys products he has not physically examined before.<sup>7</sup> The consumer usually agrees to the terms of the contract without fully thinking it through, so sometimes, he discovers that he has not made the right decision.<sup>8</sup> Therefore, most comparative legislations recognize the right of a consumer to withdraw as a means to overcome the problems arising from information asymmetries.<sup>9</sup> The withdrawal right enables consumers to terminate the agreement individually if they find it unsuitable after receipt.<sup>10</sup> This right allows the contracting party to terminate the contract individually within a specific time, without providing any justification, if it becomes clear after receipt that it is unsuitable for him or does not meet his needs and wishes.<sup>11</sup>

<sup>5</sup> *The Statistical Report*, p 17.

<sup>6</sup> *The Statistical Report*, p 21.

<sup>7</sup> Mary Donnelly and Fidelma White, 'Digital Content and Consumer Protection: An Empirical Study of Supplier Compliance with Consumer Information Obligations' (2019) 35 *Computer Law & Security Review* 105343; Reinhard Steennot, 'Rules of Jurisdiction and Conflict Rules Relating to Online Cross-Border Contracts Concerning Touristic Services Provided to Consumers' (2016) 32 *Computer Law & Security Review* 482; Saliha Lieamri, 'The Right of the Electronic Consumer to Withdraw from the Contract in Electronic Commerce Contracts (in Arabic: Haqu Almustahlik Alalkutrunii Fi Alsahb Ean Altaeaqud Fi Euqud Altijarat Alalkitrunia)' (2021) 25 *Journal of Judicial Jurisprudence*.

<sup>8</sup> Zofia Bednarz and Kayleen Manwaring, 'Hidden Depths: The Effects of Extrinsic Data Collection on Consumer Insurance Contracts' (2022) 45 *Computer Law & Security Review* 105667; Ms Valeria Ferrari, 'The Platformisation of Digital Payments: The Fabrication of Consumer Interest in the EU FinTech Agenda' (2022) 45 *Computer Law & Security Review* 105687.

<sup>9</sup> Reinhard Steennot, 'The Right of Withdrawal under the Consumer Rights Directive as a Tool to Protect Consumers Concluding a Distance Contract' (2013) 29 *Computer Law & Security Review* 105.

<sup>10</sup> Abdel-Jalil Al-Obaidi, Rafe' & Al-Khoumis, 'The Electronic Consumer's Right to Withdraw in the Light of Comparative Legislation (in Arabic: Haqu Almustahlik Alalkutrunii Fi Alsahb Fi Daw' Altashrieat Almuqaranati,)' (El Oued University, Algeria 2019).

<sup>11</sup> Yusuf Shindi, 'The Effect of the Consumer's Choice to Withdraw in the Contract on Determining the Moment of Concluding the Contract (in Arabic: athar Khiair Almustahlik

The legislation of this right was not a creation of contemporary law but was rather regulated by Islamic law for almost 1450 years in what is known as *the option as to inspection*.<sup>12</sup> For example, the jurisprudence of Islamic financial transactions states, “*If a person buys a piece of property without seeing such property, he has an option upon inspection thereof of either cancelling the sale or ratifying it.*”<sup>13</sup> Islamic jurisprudence makes this right related to public order and invalidates any contractual clause that omits it.<sup>14</sup> Islamic jurisprudence also regulates what is known as “*the contractual option*,” in which the two contractors agree to enable each - or both - the right to terminate the contract individually within a certain period and without giving any reason.<sup>15</sup> Therefore, all civil laws in Arab countries influenced by Islamic jurisprudence (such as Jordan, Iraq, United Arab Emirates, and Palestine) have explicitly stated these options in the contract theory rules.<sup>16</sup> In contrast, Arab legislation influenced by French civil law - including Qatar - does not regulate such rights.<sup>17</sup>

Evidence shows that a few Arab countries have granted consumers this right for all their market transactions, such as Kuwait, by Article 10/1 of the Kuwaiti Consumer Protection Law No. 39 of 2014<sup>18</sup> and in Egypt, by Article 17 of the Egyptian Consumer Protection Law No. 181 of 2018. Others limit it to distance contracts or transactions held outside shops or commercial projects, such as the Lebanese Consumer Protection Law No. 659 of 2005 (Article 55)<sup>19</sup> and the Moroccan Consumer Protection Law No. 31-8 of 2011 (Article 49).<sup>20</sup> All these laws also expressly prohibit any contractual clause that cancels or modifies

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Fi Alsaheb Fi Altaeaqad Ealaa Tahdid Lahzat Abram Aleaqda,)’ (2010) 43 Sharia and Law Journal p 758.

<sup>12</sup> Mahmoud Fayyad, ‘The Transposition of the European Directive 85/374/EEC on Product Liability into Palestine and Jordan: Is it Adaptable to Islamic Law?’ (2012) 1 (2) Global Journal of Comparative Law 194.

<sup>13</sup> *ibid*

<sup>14</sup> Saleh Al-Ali, ‘Consumer Rights in Islamic Jurisprudence and Law: A Comparative Study (in Arabic: Huquq Almustahlik Fi Alfiqh Al’iislamii Walqanuni: Dirasat Muqaranati,)’ (2020) 2017 Journal of Sharia Sciences and Islamic Studies: p 758.

<sup>15</sup> Parviz Bagheri and Kamal Halili Hassan, ‘Access to Information and Rights of Withdrawal in Internet Contracts in Iran: The Legal Challenges’ (2015) 31 Computer Law and Security Review 90.

<sup>16</sup> *Fayyad* (n 12).

<sup>17</sup> alaa Masadeh, Aymen & Khasawneh, ‘The Consumer’s Right of Withdrawal in Doorstep Selling and Distance Contracts’ (2011) 46 Journal Sharia and Law.

<sup>18</sup> Adnan Sarhan, ‘Evaluating the Legal Texts of the Consumer’s Right to Retract the Contract in the Kuwaiti Consumer Protection Law (in Arabic: Taqyim Alnus Alqanuniat Lihaqi Almustahlik Fi Alrjue Ean Aleaqd Fi Qanun Himayat Almustahlik Alkuayti)’ (2018) 1 Journal of the International College of Law p 217.

<sup>19</sup> Law No. 659 of 2005 on Consumer Protection was established based on the Parliament decision on 4 Feb 2005 and published on 10 Feb 2005 in the official gazette. It is a new law that outlines the procedures related to consumer protection in Lebanon.

<sup>20</sup> Law No. 31-08 on Consumer Protection Measures entered into force on April 7, 2011, on the day of its publication in the Official Bulletin, in accordance with its Title X, Article 197.

this right to the consumer's detriment. Other Arab countries limited it to electronic transactions, such as Article 30 of the Tunisian Law on Exchanges and Electronic Commerce No. 83 of 2000.<sup>21</sup> Others did not legitimize this right, such as the Iraqi Consumer Protection Law No. 1 of 2010.<sup>22</sup>

Within the European Union, consumers have the right to withdraw from distance contracts, and contracts concluded outside the trader's premises.<sup>23</sup> Whereas in the case of distance contracts, the right of withdrawal must compensate for the information asymmetry typical to these contracts,<sup>24</sup> it must allow the consumer to correct irrational behaviour in the case of contracts concluded outside the trader's premises (e.g. because the consumer has been overwhelmed).<sup>25</sup> Additionally, consumers are given a right to withdraw from specific types of contracts, irrespective of the way or place the contract was concluded.<sup>26</sup> In these cases, the complexity of the contract must justify the existence of a withdrawal right. This is, for example, the case for consumer credit agreements.<sup>27</sup> Since rules relating to the right of withdrawal have been harmonized, they are nearly identical in all Member States.

The Qatari legislator has limited the right of withdrawal to electronic contracts only. It seems the legislator did not wish to deviate any further from the borders of the general rules of contracts, such as the "*pactasunt servanda*" rule

<sup>21</sup> Law No. 2000-83 of August 9th, 2000, related to the Electronic Exchanges and Electronic Commerce Bill.

<sup>22</sup> Law No. 1 of 2010 concerning Consumer Protection Law, published on Alwaqai Aliraqiya, 2010-02-08, No. 4143, P 1 - P 9. Eabaas Eatiat, Walid & Eabd Alsamad, 'The Concept of the Legal Option for the Consumer to Withdraw from the Contract: A Comparative Study between Positive Law and Islamic Jurisprudence (in Arabic: Mafhum Alkhiar Alqanunii Lilmustahlik Fi Alsabh Ean Aleaqda: Dirasat Muqaranat Bayn Alqanun Alwa' (2015) 4 Journal of the College of Law for Legal and Political Sciences, Kirkuk University.

<sup>23</sup> Art 9 Consumer Rights Directive 2011/83/EU. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance, OJ L 304, 22.11.2011, p 64–88.

