Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law*

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1. INTRODUCTION

The Internet, born and first used as means to exchange knowledge and information between institutions and research centres, or between cultural and research centres, has become also a major instrument for business activities through the exchange of tangible and intangible assets and services. Therefore we are witnessing a progressive placement side by side of a virtual market and the traditional market.

Figures are significant: according to a rough estimate, "*Starting from basically zero in 1995, total (global) electronic commerce is estimated at some $26 billion for 1997; it is predicted to reach $330 billion in 2001-02 and $1 trillion in 2003-05*"[2]. In the European Union, similar estimates are in line with such predicted growth calculating an on-line revenue from € 3.5 billion in 1999 to about €45 billion in 2002[3]. While at the beginning around 85% of the e-commerce transactions were business to business, the ratio is rapidly changing in favour of the business to consumer transactions, as purchasing goods and services on-line can benefit consumers through a wider choice and lower prices, while suppliers, and in particular small and medium-sized businesses, can have access to greater market opportunities relatively cheaply[4].

Different product sectors earned great success in electronic distribution. The success of the electronic transactions using internet is based on the opportunity for the customer to approach a wide range of offer without the constraint of business hours, the ease of comparing simultaneously different sites which offer identical or interchangeable services, and also the opportunity to survey and find adequate information to make a satisfactory choice without direct relations with sales representatives.

The different sectors where the electronic transaction has been developed have elaborated a wide operational area as a result of the possibilities given by the use of internet. The legal implications in the various sectors of electronic transactions are characterized by the peculiarities of the use of e-commerce instruments from one side, and the object of the legal transaction performed through the internet.

The conclusion of contracts through internet has represented a real innovation in the area of the traditional law contract. The main issue has been considered the lack of the instruments traditionally used to express the contractual will.

Even though the "electronic will" lacks verbal or para-linguistic exteriorization, it represents a "language"[5] different from the traditional one but suitable to validly express the declarer's intention in legal form. Therefore, either in the real or in the virtual world, the process for the conclusion of a contract is closed by the meeting of proposal and acceptance, but the peculiarity of the latter exists in the fact that the parties are not present in the same place but are in locations often extremely different, the only instrument of contact being the use of the internet.

The peculiarities of these kinds of agreements and the difference in terms of contractual strength between the two parties of the contract has encouraged legal scholars to consider the consumer protection issues as particularly relevant in this area of activity.

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[2] OECD, *The Economic and Social Impact of Electronic Commerce: Preliminary Findings and Research Agenda*, Report prepared by the Secretary-General for the Ottawa Ministerial Conference, "A Borderless World: Realising the Potential for Global Electronic Commerce" (OECD, 1998).

[3] Boston Consulting Group, *The Race for Online Riches – E-retailing in Europe* (Boston Consulting Group, 1999).

[4] G. PEARCE and N. PLATTEN, *Promoting the Information Society: The EU Directive on Electronic Commerce*, in (2000) 6 European Law Journal, n. 4, pp. 363-378.

[5] On the use of different forms to express the contractual will see N. IRTI, *Scambi senza accordo*, in (1998) *Riv. Trim. Dir. Proc. Civ.*, p. 350; more in general on the different form of expression of legal rules see R. SACCO, *Mute law* in (1995) 43 Am. J. Comp. Law, p. 455.

The consumer contracts are today the meeting point of the contrast between the traditional sufficiency of the formal equality between the contractual parties and the necessity of a more comprehensive control over the real contractual balance. For this reason, the electronic negotiation highlights the need of consumer protection at the highest level. In brief, it can be recalled that the consumer position at the conclusion of the contract needs to be strengthened against the one of the supplier: the consumer agrees to a non-modifiable fixed contractual proposal by the supplier and very often – especially when he is negotiating from home, at a distance – he has no possibility to obtain the adequate information about the goods or services for which the contract was concluded, that would normally be necessary to create his full intention to enter into the contract.

