



E-Commerce Transactions in Gabon: What About the Legal Framework?

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ABSTRACT: E-commerce, as a dynamic and continuously evolving sector, presents significant challenges and opportunities. Today, it's crucial for businesses and consumers involved in this sector to thoroughly understand current legal aspects and anticipate future trends. The future of e-commerce will continue to be influenced by technological advancements, such as **artificial intelligence** and **blockchain**, as well as regulatory changes. Therefore, it's essential for e-commerce stakeholders to remain vigilant and proactive to adapt to these developments, thereby ensuring their market competitiveness and legal and regulatory compliance. Transactions related to e-commerce are increasingly discussed. Indeed, this new movement raises numerous legal questions. Therefore, a prospective study on the legal framework dedicated to this activity is warranted. The Gabonese legal framework concerning e-commerce operations is relatively recent. However, an analysis of the legislation regarding e-commerce transactions between professionals and consumers has revealed the Gabonese legislator's interest in the evolution of e-commerce transactions.

KEYWORDS: e-commerce, artificial intelligence, blockchain, legal framework.

INTRODUCTION

E-commerce (also known as electronic commerce) offers significant growth potential on the African continent, with a positive and steadily rising trajectory. To succeed in e-commerce on the continent, entrepreneurs must be fully committed, understand the specificities of the market, and implement effective, related strategies.

Obstacles can be overcome with perseverance, adaptation, resilience, and innovation. By embracing these principles, entrepreneurs contribute to shaping Africa's dynamic e-commerce landscape. The emergence and expansion of this new way of viewing and conducting business have led to a significant overhaul of how business is now done worldwide. Indeed, from 2017 to 2020, e-commerce in Africa experienced staggering growth, increasing from \$10 billion to \$20 billion [1]. This impressive figure reflects the growing appetite of African consumers for online shopping. This is partly due to increased internet connectivity and the growing adoption of mobile technologies within this geographical area. However, despite this rapid growth, e-commerce in Africa remains relatively underdeveloped compared to other regions of the world [2].

Regarding Gabon, according to the 2020 Business-to-Consumer (B2C) E-commerce Index established by the United Nations Conference on Trade and Development (UNCTAD), the country is the leader in Central Africa for e-commerce, with a score of 38/100. Furthermore, it also ranks 13th in Africa and 105th globally out of the 152 countries listed. UNCTAD [3] indicates that 62% of the Gabonese population uses the internet, and 59% of people had a mobile money account in 2020 [4]. According to the same index, Gabon must nevertheless make more efforts for a greater number of people to benefit from the advantages offered by e-commerce and access to internet services.

What's more, Gabon has over 3 million mobile subscriptions, with 35% of the population being active social media users (and 93% of them connect via mobile). The main current mobile operators are Airtel, Moov Africa, and CanalBox. The most popular web search engines in Gabon are Google (94.7%), Bing, and Yahoo (2.8% and 1.9%, respectively) [5]. It should be noted that a number of payment institutions in CEMAC [6] (Economic and Monetary Community of Central Africa) have been approved in Gabon. For the year 2022, it was possible to count five (5) of them: one (1) in Cameroon, two (2) in Congo, one (1) in Gabon, and one (1) in Chad.

Footnotes

[3] The UNCTAD index evaluates countries based on "their degree of readiness for online commerce." Countries are rated based on access to secure internet servers, the reliability of postal services and infrastructure, and the percentage of their population using the internet and holding an account with a financial institution or a mobile money service provider.

[6] The Economic and Monetary Community of Central Africa is an international organization grouping several countries in Central Africa, created on March 16, 1994, to take over from the Customs and Economic Union of Central Africa (UDEAC). Its headquarters are in Bangui, Central African Republic.

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In terms of geographical area, CEMAC had 87,516,780 bank and payment accounts at the end of that same year, 2022. With the standardization of payment accounts to IBAN/RIB formats that occurred in 2021, the gross banking rate (not accounting for multi-banking) in CEMAC amounts to 145% (a theoretical rate based on the total population/number of accounts reported for the total population). In 2022, the card payment infrastructure in CEMAC consisted of 2,745,540 [7] payment cards, 3,038 electronic payment terminals (EPTs), and 2,836 Automated Teller Machines (ATMs).

It's tough for any business model to really flourish without facing challenges that impact both consumers and businesses in its "ecosystem." A major concern with online transactions, like fraud, has direct consequences, as fraudsters can take advantage of vulnerable consumers on unsecured websites.

For business owners looking to expand into e-commerce, it's a good idea to invest in cybersecurity features to protect against revenue loss from online fraudsters. What we absolutely need to prevent is consumers becoming so skeptical that they're unwilling to risk buying goods online due to the various drawbacks mentioned earlier. Unfortunately, recurring issues in some countries today often involve bureaucratic procedures, unfavorable tax regimes, underdeveloped delivery infrastructure, all compounded by a near-lack of e-commerce skills within Small and Medium-sized Enterprises (SMEs).

These numerous shortcomings, regrettably, hinder SMEs' ability to compete with larger companies and implement adequate legal protection mechanisms to ensure the confidentiality and security of their customers' personal data and information.

In the Republic of Gabon, the legal framework in this area has been strengthened with various legislative and regulatory texts aimed at offering adequate consumer protection in case of electronic transaction violations. Notably, there's **Law No. 025/2021 regulating electronic transactions in the Gabonese Republic**, and **Law No. 027/2023 of July 12, 2023**, regulating cybersecurity and the fight against cybercrime in the Gabonese Republic, whose purpose is explained in **Article 2**.

Furthermore, Gabon's Electronic Communications and Postal Regulatory Authority (ARCEP) has also contributed to combating digital offenses through **Law No. 006/2012 of August 13, 2012**. The Gabonese Penal Code, amended by **Law No. 042/2018 of July 5, 2019**, also addresses, though too briefly in our opinion, digital offenses in several of its articles, particularly concerning privacy protection and various forms of trafficking.

Finally, it's worth noting that Gabon also established a National Commission for the Protection of Personal Data (CNPDCP) with **Law No. 001/2011 of September 25, 2011**, related to the protection of personal data. This independent commission is tasked with ensuring the proper processing of personal data, although its independence is questioned by some civil society actors.

