

THE LEGAL FRAMEWORK FOR THE AUTOMOBILE COMMERCIAL CONCESSION IN ALGERIA

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Abstract:

Algeria embarked on a policy of reform with the introduction of the market economy, whereby the state began to adapt its laws to this economic system. The state's monopoly on foreign trade was lifted, and economic operators were given the right to import and export goods in accordance with state laws, as this activity grew rapidly. The importation of automobiles gained great attention from decision-makers and was the focus of their attention, hence several Executive Decrees related to this activity were issued giving its significance in the Algerian market. On one hand, the commercialization of new vehicles was therefore identified as one of the economic activities eligible to investment, and on the other hand, this activity was regulated.

keywords: Distribution, Importateur, Agent, exclusivity, Véhicules.

Preface:

Algeria embarked on a policy of reform with the introduction of the market economy, whereby the state began to adapt its laws to this economic system. The state's monopoly on foreign trade was lifted, and economic operators were given the right to import and export goods in accordance with state laws, as this activity grew rapidly, and was among the focal points of the legislator's attention, whereas Ordinance 03-04¹ was issued, and was amended by Law 15-15². This text was general for all goods, but when it comes to specialization, we find that the import of cars has gained great attention from decision makers and was the focus of their attention, and several executive decrees were issued to regulate this activity due to its importance in the Algerian market.

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Since the Algerian legislator has regulated and legalized this activity, it is considered to be restricted on the one hand, and on the other hand, since the agent is required to obtain the agreement of the manufacturer in order to commercialize the vehicles in Algeria, thus, we note that this agent is exercising a commercial activity in accordance with the principle of freedom of trade and investment and, at the same time, is restricted by strict procedures imposed by the law.

The importance of the study stems from the fact that it sheds light on the rules that govern the activity of the commercialisation of new vehicles.

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¹ Ordonance 03-04 dated on 19/07/2003 bearing the rules applicable to the import and export of goods, published in the Official Gazette dated in 20/07/2003 No. 43

² Law 15-15 of 15/07/2015 amending and supplementing Ordinance 03-04, published in the Official Gazette dated on 29/07/2015 No. 41.

³ Executive Decree No. 07-390 dated on 12/12/2007 defining the terms and conditions of the activity of new vehicles dealerships (repealed), published in the Official Gazette of 12/12/2007 No. 78.

⁴ Executive Decree No. 15-58-58 dated on 08/02/2015 defining the conditions and qualifications for the activity of new vehicle dealers (repealed), published in the Official Gazette dated on 08/02/2015 No. 05.

⁵ Executive Decree No. 20-227 dated on 19/08/2020 defining the terms and conditions of the activity of new vehicle dealerships (repealed), published in the Official Gazette dated on 19/08/2020 No. 49

⁶ No Executive Decree No. 22-383 of 17/11/2022 defining the terms and conditions of the activity of new vehicle dealerships, published in the Official Gazette dated on 17/11/2022 No. 76

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It is therefore possible to ask the following question Do the measures introduced by the provisions of Decree No. 22-383 promote the marketing of new vehicles in Algeria, or are they merely a rearrangement of the previous provisions governing this activity?

In order to answer this question and to deal with the various aspects of the subject, we will follow the descriptive method to describe and clarify the concepts of the study, as well as the analytical method to analyse the provisions of the aforementioned decree in order to determine the measures adopted by these provisions, we propose the following two axes:

- New Vehicles Commercialization System.
- New Vehicles Commercialization between Restriction and Regulation.

Section I: New Vehicles Commercialization System

The activity of commercializing new vehicles is based on importation, where a contract is concluded between the manufacturer and the importer, who is called the agent in the aforementioned Executive Decree 22-383.

However, the problem of this text is that it relies on legal terms that sometimes have meanings that sometimes do not reflect the true meaning of this activity. Therefore, it is necessary to correct some of the concepts introduced by this decree (A) and then address the legal relations of new vehicles commercialization activity (B).