2. THE EUROPEAN LAW APPROACH

As it has been just seen, two aspects are particularly critical in the area of consumer contracts: the usual impossibility to negotiate the content of the agreement and the possible lack of opportunity for reflection by the consumer at the time of his declaration of will.

The first one is characterized by a high level of strictness, standardization being an essential feature of mass contracts.

However, to avoid any detrimental effects of standardization for the consumer, an effective compromise is provided by the European Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts by providing that "*A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer*"[6].

Consequently, the European lawmaker requests "*that unfair terms used in a contract concluded with a consumer by a seller or a supplier shall […] not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms*"[7].

Such Directive does not make any difference with reference to the type of conclusion of the contract, and therefore it will be necessary to verify if in the standard terms and conditions of the e-contract prepared by the supplier and that shall be provided to the consumer, any term or condition that is unfair according to the provisions of the Directive is present or not.

With reference to the second aspect, the one of the full liberty and awareness of the consumer in his decision making process to enter into a certain agreement, when a negotiation is absent and it is substituted by a simple assent to a standard and non-modifiable proposal as is the case in the electronic consumer contracts, it is more efficient and appropriate to offer a protection subsequent to the conclusion of the contract by giving the option to reconsider the contract he entered into. This necessity has been recognized by the European lawmaker, in general, through the European Directive 97/7/EEC of 20 May 1997 on the protection of consumers in respect of distance contracts and through the various European Directives referred to specific sectors.

Moreover, the European lawmaker already enacted the Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises creating a consumer protection regulation imposing special duties of information on the supplier and recognizing the right of withdrawal from the contract he entered into for the consumer [8]. By the way, Directive 97/7/EEC on the protection of consumer in respect of distance contracts has given rise to some harmonization problems with Directive 85/577/EEC.

The model that was kept into consideration for this Directive is that of the sales without any kind of negotiation, when the consumer "suffers" the terms and conditions of the contract without having any possibility to weigh it up. This is the reason why the core of such discipline is represented by the right of withdrawal and by the duty of the supplier to inform the consumer about the existence of such right.

The e-commerce is not expressly mentioned by Art. 1 of the Directive 85/577/EEC among its fields of application, but Art. 1, n. 4 of the Directive 85/577/EEC provides that "*This Directive shall also apply to offers made contractually by the consumer under conditions similar to those described in paragraph 1 or paragraph 2 where the consumer is bound by the offer*" and in principle this could be the case of the e-commerce transactions. Furthermore, e-commerce contracts are undoubtedly contracts negotiated away from the supplier's business premises, and there should be no question about the possibility to extend the application of such Directive to the electronic contracts, also if concluded by e-mail.

[6] See Art. 3, n. 1, of the Council Directive 93/13/EEC
[7] See Art. 6, n. 1, of the Council Directive 93/13/EEC
[8] See Art. 3, 4 and 5 of the EEC Directive 85/577/EEC.

In any case there is no doubt on the possibility to extend the application of the European Directive 97/7/EEC on the protection of consumer in respect of distance contracts to the e-commerce transactions.

E-commerce contracts are undoubtedly distance contracts: the electronic conclusion of contracts sets these kind of contracts in the area of contracts entered into using a distance communication device – internet – and therefore in the area of distance contracts[9]. Besides, the European Directive on e-commerce expressly safeguards the application of the Directive on distance contracts, as it will be considered later more in detail.

With specific reference to electronic contracts, reference shall therefore be made to the European Directive 2000/31/EEC of 8 June 2000 on electronic commerce[10], enacted to create a legal framework for electronic commerce with the purpose of achieving a balance between business interests and the need to protect consumer rights[11]. This Directive contains specific provisions in terms of information to be provided (Art. 10) and transparency in which the customers will give their full and informed consent (Art. 11) and be fully aware of means of redress (Art. 18 and 20)[12].