Given the above, the central question of this analysis is to evaluate the relevance and adaptability of the existing Gabonese legislative framework in the face of e-commerce challenges and needs. More specifically, does the Gabonese legal arsenal provide mechanisms that consumers can rely on in the event of disputes arising from an online transaction or negotiation?

Our research question is therefore: Is the current Gabonese legislative framework sufficient to ensure robust legal protection for consumers engaged in e-commerce transactions, especially against risks related to personal data and invested capital?

Therefore, it's necessary to analyze the applicable legislations and, consequently, the legal framework surrounding e-commerce transactions to determine if consumers benefit from appropriate legal protection under Gabonese law, capable of ensuring their adequate safeguard.

1. Theoretical framework of e-commerce transactions

E-commerce, or electronic commerce, is a business practice that connects sellers and buyers online for transactions involving products or services. These exchanges take place through various channels such as online stores, mobile applications, social networks, price comparison websites, and sales platforms.

The legal framework of e-commerce is complex and constantly evolving. It covers diverse areas like consumer protection, transaction security, taxation, personal data protection, and intellectual property. These aspects are crucial not only for businesses but also for consumers, who must be aware of their rights and the risks involved.

The objective is to clarify these legal issues, highlighting both the challenges and opportunities they represent in the current economic context.

1.1. General Overview of e-commerce: definitions from legal and marketing perspectives

What is e-commerce? Multiple and evolving definitions

The concept of electronic commerce (e-commerce) is often difficult to define precisely, which presents a particularly sharp challenge for its measurement. Despite this complexity, many have attempted to define it.

The Organization for Economic Co-operation and Development (OECD) describes it as the set of digital transactions for goods and services, whether digital or physical, involving consumers, businesses, and public authorities. More broadly, it covers all commercial activities via electronic networks, including sales, fund transfers, marketing, and data processing. A more restrictive definition limits it to the provision of consumer goods and services through online channels.

The WTO sees e-commerce as the production, promotion, sale, and distribution of products via telecommunication networks. For INSEE, it refers to commercial transactions using the internet or other computer networks (like EDI [1]) and involving a transfer of ownership.

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In Gabon, **Law No. 025/2021 of December 28, 2021**, defines e-commerce as the economic activity of remotely supplying goods or services by electronic means. Any person (natural or legal) participating in the production, distribution, marketing, sale, or delivery of goods and services by electronic means is considered to be engaged in e-commerce under this law.

From a marketing perspective, e-commerce is the buying and selling of goods and services over the internet, encompassing all electronic commercial transactions (websites, mobile applications, online platforms). These can include B2B, B2C, C2C, and other models.

In short, e-commerce transforms consumers and professionals into key players in online sales.

E-commerce refers to all commercial exchanges conducted through a digital interface. These online purchases are made primarily via devices such as computers, tablets, smartphones, and connected televisions. It is common for e-commerce platforms, such as Fnac.com in France, to operate as a complement to the brand's physical stores.

Furthermore, an electronic transaction is precisely defined by **Article 6 of Gabonese Law No. 025/2021 of December 28, 2021**. It encompasses any action or series of actions, whether commercial or not, concerning goods or services available online. This definition covers the multiple communications involved in the sale or purchase via networks or information systems, even when the final payment or delivery of goods and services occurs outside of these digital channels.

1.2. Evolution of e-commerce

E-commerce growth: Global and regional trends.

E-commerce is in a phase of rapid expansion. In 2009, its global turnover had already reached \$313 billion. China dominates the global market, followed by the United States and the United Kingdom, while France ranks sixth. Although online product sales have quadrupled in ten years, they still only represent 10% of retail trade.

The global e-commerce giants in terms of traffic are Amazon.com, Aliexpress.com (with the highest annual growth of 44%), and Walmart.com. In France, Amazon also leads, followed by national players such as leboncoin.fr and cdiscount.com.

In Africa, the e-commerce market is particularly dynamic, with an annual growth of 25% (compared to 15% globally), and is expected to reach \$180 billion by 2024, according to McKinsey & Company. This dynamism is fueled by a growing population (young and connected), urbanization (increasing the number of middle-class consumers), and the development of telecommunications infrastructure.

However, the continent faces major challenges: low internet penetration, limited infrastructure (affecting delivery and payment), and underdeveloped regulation, which creates uncertainty for businesses.

In Gabon, electronic payments and transactions are growing strongly, particularly within the CEMAC zone. In 2020, the country recorded over 2,062 billion CFA francs in electronic payments, a performance attributed to the increase in payment accounts (rising from 2.3 million in 2019 to 2.7 million in 2020) and the rise of Mobile Money. The outstanding electronic money also increased, reaching over 29 billion CFA francs. The interoperability promoted by GIMAC and transfers abroad have also contributed to this democratization of electronic payments.

1.3. Challenges of e-commerce

In the world of e-commerce, online businesses face numerous legal challenges regarding both the management of business taxation and intellectual property.

➤ Management of Business Taxation

Regarding the taxation of e-commerce and electronic transactions in Gabon, we note that e-commerce, particularly in its cross-border dimensions, raises significant questions regarding taxation and customs.

Indeed, VAT (Value Added Tax) applies to the sale of goods and services. Furthermore, **Finance Law No. 025/2022 of January 30, 2023**, introduced a specific tax on electronic financial transactions, set at a rate of 0.5% [1]. This tax is levied on the amount already collected by mobile phone operators for transactions carried out via their networks. This tax is collected on a monthly basis through a declarative regime.

➤ Intellectual property

The point here is to highlight the crucial role of intellectual property and its role in e-commerce.

Intellectual Property (IP) includes exclusive rights granted to creators and innovators over their works, inventions, trademarks, and designs. It is of paramount importance in the field of e-commerce, where the majority of commercial exchanges take place online. In the context of e-commerce, IP is essential for several reasons. First, it protects the rights of creators, brands, and businesses that invest significant time, resources, and expertise to develop innovative products and services. By guaranteeing exclusive rights, IP offers legal protection and encourages innovation by ensuring a return on investment for creators.