<sup>24</sup> Judgment of the Court (Third Chamber) of 23 January 2019, Walbusch Walter Busch GmbH & Co. KG v Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV.

<sup>25</sup> C-485/17 - Verbraucherzentrale Berlin, Urteil des Gerichtshofs (Achte Kammer) vom 7. August 2018, Verbraucherzentrale Berlin eV. gegen Unimatic Vertriebs GmbH, Vorabentscheidungsersuchen des Bundesgerichtshofs, Vorlage zur Vorabentscheidung – Verbraucherschutz – Richtlinie 2011/83/EU – Art. 2 Nr. 9 – Begriff, Geschäftsräume – Kriterien – An einem Messestand eines Unternehmers abgeschlossener Kaufvertrag, Rechtssache C-485/17.

<sup>26</sup> Marc P Hauer, Johannes Kevekordes and Maryam Amir Haeri, 'Legal Perspective on Possible Fairness Measures – A Legal Discussion Using the Example of Hiring Decisions' (2021) 42 Computer Law & Security Review 105583.

<sup>27</sup> Art 14 Consumer Credit Directive 2008/48/EC. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133, 22.5.2008, p 66–92.

(agreements must be kept) and the rule of the binding force of the agreement.<sup>28</sup> Therefore, the consumer can claim invalidity only in the light of the general rules concerning the defects of will if its conditions are met.<sup>29</sup> It should also be noted that this right is briefly regulated by Article 57 of Decree-Law No. 16 of 2010 on Electronic Transactions and Commerce (the Decree), which states:

*“Unless otherwise agreed by the parties, the consumer shall have, where electronic communications have concluded contracts, the right to terminate the contract within three (3) days from the date of entering into the contract as long as the service provider does not fully implement the contract in a manner that serves the purpose of the contract during that time and the consumer does not use the goods or products which he/she receives nor receive any benefit or value from them”.*<sup>30</sup>

This provision does not identify specific conditions for exercising this right. It also violates the consensus of comparative legislation because it makes it possible for the parties to agree otherwise. In that way, Qatari law allows contractual clauses that contravene its provisions to the consumer's detriment, meaning that rules on the right of withdrawal are not public order. Within the EU, for example, consumer protection rules are generally regarded as provisions of equal standing to national rules that rank as rules of public policy within the domestic legal system.<sup>31</sup> For these reasons, the Statistical Report's outcomes are not surprising to the authors, which justifies the importance of this study in recommending specific legislative amendments to ensure the regulation of this right to achieve national consumer confidence in electronic transactions. This research identifies these modifications in light of field research outcomes and comparative studies.

## A. Research Objectives

- To identify and analyze the weaknesses within the legal regulatory framework governing consumers' right to withdraw in electronic

<sup>28</sup> For more details about this principle, see Mahmoud I. Fayyad, Rannen Al-Nazir, 'Inequality of Bargaining Power in Cellular Telecommunication Services Agreements', (2023) 47 (4), Telecommunications Policy 102540.

<sup>29</sup> Usamat Aljaefari, 'The Consumer's Right to Reflection and Think: A Comparative Study between Positive Law and Islamic Jurisprudence (in Arabic: Haqu Almustahlik Fi Altarawiy Waltafkiri: Dirasat Muqaranat Bayn Alqanun Alwadeii Walfiqh Al'iislamii)' (2017) 2 Al-Mohaqqiq Al-Halabi Journal of Legal and Political Sciences P 625.

<sup>30</sup> Decree Law No. (16) of 2010 on the Promulgation of the Electronic Commerce and Transactions Law, 19/08/2010. Published on the Official Gazette, Issue: 9, 28/09/2010.

<sup>31</sup> Reinhard Steennot, 'The Right of Withdrawal under the Consumer Rights Directive as a Tool to Protect Consumers Concluding a Distance Contract' (2013) 29 Computer Law & Security Review 105.

transactions in Qatar while understanding the underlying reasons for consumer dissatisfaction.

- To conduct a comparative analysis between the legal framework and provisions of European law and the existing regulations in Qatar, specifically focusing on the right to withdraw in electronic transactions, to draw insights and recommendations for improvement.
- To investigate and evaluate consumer trends and behaviours related to the exercise of the right to withdraw in electronic transactions through field research to inform recommendations for enhancing the legal regulation and organizational structure in Qatar.

## **B. Research Questions**

- What are the specific weaknesses within the legal regulatory framework governing consumers' right to withdraw in electronic transactions in Qatar, and what factors contribute to these weaknesses?
- What are the primary causes of consumer dissatisfaction with the current organization of the right to withdraw in electronic transactions, and how do these factors impact consumers' experiences and perceptions?
- How does the legal framework of European law address the right to withdraw in electronic transactions, and what insights and lessons can be derived from these provisions to inform improvements in Qatar's legal regulations and organizational structure?

## **II. RESEARCH APPROACH AND METHODOLOGY**

### **A. Desk Research**

To achieve the research's objectives, the authors searched Arabic and English databases for studies on the Organization of the right of withdrawal, whether in Qatari law or Arab and Western comparative legislation.

### **B. Quantitative Questionnaires**

The Statistical Report examined the consumers' behaviour patterns when shopping online in general and reported the right of withdraw as a critical factor that affects consumers' confidence in market transactions. In contrast, this report did not examine the regulatory framework for this right and how it represents consumers' interests when contracting online. Therefore, a quantitative questionnaire containing 22 questions was constructed to investigate the success of this regulatory framework in representing consumers' interests and the level of consumer satisfaction with regulating this right. First, the



questionnaire was sent to a representative sample of 20 persons to test its reliability and credibility. Some minor changes were made considering the submitted responses. In the end, the final questionnaire was sent to 25 students from Qatar University. Each student was asked to circulate it to family members, relatives, and friends by posting it on social media to ensure a representative sample of respondents.

C. Statistical Analysis

The questionnaire reliability was examined using Cronbach’s alpha test, and the IBM SPSS Statistics for Social Sciences was utilized in this analysis.<sup>32</sup> The Cronbach’s alpha test evaluated the agreement between respondents. The Chi-Square assessment was also utilized to determine the relationship between related variables.<sup>33</sup> A null hypothesis indicates no significant association between the two variables, revealing that the variables are independent.<sup>34</sup> The alternative hypothesis assumes a significant association between them, and these variables are dependent. The test was made at 5% significance level (i.e.,  $\alpha=0.05$ ). The Statistical Package for Social Sciences software was utilized to test the hypothesis. And achieve accurate cross-tabulation results {Ha:  $p \leq \alpha$  while Ho:  $p > \alpha$ } where (Ha) is the alternative hypothesis and (Ho) is the null hypothesis.

III. FINDINGS AND ANALYSIS

A. Questionnaire Reliability

The reliability analysis findings show that the ten items in the 5-point Likert scale of the questionnaire had satisfactory reliability of 0.809, which is more than 0.70. This number demonstrates a fair measure of consistency and correlations between the questionnaire outcomes. Table 1 shows the reliability statistics of the quantitative questionnaire, while Table 2 shows the Cronbach’s alpha test.

Table 1: Reliability Statistics		
Cronbach’s Alpha	Cronbach’s Alpha Based on Standardized Items	N of Items

<sup>32</sup> Keith S Taber, ‘The Use of Cronbach’s Alpha When Developing and Reporting Research Instruments in Science Education’ (2018) 48 Research in Science Education 1273.

<sup>33</sup> Todd Michael Franke, Timothy Ho and Christina a Christie, ‘The Chi-Square Test: Often Used and More Often Misinterpreted’ (2012) 33 American Journal of Evaluation 448; Sölpük Turhan Nihan, ‘Karl Pearsons Chi-Square Tests’(2020) 15 Educational Research and Reviews 575.

<sup>34</sup> Keith S Taber, ‘The Use of Cronbach’s Alpha When Developing and Reporting Research Instruments in Science Education’ (2018) 48 Research in Science Education 1273.

.809	.804	9
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<b>Table 2: Item-Total Statistics</b>					
	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Squared Multiple Correlation	Cronbach's Alpha if Item Deleted
Contracts benefits	16.50	22.422	.333	.127	.809
Contracts are written in the Arabic Language	16.12	22.645	.307	.154	.811
Contracts Clarity	16.75	21.546	.389	.179	.804
Withdrawal right encourages me to shop online	16.97	21.102	.430	.239	.799
I can notice the withdrawal clause	16.80	20.467	.515	.308	.788
The supplier draws my attention to the withdrawal right	16.42	19.938	.597	.389	.777
Ease to communicate with the supplier	16.37	19.797	.604	.425	.776
Satisfaction with refund	16.62	19.138	.673	.566	.766
Satisfaction with withdrawal right	16.57	19.255	.662	.581	.768

It is also noted that the respondents are represented fairly. Table 3 reveals an equitable representation of the respondents' gender, age, marital status, and employment status.