With particular reference to the duty of information, Article 10 of the said directive lists the minimum requirements in terms of information to be given to the consumers. The following paragraph 3 is particularly important: as it has been underlined, one of the main concerns in the area of e-commerce contracts is the impossibility for the consumer to negotiate terms and conditions of the agreement that he should enter into with the supplier. Therefore the European Directive requires that the supplier shall make available the terms and conditions of the agreement to the consumer in a way that he can read reproduce and print them, and such obligation is valid also for contracts concluded through the exchange of e-mails.

Directly connected to the issue of the information to be provided to the consumer is the subject of the advertising. This topic has already been addressed by the European lawmaker before the Directive on the e-commerce through the Directive 1984/450/EEC relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising and the Directive 1997/55/EEC concerning misleading advertising so as to include comparative advertising; and in this framework the Directive on e-commerce that deals with on-line advertisement is to be inserted.

Article 6 of the Directive prescribes the minimum requirements for on-line commercial advertisements, while the following Article 7 tries to establish some measures to prevent, or – at least – stem, undesired cases of spamming.

Even though such Directive has been enacted with the purpose to create a confident and protective environment for consumers in electronic transactions, it does not contain any right of free withdrawal for the consumer[13]. The European Directive 2000/31/EEC on electronic commerce, in fact, has adopted this kind of approach without providing any kind of general right of withdrawal for the consumer in the electronic contracts.

Moreover, the Directive expressly safeguards[14] the application of specific Community acts protecting consumer rights, making express reference to the Council Directive 93/13/EEC on unfair terms in consumer contracts and the Directive 97/7/EEC on the protection of consumer in respect of distance contracts.

Therefore, the consumer who decides to withdraw from the electronic contract should exercise such possibility by complying with the requirements provided for by the Directive on distance contracts, being sure that such right is exercised within the minimum term (7 days) provided for by the Directive in its Article 6, to avoid any problem deriving from the implementation of the Directive in the different European member countries.

From this brief overlook, it can be underlined that the European framework in terms of consumer protection in case of electronic commerce appears to be extremely fragmented. The European lawmaker has enacted a framework law on e-commerce, but some of the issues related to this kind of transactions can be solved only by picking up some provisions from other legal instruments.

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[9] With reference to electronic contracts as distance contracts see R. J. VASQUEZ GARCIA, *La Contratación en Internet*, in J. L. PERALES SANZ (ed.), *La Seguridad Jurídica en las Transacciones Electrónicas*, Madrid, 2002, p. 137; and with special reference to tourist contracts: C. VIGNALI, *La prenotazione telematica nell'ambito turistico*, in V. FRANCESCHELLI (ed.), *Commercio elettronico*, Milan 2001.

[10] Council Directive 2000/31/EEC, "*On Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (Directive on Electronic Commerce)*".

[11] See, in particular, recitals n. 7, 22, 29, 41, 55 and 56 of the Directive 2000/31/EEC.

[12] G. PEARCE and N. PLATTEN, *op. cit. supra*.

[13] On the inadequate protection level granted to consumers by Directive 2000/31/EEC see A.L. DIAS PEREIRA, *Comércio Electrónico na Sociedade da Informação: da Segurança Técnica à Confiança Jurídica*, Coimbra, 1999, who criticized the Directive already at the level of proposal.

[14] See recital n. 11 of the Directive 2000/31/EEC.

3. ISLAMIC LAW AND E-COMMERCE

Every scholar who approaches Islamic law immediately deals with a considerable complexity of its commercial law that is extremely different to the Western approach to the same branch of law. This is mainly due to the different level of the source of law: the Prophet was a merchant engaged in commercial practices, and he specifically permitted some of them and forbid others. Some of these prescriptions are held in the *Qur'an* and consequently have the status of Divine Command valid for all times; while others are set forth in the *Sunnah*, or authenticated reports about the acts and word of the Prophet. Therefore a great number of principles of Islamic commercial law are sacred prescriptions for which a very narrow range of interpretation is allowed[15].