Footnote

[1] EDI (Electronic Data Interchange) refers to the exchange of standardized electronic documents between two business partners, from computer to computer. It is a standardized electronic format that replaces paper documents such as purchase orders or invoices.

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Moreover, intellectual property plays a fundamental role in protecting a brand's reputation and value. Companies must actively protect their IP assets, particularly by registering them with the competent offices.

In Gabon, this mission is entrusted to the Gabonese Office of Industrial Property (OGAPI), a public institution created in 2014, whose statutes were approved in 2020.

At the CEMAC zone level, IP is governed by the Bangui Agreement, adopted in 1977 and revised in 1999 and 2015. The latter amendment, which came into force in November 2020, aimed to harmonize the agreement with international conventions and improve its effectiveness. Article 2 of Annex III of this Agreement defines trademarks for products or services as any visible sign capable of distinguishing the products or services of an enterprise (names, denominations, shapes, labels, etc.).

To be protected, a trademark must be registered, which grants its owner an exclusive right of use, enforceable against everyone, valid for ten years and indefinitely renewable. Trademark rights are transferable. Any trademark infringement can lead to an action for infringement before criminal or civil courts.

1.4. Advantages and Disadvantages of E-commerce for Gabon

While e-commerce provides many benefits to new online market players, it's important to note that it also comes with disadvantages.

➤ Advantages

E-commerce offers a multitude of benefits. For businesses, it allows them to reach a much larger audience, transcending geographical borders. Operating costs are generally reduced because the absence of expensive physical stores lowers overhead. Consumers also benefit; they can shop at any time without having to travel. E-commerce also provides a considerably wider choice of products and prices, enhanced by reviews from other consumers that help them make informed decisions.

More specifically, e-commerce offers:

- Reduced operating costs: Fewer expenses related to physical premises and sales staff.
- Extended hours: Sales are possible 24/7, meeting customer needs at any time.
- A vast product selection: More virtual space means a wider range of products than in a physical store.
- Consumer reviews: Feedback helps buyers make informed choices.
- Secure payments: Reliable online payment options (credit cards, electronic systems) simplify transactions.
- Customer data: Data collection allows for a better understanding of customer needs and refining the product offering.
- Targeted marketing campaigns: Using customer data facilitates more effective marketing efforts.
- Global reach: The ability to reach customers anywhere in the world, without geographical constraints.

➤ The inevitable challenges of e-commerce

Despite these clear advantages, e-commerce also presents significant challenges in Gabon, just as it does elsewhere. Competition is intense, forcing businesses to differentiate themselves to attract and retain customers. Furthermore, online sellers must master the risks associated with data security and the protection of their consumers' personal information. In summary, e-commerce is a promising path for new sellers, but it requires a solid strategy to navigate a competitive and secure environment.

➤ Disadvantages

To put it concisely, what are the downsides of e-commerce? What are the challenges that need to be addressed?

Despite its advantages, e-commerce has notable drawbacks.

- Fierce Competition: The large number of players in the market makes competition very intense, making it difficult for businesses to differentiate themselves.
- Security Risks: Companies must imperatively protect customers' sensitive data (payment and personal information) to prevent fraud and data theft.
- Complex customer relationship management: It is more difficult to communicate and resolve customer issues remotely compared to in-person interactions.
- Delivery Challenges: Logistics problems or transport delays can complicate the delivery of products to customers.
- Inability to physically view products: Customers cannot see or touch products before purchasing, which can lead to dissatisfaction and returns.
- Limited after-sales service: Access to after-sales service can be less straightforward for products purchased online.
- Quality control issues: It is more difficult to guarantee the quality of products sold remotely, as control is more complex.

2. The legal framework of e-commerce transactions

This section aims to evaluate the adequacy of legal protection for Gabonese consumers facing the challenges of e-commerce. To do this, we will first analyze the applicable legislations, namely: the legislative and regulatory framework for electronic transactions. Then, we will examine the institutional framework for electronic transactions in the Gabonese Republic.

Footnote Translation

[1] New Article 60 of Law No. 025/2022 of January 30, 2023, determining the state's resources and expenditures for the year 2023.

2.1. The legislative and regulatory framework at the international level

In Gabon, consumer law is governed by national law and community law. Since Gabon does not have a specific law on consumer protection, community law is currently more developed than national law. Thus, we will first highlight CEMAC community law for consumer protection, and then Gabonese national law.

Directive N° 02/19-UEAC-639-CM-33 harmonizing consumer protection within CEMAC lays the foundation for the application of protective consumer law, not only within the CEMAC sub-region but more specifically in Gabon.

Thus, on March 22, 2019, CEMAC adopted an instrument harmonizing consumer protection. This is **Directive N° 02/19-UEAC-639-CM-33 of April 8, 2019**. In February 2024, the results of the voluntary peer review of Gabonese consumer policy were presented and disseminated, in accordance with the aforementioned Directive, which is based on guiding principles that guarantee consecrated rights.

As a result, consumers are granted 13 fundamental rights [1] that contribute to their protection and apply to all countries in the CEMAC zone.

Furthermore, the Directive protects consumers against certain commercial practices and specifically prohibits three (3) types of practices. These three (3) types of practices, which are in the Directive, were also clarified by the Minister of Economy and Participations, Mays MOUSSI [2], during the peer review. They are:

- Prohibition of any **unfair commercial practice** towards the consumer [3];
- Prohibition of **false and misleading commercial practices** [4];
- Prohibition of **abusive commercial practices** [5].

Of course, there are other community texts that promote consumer protection.

Indeed, within CEMAC community law, numerous texts govern consumer protection. The importance of these texts stems from the fact that they deal specifically with certain aspects of consumer protection, on the one hand, and are, on the other hand, directly applicable, which means that the consumer can demand their application before the competent national and community courts. As CEMAC regulations, these texts are superior to national law and are directly applicable. This analysis focuses on financial services and air transport, given their impact on consumer well-being.

a) Banking products and services

This text is governed by **Regulation N° 01/20/CEMAC/UMAC/COBAC of July 3, 2020**, concerning the protection of consumers of banking products and services in CEMAC.