<b>Table 3: Participants' Sociodemographic Characteristics (391 Respondents)</b>	
Gender	
Male	197 (50%)
Female	194 (50%)
Age in Years	
<20	68 (17%)
> 20 and < 30	173 (44%)
> 30 and < 40	65 (16%)
> 40 and < 50	23 (6%)
> 50	

Marital status	234 (60%)
Single	157 (40%)
Married	0 (0%)
Divorced	0 (0%)
Widower	0 (0%)
Occupation	152 (39%)
Employed	239 (62%)
Non-Employed	
Education	0 (0%)
Without	11 (3%)
Primary	111 (28%)
Secondary	210 (54%)
Graduate	59 (15%)
High Graduate	
Shopping Online	340 (87%)
Yes	51 (13%)
No	

The Statistical Report also demonstrated a higher percentage of people who usually shop online. According to the Statistical Report, this percentage increased from 15% in 2018 to 37% in 2019 (with an increase of 140%). The questionnaire showed similar results; it increased from 37% in 2019 to 78% in 2022 (with a rise of 110%). These findings are consistent with some surveys that predict that 95% of residents in Qatar will shop online in 2025.<sup>35</sup> Also, 51 out of 391 people (13%) said they had never shopped online before, so they did not complete the survey. The number of respondents who answered the rest of the questionnaire reached 340. The field research findings are also consistent with the Statistical Report, where 64% of respondents expressed that the right of withdrawal encourages them to shop online permanently, and 31% replied that it sometimes encourages them. In comparison, only 5% reported not caring about this right when shopping online. When respondents were asked about their satisfaction with exercising the right to withdraw in previous transactions, only 12% showed significant satisfaction (See Table 6).

The relevant research studies and field research findings revealed many challenges in regulating the right of withdrawal in electronic transactions in Qatari law related to its scope of application. The research showed that the conditions and consequences for exercising this right represented significant legal dilemmas. These challenges are discussed in detail in this part of the study.

<sup>35</sup> The Statistical Report.

## B. Challenges of Application Scope

The Qatari Legislature limits this right to electronic consumer contracts made between consumers and suppliers only (subjective scope). It also limits its application to electronic contracts that satisfy personal needs or the needs of others in goods and services (objective scope).

### (a) *Subjective Scope of Application*

Article 1 of the Decree defines the consumer as a person acting for purposes other than those related to his trade, business, or profession.<sup>36</sup> The same article defines the customer as a person engaging in a transaction as part of an electronic commerce service. Also, the service provider is defined in the same article as a person providing an electronic commerce service.

One of the problems raised by the Decree is that this right is limited to contracts made between business-to-consumer (B2C), while agreements made between consumer-to-consumer (C2C) (such as contracts for the sale of second-hand products on social media) are excluded from this scope because the seller, in this case, does not trade. This provision is consistent with most contemporary jurisprudence trends that limit the scope of protection to contracts made between consumers and businesses only to ensure the balance of the contractual relationship. The Decree assumes that contractual relations between consumers are balanced and, therefore, there is no need for legislative intervention.<sup>37</sup> Authors disagree with this approach; a distinction must be made between the imbalance between contractual parties and the information asymmetry resulting from the fact that the contract was concluded. In a C2C relationship, there might not be an imbalance, but there is still information asymmetry when the contract is concluded online. The physical reality of the buyer contracting things he does not see when issuing his acceptance should not be ignored. Thus, the seller is in a better contractual position than the buyer regarding his knowledge of the sale.<sup>38</sup>

The Statistical Report findings are aligned with this conclusion. It indicated that 75% of the respondents shop online through the “market platform” more

<sup>36</sup> Art 1 provides that a Consumer is a person who is acting for purposes other than those of his trade, business or profession.

<sup>37</sup> Hwria Yusif, ‘The Right to Withdraw from the Contract is a Mechanism for Electronic Consumer Protection (in Arrabic: Haqu Alsahb Ean Aleaqd Alyt Lihimayat Almustahlik Alalkitruni,)’ (2018) 2 *Al-Ijtihad Journal for Legal and Economic Studies*, P, 18; Adhiman Taher, ‘The Right to Withdraw Remote Consumer Contracts as a Legal Mechanism to Ensure Consumer Protection (in Arabic: Haqi Alsahb Ean Aleuqud Alaistihlakiat Ean Bued Kaliat Qanuniat Lidaman Himayat Almustahliki)’ [2020] *Algerian Journal of Legal and Political Sciences* P 24.

<sup>38</sup> *Bagheri and Hassan* (n 15).

than the official websites of commercial companies because this platform provides greater diversity in products and services.<sup>39</sup> Evidence shows that most of those who sell their products on this platform are non-merchants (consumers advertising used products). The Statistical Report also found that social media is the most popular way consumers shop online (Facebook 62%, Instagram 35%, Google 33%, Snapchat 19%).<sup>40</sup> These means are essential for consumers to resell their used products online.

Although there are no official statistics documenting these figures, the field research findings show that 47% of respondents always use social media when shopping online for goods and services, while 41% usually use such means. In contrast, 7% do not prefer shopping on social media (see Table 4). This table also indicates that 51% of respondents usually purchase used goods online. When asked to list goods and services they usually purchase online, 37% said they buy used cars and accessories, while 47% said they purchase used smart devices. Table 4 shows some consumer habits when shopping online.

<b>Table 4: Product and Service Information (340 Respondents)</b>	
Use social media to shop Online	
Yes (Always)	159 (47%)
No (Never)	7 (2%)
Sometimes	174 (41%)
Purchase Used Products Online	
Yes (Always)	51 (15%)
No (Never)	167 (49%)
Sometimes	118 (36%)
Products Purchased Online	
Clothes	255 (75%)
Beauty Health and Sport	179 (52%)
Used Cars and Car accessories	126 (37%)
Hotels and Tourism Services	163 (43%)
Air Flights	146 (41%)
Used Smart Devices	161 (47%)
Furniture and Home supplies	143 (42%)
Others	86 (25%)

Qatari law defines the consumer as a natural or legal person. Thus, some jurisprudence includes natural and legal persons.<sup>41</sup> However, the authors disagree with this interpretation; it seems the phrase “*acts for purposes other than*

<sup>39</sup> The Statistical Report, p 15.  
<sup>40</sup> The Statistical Report, p 19.  
<sup>41</sup> Nisreen Mahasneh, ‘The Consumer’s Right to Withdraw in the Electronic Contract: A Study in the Light of the Qatari Electronic Transactions and Trade Law Compared to the European Directive for Consumer Rights (in Arabic: Haqa Almustahlik Fi Alsahub Fi Aleaqd Alalkitrunii: Di’ (2018) 4 Journal of the Kuwait International Law College,p 204; Al-Ali (n 14); Sarhan (n 18), pp 222-223.

*those of his trade, profession or business*” has rendered the extension of this definition to legal persons worthless, so this definition should be limited to the natural person only. The consumer definition provided by law indicates persons who contract to satisfy their personal or family needs. It does not apply to the legal person who contracts to provide for needs related to his business or professional activity, regardless of how they relate to the scope of his main activity. This scope also excludes persons who acquire objects for a professional purpose outside their professional experience.<sup>42</sup> Therefore, a law firm contracting with a supplier to purchase an air conditioner for its office is not considered a consumer because the contract is made for its commercial activity. Also, a brokerage firm contracting with an internet service provider is not a consumer because the agreement conducts its business, even if it is outside its business scope.

Within the EU law, the concept of a consumer is equally narrowly defined as any natural person acting for purposes that are outside his trade, business, craft, or profession. Legal persons can never be considered consumers.<sup>43</sup> On the other hand, a natural person acting for private purposes must be considered a consumer even if he has relevant expertise in that transaction.<sup>44</sup>

It should also be noted that the approach, in which persons acting for professional purposes but outside their expertise are not considered consumers, contradicts the objective of the protection established by the Decree, which is to overcome information asymmetries.<sup>45</sup> In these cases, the contracting party's lack of experience and knowledge in conducting information relating to the object of the contract and the terms of the agreement compared to the other party due to his lack of technical experience.<sup>46</sup> This case is not limited to the natural person only. Still, it includes the legal person who may contract to acquire issues unrelated to his business activity, which demands the right of

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<sup>42</sup> *Yusif* (n 37) p 19.

<sup>43</sup> Judgment of the Court (First Chamber) of 14 March 1991. Criminal proceedings against Patrice Di Pinto. Reference for a Preliminary Ruling: Cour d'appel de Paris - France. Consumer Protection - Doorstep canvassing. Case C-361/89. European Court Reports 1991 I-01189.