Consequently it is easy to underestimate the difficulty of applying the traditional Islamic law to modern commercial transactions without taking into adequate account the above mentioned considerations.

Even if the Islamic commercial law is characterized by a high level of formalism and complexity, this should not prevent to verify the possibility to extend its application to the commercial transactions where the use of the new technologies is the most considerable feature. The question is therefore if the changes required by needs arising form e-commerce are compatible with *Shari'a* law.

Shari'a strongly recommends the search of knowledge. We have a number of examples of such prescription in many *Suras* of the *Qur'an*[16]. This is also very clear from some of the Sayings of the Prophet Mohamed. In one He said: "*He who seeks knowledge in any way, God would lead him to Heaven, and angels would put their wings for him*"[17]; in another he also stated: "*He who seeks knowledge would be rewarded twice if he accomplished its objectives, and would be rewarded once if he did not succeed*"[18].

Such verses of the *Qur'an* and *Sunnah* of the Prophet Mohamed clearly show the importance of gaining and properly using knowledge. Therefore there is nothing in principle in the *Shari'a* that forbids the acquisition of the advanced knowledge coming from the use of the new technologies and to use it for the benefit and the prosperity of the people. *Shari'a* makes no difference among the different kind of technologies, thus admitting all of them, including the ones necessary for the e-commerce transactions; then electronic communication technologies do not violate *Shari'a* precepts[19].

This conclusion, based on some of the *Suras* of the *Qur'an* and on the *Sunnah* cited above, is also confirmed by the principle of *Al Asle Al-Ebaha*, one of the most important principles of the *Shari'a*, according to which the basic rule of Islam is that everything is permitted except those things that are expressly forbidden[20]. Moreover there is also an effort to think the concepts developed by the human progress over the lens of the *Qur'an* and the *Sunnah*[21].

Such conclusion is only the starting point with reference to the legal implications of e-commerce according to Islamic law, because the use of the e-commerce tools has raised certain issues which should be examined according to the *Shari'a* principles and provisions.

It has been already clarified that the development of the e-commerce is based on the reliability of its environment. The parties involved in the transactions shall therefore have trust and confidence with reference to a number of issues among which we certainly have the validity and the enforceability of the transactions concluded in such manner, the integrity and completeness of if information, confidentiality, the security of the transaction tools,

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[15] J.K. WINN, *Islamic Law, Globalization and Emerging E-Commerce Technologies*, in The International Bureau of the Permanent Court of Arbitration (ed.), The PCA/Peace Palace Papers, "*Strengthening Relations with Arab and Islamic Countries Through International Law: E-Commerce, the WTO Dispute Settlement Mechanism and Foreign Investment*", Kluwer, …, 2002.

[16] For example, in *Surat Al Alaq* 96:1-5 "Read" is the first word of the Prophet's Revelation to direct Muslims to the acquisition of knowledge; in *Surat Fater* 35:28 it is stated: "Among his servants, who have knowledge for God is exalted …"; but other examples can also be quoted.

[17] *Collection of Sunan Abu Dawud*, n. 3157, in HADITH ENCYCLOPEDYA (Harf Information Technology).

[18] *Collection of Sunan Al-Darimi*, n. 339, in HADITH ENCYCLOPEDYA cit.

[19] M.I.M., ABOUL-ENEIN *E-Commerce Through the Lens of* Shari'a *Law*, in The International Bureau of the Permanent Court of Arbitration (ed.), The PCA/Peace Palace Papers, "*Strengthening Relations with Arab and Islamic Countries Through International Law: E-Commerce, the WTO Dispute Settlement Mechanism and Foreign Investment*", cit.

[20] …

[21] R. CHARLES, *Le droit musulman*, Paris, 1956.

the protection of the weaker party, the right of recourse in any case of non performance. The objective is therefore to create an adequate legal environment by undertaking all the possible ways to overcome the various obstacles that could affect e-commerce transactions.