As per this regulation, **Article 1** states: "the consumer of banking services or 'consumer' is defined as any natural person who, in a contract related to banking products or services, acts for purposes that do not fall within the scope of their artisanal, agricultural, industrial, commercial, or liberal activity." Indeed, **Article 3** of the said Regulation states: "any credit institution, microfinance institution, or payment institution, as well as any intermediary in banking operations operating in the territory of one of the CEMAC States, which offers banking products and services to consumers, is subject to the provisions of this regulation." However, according to **Article 8**, the Regulation prohibits any advertisement for a banking product or service aimed at consumers that contains, in any form, false or misleading allegations, indications, or presentations when they concern one or more of the following elements: existence and date of availability, nature of the product or service offered, price and sales conditions, conditions of use, scope of commitments made by the consumer, scope of commitments made by the institution, identity or quality of the institution.

Thus, this Regulation protects consumers from certain specific abusive clauses; it also protects consumers against the use of their personal data as per **Article 28** of the said Regulation.

b) Air Transport

Regulation n° 06/07-UEAC-082-CM-15 of March 19, 2007, organizes the regime of air carrier liability in case of a violation of passenger boarding rules in the airports of CEMAC member states [1].

Indeed, this regulation sets the minimum rules applicable in case of a violation of passenger boarding rules by air carriers, either due to a refusal to board passengers on a booked scheduled flight, or due to a significant delay, or the cancellation of the flight. Furthermore, it also determines the modalities of compensation as a way to distribute any harm suffered by a passenger in the airports of the member states, regardless of the state in which the air carrier is established, and regardless of the passenger's nationality or their destination, as per Article 2 of the Regulation.

Consequently, this regulation provides detailed information on the compensation that passengers may receive in the event of flight cancellation, refusal to board, or flight delay, in **Articles 5, 7, and 8**.

Footnotes Translation

[1] Article 3 of Directive N° 02/19-UEAC-639-CM-33 of April 8, 2019, harmonizing consumer protection within CEMAC.

[2]<https://gabonmediatime.com/gabon-le-droit-et-la-politique-de-protection-du-consommateur-passez-au-crible/> Consulted on March 28, 2024.

[3] Article 32 of the Directive.

[4] Article 35 of the Directive.

[5] Article 40 of the Directive.

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c) The variability of the global effective rate and protection against usury

This text is governed by **Regulation 04/19 CEMAC/UMAC/CM of August 10, 2020** [2], relating to the global effective rate, the repression of usury, and the publication of banking conditions in CEMAC. It protects consumers of financial services by promoting transparency, fairness, and effective competition. Additionally, institutions must periodically declare to the national economic and financial committee of their country of establishment the global effective rates applicable to all credits granted to clients.

d) Payment products and services

This text is governed by **Regulation N° 04/18/CEMAC/UMAC/COBAC of December 21, 2018**, relating to payment services in CEMAC. It establishes measures for the protection of consumer funds. Indeed, these funds must not be used for financing the operational needs of a banking institution or credits granted to clients. They can only be used for the purpose of carrying out payment operations and are protected against any claim by other creditors, including in the case of an execution procedure or collective debt settlement procedure opened against the institution.

e) The guaranteed minimum banking service

Instituted by Article 5 of **Regulation n° 01/20/CEMAC/UMAC/COBAC of July 3, 2020**, concerning the protection of consumers of banking products and services in CEMAC, the minimum banking service for consumers of services and products provided by credit institutions, microfinance institutions, and payment institutions operating in CEMAC is now effective.

Since July 30, 2020, it has been organized by **COBAC Regulation R-2020/04** relating to the guaranteed minimum banking service. This regulation lists, in a limited manner, the operations, products, and services that consumers can access free of charge.

The services covered by the guaranteed minimum banking service are listed in Article 2 of this Regulation. Some of the enumerated services and products were accessible, or at least should have been, since **January 1, 2021** [3], the date the Regulation came into force. Others, on the other hand, were only required to be so as of **January 1, 2023**, 24 months later. Thus, the opening of accounts has been free since January 1, 2021, while the operation of these accounts would only become free from 2023.

2.2. The legislative and regulatory framework at the national level

Regarding consumer protection in Gabon, the legal framework is primarily based on the 2022 draft law organizing the consumer protection regime in the Gabonese Republic. This law is supplemented by other national texts that contribute to ensuring the same protection for consumers.

a) The 2022 draft law on organizing the consumer protection regime in the Gabonese Republic

Gabon does not yet have specific legislation on consumer protection. On the other hand, there is a draft law that has not yet been examined but will certainly be used as a reference, as it is in line with the CEMAC directive on consumer protection.

However, two elements must be clarified. One concerns the scope of the law, i.e., the applicable law and the areas concerned, while the other concerns the institutional framework, i.e., the handling of complaints and punitive measures.

First, the scope of the law would be quite broad, because if the text were adopted without modification, it would apply to all transactions related to the supply, distribution, sale, exchange, and use of goods or services between a consumer and a professional or economic operator, including for electronic transactions when the economic operator or the consumer is domiciled in Gabon; when the communication concerns both a good and a service, if the offer or acceptance of a contract is made to or from Gabon; and finally, when the commercial practice is carried out or received in Gabon [1].

This extension, particularly of the material and territorial scope, is welcome as it allows for an expansion of the range of consumers who can be protected. Regarding the areas covered by the scope, the targeted transactions are expected to include sectors such as health, pharmaceuticals (including traditional medicine), food, household appliances, cars, water, energy, housing, education, financial and banking services, insurance, transport, tourism, telecommunications, electronic communication services, and other commercial services [2].

Subsequently, at the institutional level, the DGCCRF (General Directorate for Competition, Consumer Affairs, and Fraud Prevention) [3] has the power to investigate and handle complaints, resolve disputes, and implement sanctions in accordance with the current framework. Regarding the handling of complaints, once the procedure is complete, the DGCCRF has the possibility of taking all necessary measures to end the disturbance and administratively or financially sanction indecent operators. It also has the option of negotiating with economic actors to find an amicable solution to conflicts by compensating the victims. Regarding dispute resolution, the draft law establishes who is authorized to initiate procedures and sets the legal framework for procedural rules to resolve disputes, as defined in Article 148 and subsequent articles.

