

The “E-Transactions’ Law” of October 10th 2018, The Problem or the Solution?



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1. Introduction

The word transaction indicates an exchange or transfer of goods, services and/or funds¹. In fact, it must be understood in a broader sense since the new Lebanese law enacted on October 10th 2018 not only includes the transfer of goods/services, but also the exchange of information in general. The most illustrative examples would be the articles related to the e-documents and e-signatures² which may not involve any pecuniary value.

The Lebanese parliament is proud to present its newly born law that is mainly intended to encourage e-commerce, to protect personal data and to prevent or suppress legal violations pertaining to system integrity, data integrity, illegal access to networks and computer systems, data tempering, forgery, misuse of systems and software, minors abuse in adult material, hacking etc.³

One cannot emphasize enough on its importance especially when it comes to encourage all kinds of ‘secure transactions’, since the world became a global village as far as new generations could remember and the use of electronic means of communication became unavoidable. Such a step is long-overdue in Lebanon and it was never too late for the Lebanese legislator to issue it given the benefits it should have contained.

The question remains whether this law reached its objectives or not? Did the legislator include all the details this law should have after all these years? Knowing that the internet was first introduced in Lebanon in 1994⁴ and has grown slowly ever since due to corruption. The answer requires examining various aspects of this legal text as follows:

¹ <https://www.merriam-webster.com/dictionary/transaction>

² Art. 1 & 7 & following, of the law on e-transactions of October 10th 2018.

³ The Lebanese republic’s official gazette, issue n° 45 of October 18th 2018, p.4567.

⁴ <https://fanack.com/lebanon/society-media-culture/lebanon-media/>: “The country’s media outlets were quicker to adopt internet technology, available in Lebanon since 1994, with three Lebanese dailies publishing online in 1996 and approximately 200 online news websites by 2002”.

2. The Positive Aspects:

The first idea that comes to mind is that Lebanese people have now a legal basis to rely on whenever they need especially before the courts or even between the parties. Consequently, all electronic correspondence (including e-contracts, e-mails) and exchanges acquired a specific legal value through this text. Electronic documents and signatures became “official” and have now the same value as their paper counterparts¹. The law regulated the e-payment method² which will certainly have a positive impact on the electronic commerce³.

This law also deals with the liability of the internet service providers and data hosts⁴ as well as with banking and financial operations especially through the regulation of electronic payment methods⁵, the e-cards and e-checks’ usage which is a big leap towards a better and more secure internet experience in a network that has long suffered from hacking, intrusions and piracy. It emphasized the old principle of freedom of trade coupled with the principle of open and neutral internet that is not absolute! In this sense, the law states that the ISPs⁶ must keep the log files 3 years for security, reliability or investigation purposes.

Everyone can engage in all kinds of legitimate activities inter-alia commercial activity, but most of the time, the legislator interferes and sets boundaries to that freedom⁷ in order to manage better the relationships between people especially in fast growing environments⁸.

E-commerce and activities happening through the network obey the rules of the Lebanese civil code, the procedural code and the consumers law that has been amended lately by the law on e-transactions⁹. On the other hand, new measures have been adopted to ensure a safer

¹ Art. 4.

² Art. 41 & following.

³ The new law regulated the e-commerce agreements, art. 33 & following.

⁴ Art. 68 & following.

⁵ Art. 53 & following.

⁶ Internet service providers.

⁷ Art. 124 of the Lebanese civil code (COC): “Shall also compensate, the individuals who harm others by exceeding, in the course of exercising their right, the limits of good faith or those of the purpose for which this right is granted”.

⁸ i.e. the actual new law on e-transactions.

⁹ Art. 3, 6, 12 & 30.

experience for internet users such as the right of permanent access to information related to the Trader, allowing a quick and efficient identification of the person sitting behind the computer or the owner of a specific website.

Unfortunately, the positive aspects are not numerous, they are outnumbered by the negative aspects that weight this new law down.

3. Some Negative Aspects:

The American-style new law begins with a ‘definitions section’¹ that doesn't encompass all the technical terms used through the articles² and which, on the other hand, doesn't define adequately some of the terms listed in the first article³, leaving the impression that it is a poor translation of the old French text of 2004. This might become a source of future misinterpretations of the text and can lead to major legal issues especially when dealing with e-documents and e-signatures.

Sometimes, legislating can be an arduous task. This can be observed through the article 32 that tends to protect users from online SPAM advertisements leaving behind other ways of communication (i.e. GSM networks). The usage of undefined terms in the definitions’ section (i.e. online), creates grey areas that affect negatively the intended level of protection.

Furthermore, the fourth chapter⁴ related to the national authority of Lebanese domain names’ management cannot be enforced. The presence of 5 ministries, the bar association, the federation of chambers of commerce and industry and 5 associations within this new born organism, makes it nearly impossible for it to carry on its duties as it should. Its rules are not specified in predefined bylaws that regulate its operation.

¹ Art. 1.

² i.e. the term “online” used in art. 32.

³ Electronic document; electronic signature etc.

⁴ Art. 78 & following.

Chapter five¹ is one of the main pillars of this law. It is intended to protect personal data, but in doing so, it violates people’s privacy by granting this task to the ministry of economy and trade. Based on previous experiences with the Lebanese public sector, this information is most likely communicated to security services, even worse, to private companies that can be in contact with local or foreign secret services.

According to this Law, it is the ministry of economy and trade that grants the authorization to collect and process personal data², but the criteria upon which such decisions are made are not clearly defined, which leaves the citizens at the mercy of the administration.