Then the issue is to verify if the legal instruments used to rule e-commerce transactions would conflict with any of the *Shari'a* law principles or provisions.

The requirement of the traditional written document with the signatures of all the involved parties, the authentication of such signatures sometimes required for the validity of the agreement entered into, the need to record the contract or other documents or information on paper for legal or administrative purposes, often required in a great number of legal systems as well as in some international conventions regarding international trade, are all obstacles to overcome to properly develop e-commerce transactions.

It is therefore necessary in such legal systems to enact proper legislation to address all the changes necessary to give proper value to electronic documents and electronic signatures, by considering them legally acceptable.

In order to address this issue under Islamic law it is necessary to verify if *Shari'a* law requires the traditional way of writing and signing document as necessary element for the validity of the agreement, both domestic and international.

In Islamic law there isn't a category comparable to the Western concept of the general law of obligations[22].

The contract in Islamic law can be defined as the result of the matching of a positive proposal (*īğāb*) made by one of the contractors and the acceptance (*qabūl*) of the other contractor in a way which has an impact on the subject of the contract: the coming together of *īğāb* and *qabūl* creates the contract[23].

In general, Islamic law does not allow the freedom of contract, but permits certain autonomy in the ambit of contractual types already pre-determined. The sale contract (*bay'*) is an exchange of movable or immovable goods[24].

If we examine the doctrines of Islam we do not find any of them that require solemn formalities[25] like the traditional written or signed document to enter into any kind of commercial transaction[26]. The contract is considered as concluded by the coming together of the statements of two people; it is also considered confirmed when the words of one party comply with an action showing intention from the other party like a signal, reception or writing[27]. According to Islamic law, the sale contract is effective (*tāmm*) simply through the reciprocal taking of possession (*taqābud*) of the goods exchanged[28].

If we look at the books of the jurists of the different schools of though of Islam[29], we will find a large number of different opinions, but none of them requires the traditional written and signed agreement as requisite for the validity of the commercial contract. Thus, all schools of Islam consider valid any form of the agreement that fully reflects the consent of the parties involved in the transaction as instrument to express the will of the contracting parties.

The *Hanafi* School allows the conclusion of a commercial contract by any way that reflects the consent of the parties, including any sign that is understood by both parties. The simple exchange of goods between two parties without any written document or sign, or the verbal exchange of offer and acceptance are considered sufficient. Even silence can be considered as a valid instrument of expression of the parties' will if the circumstances of the case reflect that the silence of the party receiving an offer or goods can clearly mean his acceptance of the deal.

The *Hanbali* School also accepts any way that reveals the consent of the parties to enter into a specific agreement.

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[22] See J. SCHACHT, *An Introduction to Islamic Law*, Oxford, 1964; R. CHARLES, *Le droit musulman*, cit.

[23] A. EDDIN KHAROFA, *Transactions in Islamic Law*, Kuala Lumpur, 2000.

[24] See J. SCHACHT, *op.cit.*

[25] R. CHARLES, *Le droit musulman*, cit.

[26] The only exception to this principle is when two parties – a creditor and a debtor – agree that the debt or the obligation will be paid or fulfilled in the future or within a specific time: in such a case the debt or the obligation shall be recorded in writing. This is provided in the *Qur'an* in *Surat Al Baqara* 2:282. Even in this case there is no specific requirement of a traditional written document for the validity of this kind of contract. Therefore any kind of written document suitable to reach such purpose is considered sufficient.

[27] A. EDDIN KHAROFA, *Transactions* cit.

[28] See J. SCHACHT, *op.cit.*; R. CHARLES, in *Le droit musulman*, cit. defines the sale contract as a consensual contract.

[29] It is useful to recall that even if the range of the interpretation of Islamic law is very low, this has not prevented the birth of four different schools of though within the majority *Sunni* of Islam: *Hanafi*, *Hanbali*, *Maliki*, and *Shafi'i*.