With respect to sanctions, the draft law provides that the DGCCRF and approved consumer associations are authorized to participate in any public action aimed at implementing the criminal penalties provided in case of failure. Specifically, regarding the sanctions, the law provides for three categories: in addition to administrative sanctions, it establishes the regime for criminal and civil sanctions.

b) Other national texts contributing to consumer protection in Gabon

Gabon has many texts that contribute, in one way or another, to consumer protection.

- **Consumer information and education law No. 14/98 of July 23, 1998**, establishing the Competition Regime in the Gabonese Republic, enshrined the liberalization of prices and trade. It followed **Law No. 5/89 of July 6, 1989**, on competition, which had initiated the process of economic liberalization. The law imposes an obligation to inform consumers

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by requiring the seller to issue an invoice, which must mention, among other things, the unit price and quantity of the goods, or the value of the service rendered. **Articles 27 and 28** of the law define the practice of illicit pricing. The law organizes a regime of procedures and sanctions for operators who do not comply with the established rules.

- **The price regime.** The same law governs consumer information and education. Indeed, before these provisions, **Law No. 29/63 of June 15, 1963**, regulating prices in the Gabonese Republic, organized the price regime. It remains that the prices of certain products such as bread, sugar, pharmaceutical products, school textbooks, or petroleum products are determined by a specific regulation. Similarly, the prices of certain services or benefits can be fixed either by approval or by decree [4]. The law imposes an obligation to inform consumers by requiring the seller to issue an invoice, which must mention, among other things, the unit price and quantity of the goods, or the value of the service rendered. Articles 27 and 28 of the law define the practice of illicit pricing. The law organizes a regime of procedures and sanctions for operators who do not comply with the established rules.
- **Electronic transactions and privacy protection through personal data Law No. 025/2021 of December 28, 2021**, which governs electronic transactions in the Gabonese Republic, is the first text to regulate electronic transactions and guarantee privacy protection in the Gabonese Republic. In accordance with its **Article 2**, it concerns all electronic transactions, including information society services; non-economic activities carried out remotely and by electronic means concerning goods, services, rights, or obligations; activities carried out remotely and by electronic means concerning goods, services, rights, or obligations, when they connect individuals acting for non-professional purposes, whether they are commercial, industrial, artisanal, or liberal; the digitization of administrative and judicial procedures and formalities; the State, local authorities, and any public or private legal person responsible for the management of a public service put public information online. However, certain activities are not formally covered by the law; they are mentioned in **Article 3** of this law.
- **Dispute resolution and compensation for harm** In Gabon, there are different approaches to resolving consumer disputes, whether through judicial or amicable means. We are talking about conciliation, mediation, and arbitration by amicable means. It is essential to handle consumer disputes quickly and appropriately to facilitate access to dispute resolution structures and ensure a balance between professional actors and consumers. The DGCCRF has the authority to manage complaints or take corrective measures by following administrative procedures. The different possibilities for conflict resolution include conciliatory solutions and negotiated solutions.

Gabon has not yet established specific rules on this subject. It is true that access to courts to resolve conflicts is possible, but in reality, the common law in force does not encourage turning to the judicial system for at least three reasons:

- The consumer has to face high fees and expenses that outweigh the value of the goods or services concerned.
- The delays in handling cases within the competent jurisdictions.
- The judicial language is technically complex and poses problems of corruption.

In addition, it frequently happens that the DGCCRF's control services are seized for disputes that they manage to resolve, but without being able to make important decisions such as compensating the victims of violations of consumer protection rules. By creating specialized courts or chambers within the jurisdictions of the Judicial Order, as well as by implementing conciliation or judicial mediation, it would be possible to improve the handling of consumer disputes. Among these situations, it would be possible to set up simplified procedures.

Such bodies could implement simplified procedures. This list is not exhaustive, as we can also mention other texts such as those concerning transport, the preservation of food products and foodstuffs, direct consumer credit operations, and quality control.

3. The institutional framework

Objectives of the Regulation and Institutional Framework for Consumer Protection

The primary objective of any regulation in this area is consumer protection. To achieve this effectively, it is crucial to establish a solid institutional framework. This framework should include the creation of dedicated public bodies for the control and effective application of regulations. These entities would also have the role of collecting relevant information.

In parallel, it is important to involve private institutions so that they can, based on this information, issue official communications and, most importantly, raise public awareness of their rights.

3.1. Public institutions in charge of consumer protection

Among these public institutions, there is the General Directorate for Competition, Consumer Affairs, and Fraud Prevention and other administrations that also contribute to this protection.

- The General Directorate for Competition, Consumer Affairs, and Fraud Prevention

Decree No. 00253/PR/MER of September 29, 2022, creating, attributing, and organizing the DGCCRF, supplements **Decree No. 000665/PR/MEFBP of August 2, 2004**. The missions assigned to this administrative body regarding consumer matters are set out therein. Indeed, the General Directorate for Competition, Consumer Affairs, and Fraud Prevention is the main public institution in charge of consumer protection in Gabon. Its mission is to implement the Government's policy on competition, consumer affairs, and fraud prevention, according to **Article 3** of the said decree. However, to strengthen consumer protection, the DGCCRF has

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revised its organization by rationalizing the various services. Thus, according to **Article 42** of the said decree, the DGCCRF comprises three (3) services, such as:

- The Consumer Protection Service;
- The Consumer Safety Service;
- The Risk Monitoring and Prevention Service.

This demonstrates a constant desire to foster collaboration with other administrations in charge of consumer protection to solve the problem of overlapping jurisdictions observed at the institutional and operational levels. Furthermore, it would be desirable to designate the DGCCRF as the focal point for consumer protection issues in Gabon.

3.2. Other administrations contributing to consumer protection

Several ministries, by their very nature, contribute to the protection and defense of consumer interests. This includes, for example, the Ministry of Health and Social Affairs, which is in charge of developing and enforcing standards for the quality of care, medicines and medical devices, and health infrastructure and equipment.