It would have been much better if things stopped at this point, but the new born law grants also the minister of defense and the minister of health the right to deliver such authorizations³, which means that collecting such sensitive information can now be delegated to local or foreign companies! It endangers both national security and foreign security. One of the major drawbacks of this law is that the executive decides whatever suits its interests without referring to the judiciary which is normally, in other places (i.e. Europe), fully competent in such cases or at least controls these authorizations and procedures. Sensitive information such as the genetic identity, sexual life or even internal security data can be within the reach of individuals if they are well connected. The law didn’t specify which organism within the ministry of economy and trade will process requests and grant these licenses, and one might even ask if the ministry is ready to perform such tasks?

This very particular chapter (5) needs to be amended urgently because it doesn’t insure the adequate protection of private interests, and if one needs to judge this law only by its title⁴, we get the impression that it is barely a compilation of legal dispositions on e-transactions. The legislator should have included the word “protection” in order for its title to be “e-transactions

¹ Art. 85 to 109.

² Art. 95 & following.

³ Art. 97.

⁴ “Law n° 81 on e-transactions and personal data”.

and the protection of personal data”, and not just a poor presentation on various aspects of wired or wireless data transfer. The fifth chapter must be the corner stone of this new law. Adopting new means of communication can be too risky because it constitutes a golden opportunity for profiteers to violate others’ private life.

The protection of private data becomes meaningless with numerous exceptions that tend to get the upper hand on the principle. Having said that, some articles¹ do not insure proper protection leaving behind unforeseen cases. For instance, the prohibition to collect private data includes information pertaining to people’s health, genetic identity, sexual life etc. but the text neglected other aspects people’s private life such as political, religious, ethnical orientations, biometrics, e-mail and IP addresses, telephone number etc. even the procedure of data sharing is not clear at some points. This is the case when the administration grants the authorization to process data within commercial activities for ‘promotional purposes’² without defining this latter or setting its boundaries.

This legal text contains flaws beyond imagination. In fact, the public administration doesn’t need the aforementioned authorization to process data, knowing that such a right belongs to the ministry of economy and trade. Things don’t seem to stop at this level! Surprisingly, non-profit associations don’t need such an authorization, and one might ask if it is not an opportunity for foreign secret services to infiltrate the market to collect and process personal data through such Lebanese associations? Shouldn’t those latter at least notify people of such data collection process?

However, a person may grant the authorization to collect and process his personal information³, but the law, once again, did not specify if such an approval must be written or can simply be oral. The text didn’t provide the right to retract it nor did it mention the fate of the previously collected information.

¹ Art. 91.

² Art. 92.

³ Art. 94.

When it comes to surfing the web, the law prohibits the illegal access to websites but doesn't provide penalties for such a violation. On the other hand, it doesn't lay upon the site owner any obligation to inform his subscribers about illegal access so they could take personal measures to protect themselves or their personal data. Moreover, the text did not foresee the intrusion into public websites¹ which has to our knowledge more serious consequences than breaking into a private site. That is the reason why Lebanon must adopt serious and much more effective penalties for such cases.

Much can be said about this law, but if we have to look at it from a global angle, one can say that beside being incompatible with the general data protection regulation², it is a tool between the hands of the administration to put pressure on citizens, which facilitates abuses on different levels.

While waiting for an adequate law that regulates better electronic transactions, we strongly advise different companies to abide by the rules contained in the GDPR especially when dealing with European and foreign countries. On an international scale (CEDRE), Lebanon must comply with such rules and reinforce personal data and databases protection through preventive measures and effective sanctions.

Once again Lebanon is requested to sign conventions regarding log files' storage (3years) especially if the servers are located outside Lebanon.

On one hand, the Lebanese legislator must establish an independent body mostly composed of judges to supervise the grant of authorizations to various parties. On the other hand, the protection of personal data must figure within the prerogatives of the judiciary rather than within those of the executive. This latter remains under the judiciary's control for a better personal data protection.

¹ Art. 110.

² <https://eugdpr.org/>

All the prerogatives of the ministry of economy and trade must consequently be transferred to that independent body and the data must be divided into categories to facilitate its protection without compromising its traffic.

The new law missed its most important target that is to protect personal data because it does not regulate properly the actual situation, especially when inspired by old texts dating back to 2004. We might even wonder about its legal and technical value when it comes to personal data protection! It is surely not admissible for this text to contain as many flaws as it does actually, knowing that the internet was first introduced in Lebanon in the mid 90s.

From a broader angle, one might even ask if the recent legislations in foreign countries take into account the nature of the internet?

This latter is divided into 3 main layers: surface web, deep web and dark web.

The first one, most commonly known as the world wide web includes all common and popular websites like Google, Youtube, Facebook, Wikipedia, private and commercial websites etc.

The second one, contains non indexed websites (they do not appear in search engines) that are still accessible by people.

The third one, can be accessed only by few people (hackers etc.), organizations, agencies (i.e. CIA, FBI, Council on foreign relations etc.) and embassies. It is interesting to note that this third layer is not exclusively used by governmental agents, for governmental purposes, but also for criminal activity such as military equipment, human organs and drugs trafficking which makes of it a hidden and seriously dangerous communication tool.

Due to the digitization of such environments, people can retrieve interesting information, most of it related to sensitive issues (i.e. embassies secret correspondence) leading to the fall of some nations or at least to crisis situations in the international community.

Such layers must capture the legislator’s attention because of their great impact on local and foreign international relations and their stability.

4. Conclusion

Despite the drawbacks, Lebanon has now a new legal platform on which people can rely to claim rights that couldn't be adequately enforced under the traditional legal system. Whether we perceive it as a problem or as a solution, this law still has much to cross if Lebanon really intends to step in the new era of information technology.