The *Maleki* School considers valid any instrument that reflects the will of the parties if customarily acceptable.

From the above mentioned elements it can be concluded that the traditional written agreement is not a requirement for the validity of a commercial contract under *Shari'a* law, and consequently there is no prescription in Islamic law requiring the presentation of written documents or the record or storage of documents or information for the completeness of a commercial transaction[30].

Thus, there is nothing in *Shari'a* law that prevents the issue of a law that covers the peculiar aspects of electronic commerce – including the liability of the parties and service providers, and the protection either of the weaker party and the innocent third parties – to create suitable legal environment for the development of e-commerce.

In order to reach such aims, the lawmaker can enact a law based on the above mentioned principle of *Al Asle Al Ebaha*, considered that there is nothing in *Shari'a* law that prohibit it, and also the *Al Masaleh Al-Morsala* source of Islamic law that permits the enactment of laws to satisfy the needs and the interests of the people, provided however that they do not contravene the provisions of the *Qur'an*, *Sunnah* and other sources of Islamic law[31].

Moreover, all practices that are considered good and valid customs are applicable under *Shari'a* law. In particular, *Hanafi* and *Malaki* schools consider customs (*Aurf Sahih*) as origins of the rules of Islamic law, provided however that they do not violate the provisions of the *Qur'an*, *Sunnah* and other sources of Islamic law, and to the extent that they do not contemplate acts prohibited by any rule of Islamic law, or waive duties provided by any rule of *Shari'a* law[32].

With particular reference to the consumer protection, it must be recalled that Islamic law provides for the right of rescission as the unilateral right to cancel (*faskh*) the contract that must be exercised within a fixed time limit, otherwise the contract is effective[33].

It can also be added that the *Qur'an* refers many times to the necessity of protecting the individuals within the Islamic society, and that Islam has extremely high respect to the right of every member of the society to protect his personal life against any interference.

With reference to contract law, *Shari'a* allows the distance sale provided that a message is sent to one party to the other, it arrives and is answered positively by the other within the due time, if any. On the other side sales without proper matching between proposal and acceptance and sales of an unknown object at unknown terms are prohibited under Islamic law[34].

Some countries where there is not yet a specific law governing e-commerce transactions have anyway some rules in their Penal Codes to deal with fraud, misuse of identity and providing false information[35]. Moreover, they could also claim the application of the closing rule that forbids everything which is anti-Islamic, against the State and/or immoral.

Other countries have ruled or intend to rule the matter of e-commerce through specific laws. Among them the case of Iran and Tunisia can be quoted as an example for the Islamic law.

The Law on Electronic Commerce, approved by the Iranian *Majlis* (Parliament) on 7 January 2004 (*17 Dey 1382*)[36] and composed of 81 articles, is designed to harmonize the Iranian involvement in e-commerce with the domestic legal environment and global requirements. It contains six chapters on the safe exchange of data and information through the medium of the new technology instruments.

The third chapter of the law covers some different issues, among which is the consumer protection.

The consumer protection in Iranian e-commerce law is based on three pillars: the right of full information, the right of withdrawal and the protection from unfair contractual conditions.

The right of information covers all the aspect of the contractual relationship and in particular the characteristics of the goods offered, all the information related to the supplier, all terms and conditions of the

[30] M.I.M. See ABOUL-ENEIN, *E-Commerce* cit.
[31] See M.I.M. ABOUL-ENEIN, *E-Commerce* cit., and the bibliography quoted therein.
[32] See again M.I.M. ABOUL-ENEIN, *E-Commerce* cit., and the bibliography quoted therein.
[33] J. SCHACHT, *An Introduction* cit.
[34] A. EDDIN KHAROFA, *Transactions* cit.
[35] This is the case, for example, of the UAE.
[36] The law was published in the Official Gazette on 31 January 2004 (*11 Bahman 1382*) and came into effect after the legal grace period of 15 days on 16 February 2004 (*27 Bahman 1382*).

contract, with particular reference to the ways to exercise the right of withdrawal[37]. The same right of information is also granted in case of marketing of the goods and services offered through the net[38].