The Ministry of Transport, for its part, designs and implements regulations on land transport, air transport, and the maritime transport of goods and people. It ensures passenger safety and compliance with competition rules in the exercise of transport activities. The Ministry of Agriculture ensures that agricultural production is sufficient, of satisfactory quality, and safe for consumers.

The Ministry in charge of the Environment is responsible for ensuring the sustainable management of natural resources, which are by nature limited, and for promoting the sustainable consumption of products.

In addition to these administrations, there are regulatory bodies participating in consumer protection.

Besides the DGCCRF, there are technical regulatory bodies operating in specific areas of consumer protection and reporting to another supervisory ministry. The most well-known regulatory agencies in Gabon are the AGASA (Gabonese Agency for Food Safety) for agriculture, the ARCEP (Regulatory Authority for Electronic Communications, Posts, and Press Distribution) for telecommunications, and the ARSEE (Regulatory Agency for the Drinking Water and Electrical Energy Sector) for water and electricity. The standardization body, the AGANOR (Gabonese Agency for Standardization), also participates in this mission of protection.

- The Gabonese Agency for Food Safety Created in 2011, by **Decree n°0292/PR/MAEPDR of February 18, 2011**, as amended by **Decree 0667/PR/MAEPDR of July 10, 2013**, the Gabonese Agency for Food Safety, or AGASA, has the mission of providing advice and scientific and technical assistance in all areas that have an impact on food safety, protecting the health and interests of consumers while ensuring the proper functioning of the internal market, ensuring the constitution of safety stocks, ensuring the proper management of supplies and safety stocks, proposing strategies, implementing them in conjunction with other concerned ministerial departments, ensuring the information of consumers, particularly on prices and the sanitary and nutritional quality of food, researching, collecting, analyzing, and summarizing scientific and technical data in the fields of food safety, conducting an action for the identification and characterization of emerging risks, and ensuring liaison with other similar food safety and health agencies or structures [1].
- The Regulatory Authority for Electronic Communications and Posts The Regulatory Authority for Electronic Communications and Posts (ARCEP) of the Gabonese Republic is an independent administrative authority. It was created by **Ordinance n°000008/PR/2012 of February 13, 2012**, and ratified by **Law n°006/2012 of August 13, 2012**, which repeals **Decree n° 0116/PR/MCEN** and confers upon ARCEP the status of an "Authority" instead of an "Agency," new missions, and an organization adapted to the functioning of an authority. Its missions notably include preparing studies and draft texts related to the Electronic Communications and Postal sector, ensuring operators comply with the provisions contained in licenses, authorizations, accreditations, and specifications, and sanctioning or having offenders sanctioned [2].
- The Gabonese Agency for Standardization Created by **Decree n° 0227/PR/MIMT of June 23, 2014**, the Gabonese Agency for Standardization (AGANOR) is a public administrative establishment placed under the supervision of the Ministry in charge of Industry. It has legal personality and enjoys administrative and financial management autonomy. Its mission is to implement government policy in the fields of standardization, conformity assessment, and metrology [3].
- The Regulatory Agency for the Drinking Water and Electrical Energy Sector The ARSEE was created by **Law n°026/2010 of July 27, 2010**, ratifying **Legal decree N°019/PR/2010 of February 25, 2010**, creating, attributing, organizing, and operating the Regulatory Agency for the Drinking Water and Electrical Energy Sector in the Gabonese Republic. Its mission is to ensure the quality of drinking water and electrical energy services, which translates into continuity, safety, the obligation to supply, and equal treatment of users throughout the territory; to ensure the legitimate interests of users and operators holding contracts, licenses, and concessions when regulations in the drinking water and electrical energy sector are modified; to ensure the continuity of public service and protect the general interest; and to grant, under conditions of transparency and competition, authorizations and operating licenses in the drinking water and electrical energy sector [4], among others.

3.3. Private institutions contributing to consumer protection in Gabon

Among private institutions, we must mention consumer associations that defend the interests of consumers, as well as the media and businesses that help raise consumer awareness about the dangers of using certain products.

➤ Consumer associations

Consumer associations play a crucial role in implementing consumer protection policies, acting both preventively for amicable solutions and legally to defend collective and private interests.

In Gabon, numerous associations, particularly generalists like "SOS Consommateurs" and the Gabonese Consumers' Organization (OGC), work in this field. However, they face major challenges, including a lack of financial and human resources, legitimacy problems due to low membership, public unawareness of their existence, and difficulties related to literacy.

Despite these obstacles, they provide daily assistance, as evidenced by the expansion of the OGC to cover the national territory and promote food safety and consumer rights awareness. To be fully legitimate and effective, these associations must ensure their independence, have adequate resources, strengthen their capacities through continuous training, and be representative without any conflict of interest.

➤ Media and businesses

In Gabon, the media plays a crucial role in consumer protection. They conduct awareness and education campaigns among the population through various communication channels such as radio, television, print media, and the internet. They alert consumers to the dangers associated with using certain types of products and services. Moreover, the media alerts consumers to the dangers of using certain types of products.

The role of businesses in consumer protection is essential for establishing and maintaining customer trust, as well as for ensuring lasting relationships. They must actively participate in consumer protection. Thus, to encourage business participation in consumer protection, it would be important to organize consultation frameworks by sector, as well as consultations on issues like the high cost of living. Public administrations and businesses should also conduct awareness and information campaigns, particularly through employers' associations.

4. Dispute resolution in e-commerce

Article 200 of Law No. 025/2023 of July 9, 2023, amending **Law No. 001/2011 of September 25, 2011**, on the protection of personal data, states: "Every person has the right to non-judicial and judicial recourse in the event of a violation or infringement of their personality in the matter of personal data, in accordance with the texts in force."

This article highlights two procedures for resolving conflicts: amicable recourse and judicial recourse.

4.1. Amicable recourse options [1]

Regarding amicable dispute resolution options, we have mediation (a) and arbitration (b).

a) Mediation

Mediation can be considered as an alternative for conflict resolution in Gabon.