<sup>44</sup> Judgment of the Court (Fourth Chamber) of 3 September 2015. Horațiu Ovidiu Costea v SC Volksbank România SA. Request for a preliminary ruling under art 267 TFEU from the Judecătoria Oradea (Romania), made by decision of 25 February 2014, received at the Court on 7 March 2014, in the proceedings.

<sup>45</sup> Ahmed Ahmed, 'The Right to Withdraw in Remote Contracting, A Comparative Study (in Arabic: Haqa Alsuhub Fi Altaeaqud Ean Bueda, Dirasat Muqaranati)' [2020] Journal of Middle East Research.

<sup>46</sup> Mahmoud Fayyad, 'A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience?' (2012) 5 International Journal of Private Law 200; *Fayyad* (n 12).

withdrawal to be extended to this category.<sup>47</sup> This interpretation is consistent with the consumer definition provided in the Qatari Consumer Protection Law No. 8 of 2008 as amended by Law No. 7 of 2018, which does not limit this definition to a natural person, but expands it to include a legal person who contracts to satisfy his needs or the needs of others.<sup>48</sup> The term (others), in this sense, may refer to dependents or employees of legal persons as long as the subject of the contract is not related to the main activity of this legal person.<sup>49</sup>

Another problem raised by this scope is its silence about the services and goods that consumers receive through brokers and commercial agents, significantly as they acquire the status of a merchant but may exercise this activity on behalf of consumers. Jurists agree that the duty of the broker and commercial agent is limited to mediation between the parties to the agreement; they are not a party to it, so the consumer should have this right since the agreement is made in his name and account.

For consumers buying goods or obtaining services through online marketplaces, it is essential to know in what capacity the seller or service provider is acting. Consumer law applies only if the seller or service provider is considered a trader. Therefore, the EU legislator recently (2019) created a duty for online marketplaces to inform consumers of the capacity of the third party offering goods or services through the online platform, as well as to warn consumers that they will not be able to invoke rules of consumer protection - including the right of withdrawal - when the third party is not a trader.<sup>50</sup> To comply with this duty of information, the online marketplace service provider may trust the declaration of the third party in this regard. So, it will be up to the party offering goods or services through an online marketplace to indicate whether the service provider acts as a consumer or a trader. When a natural person acts outside or within a professional activity, it may be hard to determine when it sells goods or services through an online marketplace. In the *Kamenov* case (4 October 2018, C-105/17),<sup>51</sup> the European Court of Justice pro-

<sup>47</sup> *Taher* (n 37) p 24.

<sup>48</sup> Mohamed Abdel Hamid, *Civil Protection for the Traditional and Electronic Consumer*, (in Arabic: *Alhimayat Almadaniat Lilmustahlik Altaqlidii Walalkitrunii*) (New University House 2015) p 25.

<sup>49</sup> Nour El-Huda Bachiri, 'Electronic Consumer Protection through Electronic Arbitration (in Arabic: Himayat Almustahlik Alalkitrunii Min Khilal Altaahkim Alalkitrunii)' (Larbi Ben M'hidi University 2017).

<sup>50</sup> See art 4 of the 2019/2161 'Omnibus' Directive, inserting a new art 6bis in the 2011/83 Consumer Rights Directive.

<sup>51</sup> Judgment of the Court (Fifth Chamber) of 4 October 2018. *Komisiazashtitanapotrebitelite v Evelina Kamenova* Request for a preliminary ruling from the Administrativen sad – Varna. Reference for a preliminary ruling — Consumer protection — Directive 2005/29/EC — Article 2(b) and (d) — Directive 2011/83/EU — Article 2(2) — Concepts of 'trader' and 'commercial practices,' Case C-105/17.

vided an indicative list of criteria national courts have to consider when determining whether a natural person is a trader. More specifically, the ECJ states that the national court has to verify:

*“whether the sale on the online platform was carried out in an organised manner, whether that sale was intended to generate profit, whether the seller had technical information and expertise relating to the products which she offered for sale which the consumer did not necessarily have, with the result that she was placed in a more advantageous position than the consumer, whether the seller had a legal status which enabled her to engage in commercial activities and to what extent the online sale was connected to the seller’s commercial or professional activity, whether the seller was subject to VAT, whether the seller, acting on behalf of a particular trader or on her own behalf or through another person acting in her name and on her behalf, received remuneration or an incentive; whether the seller purchased new or second-hand goods in order to resell them, thus making that a regular, frequent and/or simultaneous activity in comparison with her usual commercial or business activity, whether the goods for sale were all of the same type or of the same value, and, in particular, whether the offer was concentrated on a small number of goods”*

Finally, the Decree does not address the mixed purposes contracts, such as the case of a law firm contracting with a telecommunications company to obtain internet service at its workplace and private home under a single contract. Within the EU, the question is also subject to debate. The European Court of Justice has opted for a narrow interpretation, determining that a natural person who concludes a contract for goods intended for purposes that are in part within and part outside his trade or profession cannot be considered a consumer *unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply, the fact that the private element is predominant being irrelevant in that respect*.<sup>52</sup> Although case law of the ECJ mainly relates to the concept of a consumer in the context of determining international jurisdiction, recent decisions of the ECJ,<sup>53</sup> as well as recent Directives<sup>54</sup>

<sup>52</sup> Opinion of Advocate General Kokott delivered on 13 November 2014. *Karoline Gruber v Unabhängiger Verwaltungssenat für Kärnten and Others*. Reference for a preliminary ruling: Verwaltungsgesichtshof - Austria. Reference for a preliminary ruling - Environment - Directive 2011/92/EU. Case C-570/13. Court reports – general. ECLI identifier: CLI:EU: C: 2014:2374.

<sup>53</sup> Judgment of the Court (Third Chamber) of 25 January 2018 *Maximilian Schrems v Facebook Ireland Limited* Request for a preliminary ruling from the Oberster Gerichtshof Reference for a preliminary ruling. Case C-498/16.

<sup>54</sup> Directives 2019/770; 2019/771.



suggest that this narrow interpretation has become the standard within the EU. However, it must be emphasized that the Member States retain the possibility to apply a broader definition, including all contracts concluded for *mainly* private purposes.

*(b) Objective Scope of Application*

The right of withdrawal in Qatari law is limited to electronic contracts only. Article 1 of the Decree defines an electronic transaction as: “*any deal, contract or agreement concluded or performed, in whole or in part, through electronic communications*”.<sup>55</sup> Also, an e-commerce service means “a service provided for consideration, or a service of a non-commercial nature, provided by means of any combination of an information system and any telecommunications network or telecommunications service, including electronic government services.”

Contrary to some comparative legislation limiting this definition to how the contract is made (such as the Jordanian Electronic Transactions Law No. 85 of 2001),<sup>56</sup> the Decree expands this definition to include all contracts that are concluded or performed electronically. The United Nations Model Law on Electronic Commerce of 1996 limits this definition to contracts where information is communicated electronically only.<sup>57</sup> Article 2/a defines an electronic contract by defining means of data as: “information generated, transmitted, received or stored by electronic means”. Although contemporary jurists have not agreed on a uniform definition of an electronic contract, all have limited it to how the contract is concluded. Some contemporary jurisprudence defines it as: “*offering the seller and services by means of communication....*”.<sup>58</sup> Others define it as: “*a contract concluded by the exchange of electronically processed messages....*”,<sup>59</sup> while others define it as “*a negotiation concluded by agreement using electronic means of communication*”.<sup>60</sup> Within the EU, the right of withdrawal applies to distance contracts. A distance contract is every contract for which the parties exclusively used one or more techniques for distance communication, meaning that they were not simultaneously present before or at the conclusion of the contract.<sup>61</sup> Therefore, the concept of a distance contract

<sup>55</sup> Art 1: ‘Electronic transaction’: means any deal, contract or agreement concluded or performed, in whole or in part, through electronic communications.

<sup>56</sup> Law No. 15 of 2015 concerning Electronic Transactions 2015-5-17, ISN: JOR-2015-L-103025.

<sup>57</sup> Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law, GA res. 51/162, 51 U.N. GAOR Supp (No. 49) at 336, U N Doc A/51/49 (vol I) (1996).

<sup>58</sup> *Yusif* (n 37).

<sup>59</sup> *Mahasneh* (n 41) p 197.

<sup>60</sup> *Sarhan* (n 18).