The right of withdrawal recognized in favor of the consumer is modeled on the European pattern. For any distance contract the law recognizes[39] to the consumer the right to withdraw from the contract without penalty and without giving any reason for a period of at least seven working days. In case of sale of goods, the period is calculated from the delivery of the goods, and in case of rendering of services from the date of entering into force of the agreement; in any other case the right of withdrawal commences when the complete information on the transaction is given to the consumer[40]

The law is not very detailed with reference to unfair contractual terms. It contains only a generic provision according to which the use of contractual conditions that are in contradiction with the regulations of that section of the Law and also the application of unfair conditions that disadvantages the consumer are considered not effective[41]. It should be noted that if this provision is anyway adaptable in principle to any possible case, from the other case it leaves an extreme range of discretion to the judge to establish if a particular contractual term can be considered unfair or not.

Tunisia enacted its law on e-commerce in 2000[42]. The part related to the consumer protection is opened by Article 25 that contains all the information that the supplier must provide to the consumer before the conclusion of the electronic contract. The contract is concluded on the date of the approval of the order from the supplier[43] who must provide the consumer with a document (even electronic) containing all terms and conditions of the agreement within 10 days from the execution of the contract[44].

The law recognizes to the consumer a right of withdrawal from the contract modeled also on the European pattern. It has to be exercised within 10 working days from the delivery of the goods or the conclusion of the contract in case of services[45]. Very peculiar is the provision by which the rescission of the contract by the consumer automatically cancels without refund also any loan obtained by the consumer from the supplier or from a third party for the acquisition of the goods[46].

With reference to electronic payments, in case of fraud, theft or misuse, the owners of the e-payment system are liable towards the consumer until he has notified him about the event occurred[47].

4. SOME FIRST CONCLUSIONS

These brief conclusions come from the first rough analysis of the above mentioned general principles and are intended to represent only a start point for a more detailed and analytical study that could reveal further elements to be analyzed and compared.

The brief analysis of these two patterns of regulation on e-commerce transactions does not reveal any particular difference due to the different level of the source of law in the two systems. The peculiarities of Islamic law do not significantly influence the way used to protect the consumer in these particular kinds of contracts. Even more, the need to protect the consumer – considered as a weak human being in this particular situation – can be inferred from the interpretation of the sayings held in the *Qur'an* or set forth in the *Sunnah*.

The European pattern is perhaps more detailed, but it could appear *prima facie* excessively fragmented and not easily comprehensible and – furthermore – accessible for a consumer not used to deal with legal issues.

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[37] See Articles 34 and 35 of the law.
[38] See Articles 50 and ff. of the law.
[39] Article 37.
[40] Article 38.
[41] See Article 46.
[42] The law is the Law n° 2000-83 enacted on August 9th, 2000.
[43] Article 28.
[44] Article 29.
[45] Article 30.
[46] Article 33.
[47] Article 37.

The experience given by the two countries considered under the umbrella of Islamic law shows us a slimmer pattern composed by the cornerstones of the consumer protection in e-commerce transactions.

The adoption of such kind of approach is probably given by the necessity in the ambit of Islamic law to rule what is not deducible from the *Qur'an* and *Sunnah* of the Prophet Mohamed, referring back to the sacred texts and the others principles of *Shari'a* law for what is not provided in the text of the law.

Surely in both cases, a clearer scenario will be given from the interpretation of the laws given by the scholars and furthermore by their application by the courts. Like in every situation similar to the present one, the study on the interaction of all the legal formants present in the realities to be compared can reveal in which extent, if any, the two patterns of law differ.