Indeed, mediation is a method of amicable dispute resolution where the parties in conflict call upon a neutral third party, the mediator, to help them find an agreement. The mediator can be chosen by the parties or appointed by a judge, always with their consent.

Historically, Gabonese economic actors had to turn to foreign countries for the mediation of commercial disputes. However, since December 23, 2020, the International Institute of Mediation, Arbitration, and Conciliation (IIMAC) has opened its doors in Libreville. Created in March 2020, IIMAC's mission is to resolve contractual and public investment disputes consensually. Its objective is to offer **a private, fast, and local justice** that is less procedural, all while respecting the rule of law. IIMAC aims to promote alternative dispute resolution methods by offering its expertise in commercial and investment arbitration, conciliation, and mediation. The mediation process, for which the mediator is the guarantor, generally takes place in four essential phases. This initiative represents a significant step forward for the resolution of economic conflicts in Gabon, offering an alternative based on the mutual consent of the parties.

b) Arbitration

Arbitration: a private, jurisdictional method of conflict resolution in Gabon.

Arbitration is a procedure by which disputing parties entrust one or more arbitrators, acting as "private judges," with the mission of settling their conflict without going through state courts. Unlike other alternative dispute resolution methods, arbitration is a private jurisdictional and contentious procedure. It is established either by an arbitration clause inserted into a contract before any dispute arises or by an arbitration agreement signed after the dispute has begun. The parties choose the arbitrators based on their skills and availability.

For Gabon, reducing the time for handling commercial disputes through arbitration can significantly improve the business environment. Investors value the security of their investments, which depends on the ability to resolve conflicts quickly and efficiently.

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The Organization for the Harmonization of Business Law in Africa (OHADA) has institutionalized arbitration as a standard method for the legal resolution of commercial conflicts. The revised OHADA Uniform Act on Arbitration came into force on December 15, 2017.

The arbitration procedure takes place in several key stages:

- **The arbitration agreement:** This is the contractual basis for arbitration. It obliges the parties to submit their dispute to this method.
 - The arbitration agreement concerns an already existing dispute.
 - The arbitration clause is a contractual provision anticipating future disputes.
- **The arbitral procedure:**
 - Acceptance of arbitration: all parties must consent to arbitration and can be assisted by a lawyer.
 - Signing the agreement: the parties formalize their consent.
 - The course of the arbitration: the arbitrators examine the evidence, hear the parties, and render an arbitral award.
 - Notification of the decision: the decision is communicated to the parties.

A major advantage of arbitration is the confidentiality of the dispute, as the procedure is not public and the award is not published, unlike traditional court proceedings.

In the context of arbitration, the arbitral award is not subject to traditional avenues of appeal such as direct opposition, appeal, or cassation appeal. The only recourse against an arbitral award is an action for annulment, which must be brought before a state court. The decision of this court concerning the action for annulment can, in turn, only be subject to a cassation appeal before the Common Court of Justice and Arbitration (CCJA).

The action for annulment is admissible only in cases strictly defined by the OHADA Uniform Act on Arbitration (AUA). These cases include:

- The absence, nullity, or expiration of the arbitration agreement;
- Irregularity in the composition of the arbitral tribunal or the appointment of the sole arbitrator;
- The arbitral tribunal's failure to comply with the mission entrusted to it;
- Failure to comply with the principle of due process;
- The arbitral tribunal's violation of a rule of international public policy of the OHADA signatory states;
- The absence of reasons for the arbitral award.

Furthermore, the arbitral award may, under certain specific conditions detailed in Article 25 of the AUA, be subject to an action for revision or a third-party opposition directly before the Arbitral Tribunal.

4.2. Recourse to the courts

Judicial recourse first requires knowing the **territorial jurisdiction** of the dispute (a) and finally, knowing how to initiate the legal procedure (b).

a) Territorial jurisdiction

Regarding the resolution of e-commerce disputes in Gabon, territorial jurisdiction is based on the ability of economic operators to refer a dispute to a judge.

Principle: the rules of classic civil procedure also apply here. **Articles 42 to 48 of the French Code of civil procedure** stipulate that the geographically competent commercial court will be that of the defendant's domicile (the opponent). The competent commercial court will therefore be that of the location of the merchant's domicile or the company's registered office.

In Gabon, the territorial jurisdiction of the Commercial Court covers the province where it is headquartered, as stipulated in **Article 204, paragraph 2 of Organic Law N° 008/2019**, which defines the organization, composition, jurisdiction, and functioning of the judicial order.

Exception: For collective proceedings, the competent Commercial Court will be that of the debtor's domicile [1] (Article R. 600-1 of the Commercial Code).

b) Judicial procedure

Organic Law N° 008/2019 defines the organization, composition, jurisdiction, and functioning of the judicial order.

To settle an e-commerce dispute, the aggrieved party can file a lawsuit with the Commercial Court, which is the competent jurisdiction for commercial disputes. The Commercial Court of Libreville also handles commercial litigation [2], including those related to e-commerce. Since 2020, this court has rendered 242 judgments.

Footnote

[1] There are different types of Alternative Dispute Resolution (ADR) methods that are adapted to different types of situations: negotiation, mediation, conciliation, collaborative law, or arbitration.

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This court can be seized by:

- Summons (Voie d'assignation) [3]: The summons is therefore a legal demand that initiates the proceedings before a court. It is a document drafted and submitted by a bailiff to the registry of the competent Commercial Court. In other words, by this document, a plaintiff informs a defendant (their opponent) that a lawsuit has been filed against them and that they must appear at the location, date, and time indicated in the summons.
- Joint Request (Requête conjointe): A joint request is a way to seize the judge, i.e., to ask them to settle a conflict. The parties agree to ask the judge to settle their conflict (without necessarily agreeing on the solution to be given to their conflict) and to appear together before them.
- Joint Presentation (Présentation conjointe): If both parties agree, you can file a joint request with the registry of the competent Commercial Court. This step initiates the dispute resolution procedure.

Once the Commercial Court is seized, a judge will be appointed to investigate the case. Initially, an attempt at amicable resolution of the dispute will be considered between the parties, called conciliation. If this fails, a hearing will be scheduled to rule on the dispute.