<sup>61</sup> *Steennot* (n 9); *Ferrari* (n 8).

is not limited to contracts concluded electronically but also includes contracts concluded with other means of distance communication, such as contracts concluded over the phone or by regular mail.<sup>62</sup> In that way, all contracts in which information asymmetries result from the fact that parties are not simultaneously present when concluding a contract are in scope of the right of withdrawal.<sup>63</sup>

Qatari Law also does not include any list of electronic contracts excluded from exercising this right. This legislative approach is contrary to the majority of comparative legislation that provides an exceptional list of contacts not covered by the exercise of this right. Within the EU, for example, the Consumer Rights Directive contains a list that exhaustively enumerates cases in which a consumer cannot exercise his right to withdraw from the contract.<sup>64</sup> According to the European Court of Justice, these exceptions must be interpreted strictly to ensure high consumer protection.<sup>65</sup> However, the strict interpretation may not lead to the imposition of additional conditions that must be made for the exception to.<sup>66</sup> The different approach in Qatar can be explained by the fact that the right of withdrawal is not of public order. It could be argued that there is no need for exceptions in the law if the parties can mutually exclude the right of withdrawal. However, the approach in which a mandatory right of withdrawal is combined with an exhaustive list of exceptions must be favored since it creates a better balance between the interests of traders and consumers. Where information asymmetries result from the use of means of distance communication, consumers should, in principle, be entitled to withdraw from the contract. Only if the right of withdrawal is incompatible with the nature of the goods or services bought or would harm the legitimate interests of the trader must be provided for. It is up to the legislature (and not the contractual parties) to determine when this is the case.

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<sup>62</sup> *Donnelly and White* (n 7).

<sup>63</sup> *Bagheri and Hassan* (n 15).

<sup>64</sup> Art 16.

<sup>65</sup> Judgment of the Court (Sixth Chamber) of 27 March 2019, *slewo - schlafenlebenwohnen GmbH v Sascha Ledowski*. Request for a preliminary ruling from the Bundesgerichtshof Reference for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Arts 6(1)(k) and 16(e) — Distance contract — Right of withdrawal — Exceptions — Concept of ‘sealed goods which are not suitable for return due to health protection or hygiene reasons and which have been unsealed by the consumer after delivery’ — Mattress whose protective seal has been removed by the consumer after delivery. Case C-681/17.

<sup>66</sup> Judgment of the Court (Sixth Chamber) of 21 October 2020, *Möbel Kraft GmbH & Co. KG v ML*, Request for a preliminary ruling from the Amtsgericht Potsdam Reference for a preliminary ruling — Consumer protection — Directive 2011/83/EU — Art 16(c) — Right of withdrawal — Exceptions — Goods made to the consumer’s specifications or clearly personalised — Goods which the trader has begun to produce. Case C-529/19.

## C. Exercise the Right of Withdrawal

It should also be noted that the consumer's exercise of this right in contracts for the sale of goods differs from it in contracts for services. This part of the research explains the problems of exercising this right in light of the Qatari law provisions compared to the comparative legislation trends.

### (a) *Exercise of the Right of Withdrawal in Contracts for Goods*

According to Qatari law, the consumer can exercise this right as long as he does not use the product received or benefit from it even before the expiration of the three days stipulated by law.<sup>67</sup> This provision cannot be justified, at least not when it should be interpreted as excluding any use that is necessary to test the goods bought; the right of withdrawal demands the consumer discovers that the goods he bought are not suitable for him so that he can retreat from the transaction.<sup>68</sup> This certainty can only be reached by testing the merchandise, especially goods that the consumer cannot discover his satisfaction with after this test, such as electronics, clothing, and household appliances. The Statistical Report indicates that shopping these products online recorded the following percentages respectively, 49%, 26%, 32%, 26%, and 23%. Therefore, the law-maker is recommended to review this ruling. These statistics are also consistent with the results of field research, where Table 4 demonstrates a significant increase in consumer demand for these goods electronically.

Evidence shows that this ruling has emptied this right of its objective and made it, in many cases, meaningless. Many scholars suggested replacing his phrase with: *"This right shall be forfeited if the product is defective or its value decreases due to its use."*<sup>69</sup> Also, many comparative legislations do not provide for this provision but oblige the consumer to ensure any damage or consumption resulting from exceeding the reasonable use limit before exercising this right. Therefore, many jurists suggested the term (the use of the product) be reconsidered to indicate the use that goes beyond the necessary limits of knowledge of the merchandise, its characteristics, and its mode of operation to comply with the consumer's satisfaction.<sup>70</sup> If the consumer exceeds this use or intends to obtain any benefit, his right of withdrawal shall be forfeited.

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<sup>67</sup> Art 57.

<sup>68</sup> *Taher* (n 37).

<sup>69</sup> *Lieamri* (n 7); *Taher* (n 37); *Sarhan* (n 18).

<sup>70</sup> *Yusif* (n 37); *Aljaefari* (n 29); Salem Abboud, 'Consumer Protection in E-Marketing Contracts, an Analytical Study (in Arabic: Himayat Almustahlik Fi Euqud Altaswiq Alalkitrunii, Dirasat Tahliliat)' (2015) 7 *Journal of Market Research and Consumer Protection*.

Within the EU, the consumer retains his right of withdrawal, even when he has used the goods during the 14 days withdrawal period. A recent attempt to exclude the right of withdrawal when the consumer handled the goods in another way than what is necessary to establish the goods' nature, characteristics, and functioning were unsuccessful.<sup>71</sup> However, when the consumer handles the goods in another way than what is necessary to establish the goods' nature, characteristics, and functioning, the consumer will have to pay compensation for the diminished value of the goods.<sup>72</sup> Generally, it is accepted that the consumer who buys online should have the same rights to inspect the goods as the consumer buying the same goods in a store without compensation. The consumer purchasing a sweater may try it on but cannot wear it without compensating the trader. In Europe, it is up to the trader to prove that the consumer has not merely tested the good but used,<sup>73</sup> which can be a challenge for the trader.

*(b) Exercise of the Right of Withdrawal II Contracts for Services*

The consumer can exercise this right in two cases. The first is the case of the failure to provide the consumer with the service absolutely within three days, and the second is the case of providing it partially. Both cases are not related to a breach by the provider of his contractual obligation because this breach gives the consumer the right to request absolute avoidance of the contract based on the general rules. On the other hand, if the service is fully provided to the consumer, he cannot exercise his right of withdrawal regardless of the benefit of the service or not. The reason for this provision is that the parties cannot return to their pre-contract state because the service, by its nature, has no physical existence and, therefore cannot be judged whether or not it is consumed.

The question that arises in this area is whether the consumer is obliged to pay for the portion of the service received if he exercises his right of withdrawal? The Qatari law does not provide a special provision for this case, so the general rules that oblige the consumer to pay for the service he received must be enforced based on partial annulment of time contracts. Within the EU, on the other hand, the question is dealt with explicitly in the Consumer Rights Directive.<sup>74</sup> The consumer, who exercises his right of withdrawal after

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<sup>71</sup> Art 21 of the proposal of the Omnibus Directive.

<sup>72</sup> Art 14.2 Consumer Rights Directive.

<sup>73</sup> Judgment of the Court (First Chamber) of 3 September 2009. *Pia Messner v Firma Stefan Krüger*. Reference for a preliminary ruling: Amtsgericht Lahr - Germany. Directive 97/7/EC - Consumer protection - Distance contracts - Exercise by the consumer of the right of withdrawal - Compensation for use to be paid to the seller. Case C-489/07.

<sup>74</sup> Arts 14.3 and 14.4.

the services contract was executed in part, must pay for the services actually delivered. However, to protect consumers, it is determined that the consumer must only pay if: 1) he expressly requested the trader to start with the execution of the services contract within the withdrawal period *and* 2) he was clearly informed by the trader on the one hand about the existing right of withdrawal and on the other hand about the fact that he would have to pay for the services actually provided before the time of withdrawal.

Another problem in the Qatari provision is the law's silence to clarify what the phrase means (consumer access to the service in full). Is it intended for the provider's obligation to enable the consumer to use the service or for the actual use of the service? Few jurists support the second approach and rely on the legal principle that the law must be interpreted in consumers' interests.<sup>75</sup> The literal interpretation of the text of Article 57, which provides: "*insofar as the provider has not performed its obligation*", does not support this approach. It is understood that the provider implements his obligation once he enables the consumer to access the service regardless of the actual use of the service or not. Also, Article 57 prohibits the consumer from exercising this right three days after the formation of the contract for the sale of products, regardless of the consumer's examination of the merchandise. By analogy with this provision, the service provider has fulfilled his obligation once the consumer could use the service.