The jurisdiction of the Commercial Court extends to conflicts involving merchants, commercial acts, or companies. Article 2011 states that: "The Commercial Court has jurisdiction to hear, in particular: disputes relating to commitments between merchants and credit institutions, disputes relating to commercial companies, particularly disputes between partners, disputes relating to commercial acts between all persons, disputes between companies, including in stock market and financial law, particularly in matters of commerce and competition, disputes relating to bills of exchange and other means of payment, disputes between individuals and merchants or commercial companies in the exercise of their activities, the difficulties of commercial companies, particularly in matters of collective debt settlement proceedings."

Thus, in accordance with Article 2012 of the said law, this court has jurisdiction, on the one hand, for disputes whose value is between five million CFA francs and fifty million CFA francs, the court shall rule, in the first instance, within a period of three months. This period may be extended by three months by a reasoned decision of the president of the court. And on the other hand, for disputes whose value is greater than fifty million CFA francs, the court shall rule, in the first instance, within a period of six months. This period may be extended by three months.

CONCLUSION

Ultimately, we will conclude that online commerce is a constantly evolving sector, presenting both significant economic opportunities and complex legal challenges. In Gabon, although the legal framework for e-commerce is relatively recent, it demonstrates the legislator's interest in regulating transactions between professionals and consumers.

The adoption of this legislation is motivated by several key factors. First, the desire to stimulate the national economy and enable local businesses to access the global market. Second, the need to protect consumers, who are perceived as vulnerable due to an imbalance of information and experience with professionals, justifies the implementation of mechanisms such as the right of withdrawal and protection against abusive clauses. Finally, the desire to comply with international and regional standards has strongly influenced the development of Gabonese laws in this area.

However, despite these advances, the current Gabonese legal framework is considered insufficient and sometimes ineffective, with notable shortcomings concerning certain essential aspects of e-commerce and consumer law. To remedy this, two main solutions are being considered:

- **Drawing inspiration from foreign regulations** (such as French law or other international legislations) that are more exhaustive, while adapting them to Gabon's socio-economic, cultural, and political realities.
- **Harmonizing e-commerce law at the regional level** through organizations like CEMAC or OHADA. Such supranational harmonization would facilitate regional and global commercial exchanges.

In terms of technological innovations, the rise of electronic wallets like PayPal, Apple Pay, Google Pay, as well as local services such as Airtel Money and Mobicash, simplifies online and in-store payments. In the event of disputes, Gabonese consumers can resort to amicable procedures (mediation and arbitration) or to judicial proceedings before the Commercial Court.

Footnote

[1] How to file a lawsuit with the Commercial Court: Detailed procedures (litige.fr) - Consulted on May 16, 2024.

[2]<https://ecomatin.net/banque-le-gabon-veut-creer-un-mecanisme-de-mediation-financiere-pour-desengorger-les-tribunaux/> - Consulted on May 17, 2024.

[3] What is a joint request (formerly known as voluntary appearance)? | Droits Quotidiens - Clear legal language.

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3- LEGISLATION

1. Directive N° 02/19-UEAC-639-CM-33 harmonisant la protection du consommateur au sein de la CEMAC
2. Loi n°29/63 du 15 juin 1963 portant règlementation des prix en République Gabonaise
3. Loi n°026/2010 du 27 Juillet 2010 portant ratification de l'ordonnance N°019/PR/2010 du 25 février 2010 portant création, attribution, organisation et fonctionnement de l'Agence de Régulation du Secteur de l'Eau potable et de l'Energie Electrique en République Gabonaise
4. Loi organique n°008/2019 du 04/07/2019 fixant l'organisation, la composition, la compétence et le fonctionnement de l'ordre judiciaire
5. Loi n°025/2021 du 28/12/2021 portant réglementation des transactions électroniques en République Gabonaise
6. Projet de loi de 2022 portant organisation du régime de protection du consommateur en République Gabonaise
7. Loi n°025/2022 du 30/01/2023 déterminant les ressources et les charges de l'Etat de l'année 2023
8. Loi n°027/2023 du 12 juillet 2023 portant réglementation de la cybersécurité et de la lutte contre la cybercriminalité en République Gabonaise
9. Règlement N° 06/07-UEAC-082-CM-15 du 19 mars 2007 organise le régime de responsabilité du transporteur aérien en cas de violation des règles d'embarquement des passagers dans les aéroports des États membres de la CEMAC
10. Règlement N°03/16/CEMAC/UMAC/CM du 21 décembre 2016 relatif aux systèmes, moyens et incidents de paiement
11. Règlement N° 04/18/CEMAC/UMAC/COBAC du 21 décembre 2018 relatif aux services de paiement dans la CEMAC
12. Règlement COBAC R-2020/04 relatif au service bancaire minimum garanti
13. Règlement N° 01/20/CEMAC/ UMAC/COBAC du 03 juillet 2020 relatif à la protection des consommateurs des produits et services bancaires dans la CEMAC
14. Règlement N° 4/19 CEMAC/UMAC/CM du 10 août 2020 relatif au taux effectif global et à la répression de l'usure et la publication des conditions de banque dans la CEMAC
15. Décret N° 0292 /PR /MAEPDR du 18 février 2011 modifié par le décret 0667/PR/MAEPDR du 10 juillet 2013
16. Décret n° 0227/PR/MIMT du 23 juin 2014 porte création et organisation de l'Agence Gabonaise de Normalisation
17. Décret N° 00253/PR/MER du 29 septembre 2022 portant création, attributions et organisation de la DGCCRF
18. Ordonnance n°000008/PR/2012 du 13 février 2012, ratifiée par la loi n°006/2012 du 13 août 2012
19. Directive N° 02/19-UEAC-639-CM-33 harmonisant la protection du consommateur au sein de la CEMAC
20. Accord de Bangui, régissant la propriété intellectuelle au sein des Etats membres de l'Organisation Africaine de la Propriété Intellectuelle (OAPI). Adopté le 2 mars 1977 et révisé le 22 février 1999