Within the EU, the consumer only loses his right to withdraw from a services contract (including a digital services contract) within the 14-day withdrawal period when the services agreement was *fully* executed before exercising the right of withdrawal.<sup>76</sup> Additionally, one has to take into account that the consumer can only lose the right to withdraw from the contract when the performance of services during the withdrawal period has begun *with the consumer's prior express consent, and the consumer acknowledged that he loses his right of withdrawal once the trader has fully performed the contract*. Another exception worth mentioning in this context is the one that relates to contracts for the supply of digital content, which is not supplied on a tangible medium (e.g. a contract relating to the download of a game or a movie). For these contracts, the consumer will already lose the right to withdraw from the contract if the performance has *begun* with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.<sup>77</sup>

<sup>75</sup> Ahmed Al-Hiyari, 'The Consumer's Right to Withdraw in the Electronic Contract, a Comparative Study in Jordanian and French Laws (in Arabic: Eudul Almustahlik Ean Aleaqd Almubram Eabr Alantirnti, Dirasat Muqaranat Fi Alqanuniayn Al'urduniyi Walfaransi,)' (2009) 1 The Jordanian Journal of Law and Political Science; *Aljaefari* (n 29); *Yusif* (n 37).

<sup>76</sup> Art 16, a Consumer Rights Directive.

<sup>77</sup> Art 16/ m Consumer Rights Directive.

Another essential question arises in this area: how can the consumer exercise this right in services contracts that cannot be partially terminated, such as air transport services, tourism, travel, and entertainment services? In particular, a significant percentage of Qatari consumers contracted for these services online, respectively (32%, 27%, and 29%). The Statistical Report also showed that Qatar Airways 'sales represent 63% of electronic contracts among local suppliers and 24% of electronic contracts in general. These figures are clearly in line with the results of the field research (Table 4). There has been an apparent doctrinal disagreement about how to exercise this right in such contracts. Some jurists are inclined toward the impossibility of exercising this right in these contracts, so they should be explicitly excluded as some countries such as Egypt, and Morocco.<sup>78</sup> The European legislator opted for a similar approach and included in Article 16, 1) of the Consumer Rights Directive an exception to the right of withdrawal for contracts relating to the provision of 1) accommodation other than for residential purposes, 2) transport, 3) car rental services, 4) catering or 5) services related to leisure activities (such as concert tickets, tickets for attending a sports game). Therefore, the consumer will not be able to withdraw from these contracts. However, it is important to stress that these exceptions only apply to contracts that determine that the service's performance must occur at a certain point in time or within a certain period.

Finally, the contract may involve the consumer getting a product and service simultaneously, such as contracting with a telecommunications company for a mobile device and a monthly call package in exchange for agreed payments. What is the legal provision if the consumer exercises his right to withdraw in this case? Qatari law does not answer this question, and therefore the common intention of the contractors should be sought. Suppose the intention was initially to obtain a communication service, and the provision of a mobile phone was to encourage the consumer to contract. In that case, this case is treated as a service supply contract and vice versa. In the EU, another solution applies: contracts that have goods and services as objects are considered sales contracts,<sup>79</sup> implying that the rules on sales contracts apply. Therefore, the withdrawal period will only start the day after the delivery of the good.

#### **D. Challenges of the Duration to Exercise the Right of Withdrawal**

The Qatari legislator gives the consumer the right to withdraw within three days from the date of contracting. It is noted that this duration is very concise compared to the relevant comparative legislation in the Arab and Western countries. Perhaps, the reason for such a short period is that the lawmaker was

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<sup>78</sup> Ahmed (n 45).

<sup>79</sup> Art 2.5 Consumer Rights Directive.

influenced by the Islamic jurist who provided the same period for exercising the option of inspection. This option is based on the Prophet's holy talk when asked what the man who rushes and deceives in contracts. He said: *"if you contract, say no to deception, and then you in every sale you have purchased with the option three nights, then If you are satisfied with the sale, keep it, and if you are not satisfied return the goods to the seller"*.<sup>80</sup> Also, the provision for this short period is to deprive the consumer of the opportunity to use these things, decorate them at parties and events, and then return them so that he can benefit from them without charge.<sup>81</sup> Qatari law also does not provide the legal provision in case there are public holidays during this period and the case if the last day is a public holiday. Jurisprudence differed in dealing with this legislative silence. Most scholars agree that holidays are calculated from this period,<sup>82</sup> so the consumer does not benefit from these days if he conducts the provider directly to express his desire to withdraw. Suppose the last day of this period is a public holiday. In that case, some scholars call for applying the provisions of the Civil Procedure Law No. 13 of 1999 to complement this legislative deficiency, so this day should not be counted.<sup>83</sup> In turn, many jurists disagree with this interpretation, arguing that the Code of Civil Procedure regulates litigation proceedings before civil courts and is unrelated to regulating financial rights between individuals.

In the EU, the consumer can withdraw from the contract within 14 calendar days.<sup>84</sup> No distinction is made between working days and holidays. The 14-day calendar day period starts running the day after delivery of the good to the consumer (sales agreements) or the day after the conclusion of the agreement (services agreement). Worth mentioning is also that the 14 days is extended by 12 months in case the trader does not inform the consumer of the conditions, time limit, and procedures for exercising the right of withdrawal or does not make the model withdrawal form available to him.<sup>85</sup> Moreover, when the consumer exercises his right of withdrawal during this prolonged withdrawal period, he will not have to pay any compensation for the diminished value of the goods used or any price for the services delivered.<sup>86</sup> Therefore, it is of utmost importance for the trader to fulfill its information duties on the right of withdrawal. If he does so within the prolonged period of 1 year and 14

<sup>80</sup> Kitab Al-Buyu' (The Book of Transactions).

<sup>81</sup> Sarhan (n 18).

<sup>82</sup> Tayeb Bouzidi, 'Exercising the Right of Recourse in the Electronic Consumption Contract, a Comparative Study (in Arabic: Mumarasat Haqi Alrujue Fi Eaqd Alaistihlak Alalkitrunii, Dirasat Muqaranati)' (University of Mohamed Boudiaf 2019).

<sup>83</sup> Mahasneh (n 41).

<sup>84</sup> Art 9 Consumer Rights Directive.

<sup>85</sup> Art 10 Consumer Rights Directive.

<sup>86</sup> Art 14.2 and 14.4 Consumer Rights Directive.

days, the withdrawal period is limited to 14 days, starting when the consumer receives the required information.<sup>87</sup>

Additionally, the Qatari Decree does not identify the legal provision for the case of goods delivery in batches. Would the consumer exercise his right to each independently (within three days of receipt of each part), or would the period be calculated based on the last batch received? Once again, the European legislation is more precise.<sup>88</sup> It distinguishes between the case of multiple goods ordered by the consumer in one order and delivered separately (1), the case of delivery of a good consisting of multiple lots or pieces (2), and the case of contracts for regular delivery of goods during a defined time (3). More specifically, the withdrawal period starts the day after which the consumer receives the goods (1), the day on which the consumer receives the last lot or piece (2), or the day on which the consumer receives the first good (3).

The Qatari Decree also calculates this period from the date of the contract in the sale of goods. This ruling undermines the purpose for which this right was regulated. As already indicated, this solution differs from the EU approach, which provides that the withdrawal period can only start after the consumer (or a third party indicated by the consumer) has actually received the goods. Considering the objectives of a withdrawal right, the EU approach must be favored. Indeed, only when the consumer has actually received the good does the information asymmetry typical for a distance contract disappear. Moreover, this provision is a clear violation of the directions of Islamic jurisprudence governing the options that calculate this period from the date of actual receipt of the sale.<sup>89</sup> The field research findings demonstrated many difficulties in this provision. When respondents were asked about the time they usually receive goods purchased online? the most significant percentage answered within two days from purchase (75%), while 10% and 14% reported within one day and three days, respectively (see Table 6). This provision leads the consumer to bear the consequences of this delay in delivery because this period will not be considered when calculating the period stipulated by the law. Therefore, when respondents were asked how long they thought it was appropriate to exercise this right, 41% replied that it should be 15 days, while 23%, 17%, and 19% responded that it should be ten days, 30 days, and three days respectively (See Table 6). In contrast, most comparative legislation - for example, the European Directive - makes this period fourteen days from the date of formation of the contract in the service contracts and the date of receipt of the product in sales contracts. The same provision is provided in Article 10/1 of

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<sup>87</sup> Art 10 Consumer Rights Directive.

<sup>88</sup> Art 9.2 Consumer Rights Directive.

<sup>89</sup> *Bagheri and Hassan* (n 15).



the Kuwaiti Consumer Protection Law,<sup>90</sup> Article 17 of the Egyptian Consumer Protection Law No. 181 of 2018, and Article 19 of the Egyptian electronic commerce law. The Egyptian Consumer Protection Law No. 181 of 2018 continues to increase this period to 30 days if the reason for exercising the right of withdrawal is the presence of a defect in the merchandise or non-conformity with the specifications,<sup>91</sup> without prejudice to the application of any provisions of greater protection provided for in other legislation. The Lebanese Legislature provided for ten days from obtaining the full service or receiving the goods,<sup>92</sup> while the Moroccan Legislature provided for ten days, but from purchase.

Also, the Qatari Decree does not identify the time relied upon to determine the exercise of this right in the event of expressing this will electronically. Is it the time of sending the will expression or the time of its arrival to the vendor? Article 14 of the Decree assumes that the consumer decision reaches the provider from the moment the electronic message enters an information system outside the originator's control.<sup>93</sup> Also, the Decree does not identify the party committed to proving the receipt of the consumer goods or using the service provided. Most jurisprudence imposes this obligation on the provider because he claims it. The fact of delivery is also a physical fact so that the provider can use all the means of proof provided for in the civil and commercial proceedings Law No. 13 of 1990.<sup>94</sup> Within the EU, the Consumer Rights Directive determines explicitly that the consumer exercises his withdrawal right timely when the consumer sends the communication concerning the withdrawal right before the 14-calendar day period has expired.<sup>95</sup> Therefore, it does not matter that the trader received it before the expiry of the 14-day period. As for the burden of proof it is up to the trader to prove when the goods were actually delivered and up to the consumer to prove that the notification regarding the exercise of the right of withdrawal was sent within 14 days after delivery.<sup>96</sup> Although the consumer can freely choose in what way he informs the trader on the use of the right of withdrawal (e.g. he can, but must not use the model withdrawal form), it is important for the consumer that he is able to prove that he did so and in a timely manner. If the consumer is given the option to

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<sup>90</sup> *Sarhan* (n 18); *Mahasneh* (n 41).

<sup>91</sup> Art 21.

<sup>92</sup> Art 55.

<sup>93</sup> *Mahasneh* (n 41); Hafez Ibrahim, 'Reflections on the Legal Challenges Facing Online Shopping, UAE Law as a Model (in Arabic: Ta'amulat Fi Althahadiyat Alqanuniyat Alati Tuajih Altasawuq Eabr Almawaqie Alalkitrunia, Alqanun Alamaratii Namudhaja)' (2019) 16 *Journal of Legal Sciences*,.

<sup>94</sup> *Yusif* (n 37).

<sup>95</sup> Art 11.2.

<sup>96</sup> Art 11.4 Consumer Rights Directive.

exercise his right of withdrawal electronically, the trader must acknowledge receipt to the consumer on a durable medium.<sup>97</sup>

### **E. Challenges of the Supplier's Obligation to Inform the Consumer of this Right**

The provisions of the Qatari Decree oblige the supplier to inform the consumer of his right to withdraw before submitting the purchase order based on the text of Article 55/7. This legal provision creates several problems. The first problem is that the law is silent on the obligation of the provider to provide the consumer with specific conditions and requirements for exercising this right. In contrast, Article 6 of the European Directive obliges the provider to include detailed information about the right of withdrawal in this declaration, such as the conditions for its exercise, duration, and procedures. As already indicated, a model withdrawal form that must help the consumer in exercising his right of withdrawal must also be made available. More specifically, the information must be made available (to the average consumer) in a clear and comprehensible manner, in plain and intelligible language, and in a way that is appropriate to the means of distance communication which is appropriate to the means of distance communication that the trader uses.<sup>98</sup> Moreover, the information which is made available before the conclusion of the contract must be within a reasonable time after the conclusion of the contract - and at the latest at the time of delivery of the good or before the start of the execution of the services agreement - be confirmed on a durable medium. As already indicated, the omission of information on the right of withdrawal is sanctioned severely by the European legislator with the extension of the withdrawal period by 12 months, stressing the importance the European legislator attaches to this information requirement. Similarly, Article 25 of the executive regulations of the Kuwaiti consumer protection law obliges the provider to declare in a clear place in the Arabic Language the right of the consumer to withdraw. This notification must detail the conditions and procedures for exercising this right. It also prohibits any advertisement that includes "*goods sold are not returned or replaced*".<sup>99</sup>

The second problem is that the Qatari Decree does not identify how to provide this notification to the consumer. The provider is not obliged to use readable language when including this right in the contract. Providers usually use small and unclear font when inserting this right online. The field research findings show that only 49% of the respondents noticed the existence of this

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<sup>97</sup> Art 11.3 Consumer Rights Directive.

<sup>98</sup> Arts 6 and 7 Consumer Rights Directive.

<sup>99</sup> *Sarhan* (n 18).

notification in the annex to the terms and conditions of the contract, while the rest did not notice it (see Table 6). Jurisprudence agrees that this obligation requires this condition to be written in clear and distinctive colour to be distinguished from the rest of other contract terms. What makes it even more difficult in Qatar is that the Statistical Report showed that 84% of online shoppers use a mobile device to shop.<sup>100</sup> The mobile device's small size makes it difficult for the consumer to notice this condition if it is listed in the same size and colour as the rest of the contract terms.

These results are consistent with the results of the field research, with 44% expressing that the contract terms are sometimes presented to them when contracting electronically, while 7% reported that they did not notice contract terms before (see Table 5). Even if these terms are presented, many reported that they were unclear to them and did not provide any benefit. A significant percentage of respondents (34%) said these terms were unimportant when shopping online, while 40% said they were sometimes necessary. Also, many respondents always click on the box to directly agree to the terms and conditions without seeing them (52%). In comparison, 30% sometimes do so, while the percentage of those who answered that they care about these terms and conditions was the least (18%). Table 5 shows the consumers' evaluation for online agreements.

<b>Table 5: Evaluation of Online Contracts (340 Respondents)</b>	
Sales Offer Written Contracts	
Yes (Always)	167 (49%)
No (Never)	25 (7%)
Sometimes	148 (44%)
Contracts Benefits	
Yes (Always)	87 (26%)
No (Never)	117 (34%)
Sometimes	136 (40%)
Contracts are written in the Arabic Language	
Yes (Always)	64 (19%)
No (Never)	37 (11%)
Sometimes	203 (60%)
Contract Clarity	
Yes (Always Clear)	157 (46%)
No (Never Clear)	65 (19%)
Sometimes Clear	120 (36%)
Click the Read Contract Box Without Reading	
Yes (Always)	178 (52%)
No (Never)	61 (18%)
Sometimes	103 (30%)

<sup>100</sup> *The Statistical Report*, p 14.

The third problem is the failure of the Decree to regulate the civil legal penalty resulting from the violation of this obligation by the provider, which may open the way to different judicial rulings and jurisprudence<sup>101</sup>. The field research findings showed that only 32% of respondents reported that the provider informed them of their right to draw when contracting, while 14% and 54% said they were not always informed. Table 6 shows the consumers level of satisfaction with online withdrawal right.

<b>Table 6: Level of Satisfaction with Online Withdrawal Right (340 Respondents)</b>	
Withdrawal Right Encourages me to Shop Online Yes (Always) No (Never) Sometimes	219 (64%) 15 (5%) 106 (31%)
I Can Notice the Withdrawal Clause Yes (Always) No (Never) Sometimes	173 (51%) 47 (14%) 120 (36%)
The Supplier Draws my Attention to Withdrawal Right Yes (Always) No (Never) Sometimes	111 (32%) 45 (14%) 184 (54%)
Time for Receiving Goods Within 1 day Within 2 Within 3 days After 3 days	33 (10%) 256 (75%) 2 47 (14%) 4 (1%)
Recommend Period for Withdrawal 3 days 10 days 15 days 30 days	65 (19%) 78 (23%) 141 (41%) 58 (17%)
Ease to Communicate the Supplier Yes always easy) No (always not easy) Sometimes easy	109 (32%) 28 (8%) 113 (60%)
Satisfaction with Refund Yes (always satisfied) No (always unsatisfied) Sometimes satisfied	147 (44%) 38 (11%) 155 (45%)
Satisfaction with Withdrawal Right Satisfied Unsatisfied I do not know	40 (12%) 237 (70%) 63 (18%)

<sup>101</sup> Abboud (n 69).

## F. Challenges of Consequences of Withdrawal

Under the right of withdrawal, the consumer can terminate the contract without providing any justification. In this case, the consumer must return the merchandise in the condition received from the provider. It should be noted that the consequences of withdrawal require the investigation of several sub-topics: the extent to which this right is related to public order, the party obliged to pay such restitution, the period in which the provider must refund the amounts of money to the consumer, and finally the risk of damage of the merchandise during the period prescribed for the exercise of this right.

**First: the relation of this right to public order:** The Decree does not relate this right to the public order. In clear violation of many trends of contemporary comparative legislation, the parties may agree to violate it either by granting the consumer less protection or even exempting the provider from this obligation. Authorizing the parties to the contract to revoke this right enables the supplier to empty it of its purpose because he usually controls this relation. Also, this approach contradicts the trends of Islamic jurisprudence, which provides the option of inspection. Islamic jurisprudence makes this option linked to public order and thus invalidates any contractual clause that deprives the contracting party of this right. As long as this right is enacted to protect the weak party in the contractual relationship, it is therefore not permissible to agree to violate it to ensure the fairness of market transactions.<sup>102</sup> It is noticeable that merchants used to insert contractual clauses in an unclear font that deprives the consumer of such rights.<sup>103</sup> While the consumer protection law in Qatar does not establish special protection systems against these terms, they are valid regardless of how they are presented to the consumer. Since consumers do not pay attention to these terms and automatically agree to them without reading them, it would be easy for merchants to drop these rights under the contract document. To overcome this problem, most of the consumer protection legislation in the Arab countries made this right of public order, such as Articles 10, 11, and 33 of the Kuwaiti Consumer Protection Law,<sup>104</sup> and Article 17 of the Egyptian Consumer Protection Law.<sup>105</sup>

Within the European Union, it is also explicitly determined that consumers may not waive their rights conferred by the Directive.<sup>106</sup> Contractual terms which directly or indirectly restrict the rights of consumers resulting from the

<sup>102</sup> *Al-Obaidi, Rafe' & Al-Khoumis* (n 10).

<sup>103</sup> *Yusif* (n 37).

<sup>104</sup> *Sarhan* (n 18).

<sup>105</sup> *Al-Ali* (n 14).

<sup>106</sup> Art 25 Consumer Rights Directive.

Directive cannot bind the consumer.<sup>107</sup> Only contractual terms extending the consumer's protection (e.g., entitling the consumer to withdraw from a contract for which no withdrawal right exists) are possible according to the law.

**Second: Refund Expenses:** The Decree does not provide for the party obliged to bear the costs of the return of the sale, so the general rules concerning the effects of avoidance of the contract must be enforced. These rules distinguish between the case where the termination is due to the dissatisfaction of the consumer with the good or service provided without relying on substantive objective reasons and the case caused by the product's non-conformity to the specifications referred to in the agreement. In the first case, the consumer shall bear the refund costs because the consumer has exercised this right without any breach or default on the provider's part. In the second case, the provider must be charged the expenses of this response and compensate the consumer for the damage he suffered based on contractual liability provisions related to the defective execution of the obligation or delay in the performance.<sup>108</sup> In all cases, the consumer is obliged to notify the other party of the withdrawal by means of an e-mail announced in the contract or any agreed means.

EU law contains a similar solution. If the goods delivered do not conform with the contract, the consumer will be entitled to replacement or repair without any cost.<sup>109</sup> If, on the other hand, the goods are not defective and the consumer makes use of the right of withdrawal, the cost of sending back the goods can be imposed on the consumer, contrary to the cost of delivery, which must be reimbursed by the trader.<sup>110</sup>

**Third: failure to identify the refund date:** unlike many contemporary legal trends, the Decree does not determine when the provider is obliged to refund the amounts of money due to the consumer after exercising the right of withdrawal. For example, the Tunisian exchange and electronic commerce Law No. 83 of 2000 makes this period ten days calculated from the date of the consumer's exercise of this right (Article 30). The Moroccan legislature has set it at 15 days according to Article 37 of Law No. 31 of 2008,<sup>111</sup> In the EU, the Consumer Rights Directive determines that the trader must reimburse the consumer without undue delay and in any event not later than 14 days from the day on which the trader is informed of the consumer's decision to withdraw from the contract (Art. 13.1). However, the trader can withhold reimbursement

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<sup>107</sup> Art 25.

<sup>108</sup> *Yusif* (n 37).

<sup>109</sup> The Directive 2019/771 on Certain Aspects Concerning the Sale of Goods.

<sup>110</sup> Art 14.1 Consumer Rights Directive.

<sup>111</sup> *Bagheri and Hassan* (n 15).

until he has received the goods back, or until the consumer supplied evidence of having sent back the goods (whichever is earliest) (Art. 13.3).

It should be noted that the policy of the Qatari Decree creates several problems. First, the provider usually takes advantage of this legislative silence and delays the refund to get a benefit. He assumes that this period is subject to his discretion, and there is no legal control over him.<sup>112</sup> The field research findings showed that only 41% of respondents were always satisfied with the refund time after exercising this right (see Table 5). The same table also indicates that only 32% of respondents reported that they always found it easy to communicate with providers to inform them of the withdrawal decision. Second, the identification of this period is essential to determine the consumer's rights so he can sue the provider if he does not receive this refund during this period, away from the requirements of estimating the existence of delay or not, which may constitute a legal obstacle to sue the provider. Third, failure to identify this period may deprive the consumer of claiming compensation for the damages suffered due to the delay in refunding due to the difficulty of proving the conditions of the contractual liability. If this period is identified, the law assumes the existence of all these conditions and removes from the consumer the difficulties and challenges of this proof. Fourth, the omission of this identification makes it impossible for the law to impose penal sanctions on a provider who does not comply with these terms, contrary to the comparative legislation that expressly provides for this penalty, including the French Consumption Law (Article 121) and Article 178 of Moroccan law No. 31 of 2008.<sup>113</sup>

**Fourth: Bearing the Risk of Damage:** The Qatari Decree, as the European Directive, does not regulate special provisions organizing the risk of damage in the event of sales damage after the consumer received it and before exercising the right of withdrawal. The general rules do not raise any problem for damages caused by the fault or negligence caused by any parties to the contract, so such a person bears this responsibility. Suppose such damage is due to a foreign reason, such as damage to an electrical machine due to a sudden failure of the electricity supply lines. In that case, the holder (consumer) bears this responsibility. It should be noted that this provision does not confer any privacy for consumer protection contrary to the directions of jurisprudence. Some scholars disagree with this conclusion.<sup>114</sup> They believe that granting the consumer the right of withdrawal without bearing any financial burdens requires not to be held liable for the damages of the merchandise of force majeure. The

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<sup>112</sup> *Bouzidi* (n 81).

<sup>113</sup> *Yusif* (n 37).

<sup>114</sup> *Shindi* (n 11); *Mahasneh* (n 41); *Sarhan* (n 18).

possession by which the law is used to determine the liability for damage is the possession associated with the property; as long as the period of the consumer's right to withdraw has not expired, the ownership here has not become permanent and final. Also, the consumer's obligation to preserve the merchandise during this period is an obligation of care and not to achieve a result<sup>115</sup>.

#### IV. CONCLUSION

This study showed that the regulatory framework of the right of withdrawal is one of the reasons for the reluctance of the Qatari consumer to deal with local suppliers. This right is limited to electronic contracts only, as it was briefly regulated in one legal article within the provisions of the Electronic Transactions Law No. 16 of 2010. It also demonstrated that the lawmaker did not benefit when regulating this right from many comparative legislations in Arab and Western countries.

About the scope of application, the Decree distends its objective scope of application by covering all goods and services sold online. As in the EU and many other jurisdictions, the subjective scope of application has become limited to B2C transactions only, while this protection does not cover C2C transactions. This approach excludes most second-hand purchasing transactions made through social media. This ruling contradicts the market reality, where the field research showed the demand of consumers to shop online through social media to purchase used products from other consumers. The protection requirements are available in these transactions because the consumer contracts to buy a product without seeing it at the time of the contract. Also, the Qatari Legislature was unsuccessful in defining electronic transactions when he distends it to include transactions carried out electronically, while some comparative legislation limits them to transactions concluded electronically. EU law ensures this right to all distance contracts broader than contracts concluded electronically.

This study also showed that the three-day period provided in the Decree for the consumer to exercise this right, which starts from the day of the conclusion of the contract, is one of the most problematic issues that should be reviewed. Most respondents reported receiving goods bought online two days after purchase, while a significant percentage said that they arrived after more than three days. There is a general tendency among the questionnaires to raise this period to at least fifteen days, which is in line with the period in other countries and the EU. Moreover, about goods, this period should only start upon delivery since only the consumer can test the goods and information

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<sup>115</sup> Steennot (n 9).



asymmetries disappear. Consumers must be able to test the goods received in the same way they would be able to when buying in a shop.

This study also revealed many legal problems related to using the right of withdrawal and the consequences of exercising this right. European law can inspire when making the rules more precise and increasing legal certainty (for example, by determining explicitly how the withdrawal period must be calculated and when reimbursement must occur). The lawmaker is also recommended to invalidate any contractual clause that deprives the consumer of exercising this right or even decreases the level of protection provided by law. However, in that case, a list of exceptions to the right of withdrawal must be included in order not to harm the legitimate interest of traders. Further, the level of protection should be raised if the provider does not fulfill his obligation to inform the consumer of the conditions and procedures for exercising this right. The Decree should constitute an explicit provision exempting the consumer from the liability of the merchandise damage while exercising this right if the damage is for a foreign reason.