A) Correction of certain concepts (terms) stipulated in the Executive Decree 22-383

The Executive Decree 22-383 defines various terms relating to the process of marketing new vehicles, starting with the contract between the manufacturing organisation and the importer, which it calls an agency. It also defines the parties to the contract as the manufacturer and the agent. However, referring to the text in French, we notice that these terms correspond to other terms with different concepts, so we present these terms.

According to the legal definition of the term agency or what is called delegation, it is any contract whereby a person authorizes another person to act in the name and on the client's behalf, in accordance with the provisions of Article 571 of the Civil Code⁷.

In the commercial field, however, it is considered to be an agreement under which the agent undertakes to conclude sales and, in general, commercial transactions in the name and on behalf of the client, if necessary in his own name, in accordance with Article 34 of the Commercial Code.⁸

In the French text of the same decree, the term "agency" corresponds to "concession," which is viewed as a contractual agreement between the distributor and the manufacturer, in which the distributor is obliged to distribute a certain product, which he has purchased from the manufacturer, in a geographical area previously defined by the two parties, for a certain period of time, provided that this distributor is exclusive⁹.

The two previous definitions show that the agent acts in his own name and on behalf of the customer and that the products covered by the agency remain the property of the customer. In the case of a concession contract¹⁰, as mentioned above, the distributor, called the concessionaire, is defined as a legally independent agent who acts in his own name and for his own account, exclusively in a geographical area, in exchange for being subject to the constant control of the goods subject to the contract by the manufacturing plant.

We note that this analysis applies to a person who wishes to be involved in the activity of importing and marketing new vehicles.

⁷ Ordinance 75-58 dated on 26/09/1975 bearing the amended and supplemented Civil Code published in the Official Gazette dated on 30/09/1975 No. 78.

⁸ Ordinance 75/59 dated on 26/09/1975 bearing the Algerian Commercial Code, amended and supplemented, published in the Official Gazette dated on 30/09/1975 No. 78.

⁹ Philippe le Tourneau, Commercial Concessions, Economica, 1994, P14.

¹⁰ Jean-Bernard Blaise, Business law; traders, competition, distribution, 1999, L.G.D.J, France, For more, check the reference

Therefore, it is not correct to call him an agent, but rather a concessionaire, since on the one hand he enjoys exclusivity in distribution, as confirmed by Article 2/12 of Decree 22 -383, and on the other hand he works on his own account.

Regarding the concept of the granting manufacturer mentioned in the decree, it is considered an assignor because it transfers and sells its product to the concessionaire distributor. This accurately translates the concept of the concessionaire, as introduced by the legislator in the French text of the decree. This manufacturer is also defined in the same decree as a manufacturer in its capacity as a parent company, which is incorrect because the latter must have branches, which we do not find in this activity, but this manufacturer appoints intermediaries to sell its products, which means that this definition in article 2/2 is not consistent with the concept of the granting manufacturer.

In fact, the concept of granting manufacturer is also particular to the franchise contract, which is another type of distribution contract in which the franchisor transfers its technical knowledge to the franchisee, the distributor, in order to manufacture its product¹¹, which is absent in the activity stipulated in Decree 22 -383.

Moreover, the agent¹² can deal with several brands, while the franchisor deals with one brand due to the exclusivity clause in the distribution and commercialisation contract, as well as this agent is an intermediary between the franchisor and the customers who buy the new vehicles and commercialise them.

The word commercialization is an economic term that aims to promote prices, services and ideas that facilitate and accelerate the satisfaction of exchange relationships with the consumer in a dynamic environment¹³, while distribution is more of a legal term than an economic one, through which products are delivered from their places of production to their places of consumption.

Therefore, we see that the activity regulated by the Decree under analysis is the activity of distribution and not commercialization.

It is notable that these terms - mentioned above - have been repeated in all the Decrees that deal with the activity of commercialization of new vehicles in their Arabic text, and they must be precisely defined, as each term has its own concept and legal effect. Hence, it is necessary to reconsider these terms.

It is also worth noting that the Executive Decree 22-383 applies only to new vehicles, which are considered, within its meaning, any vehicle that has not been registered in any other country and the driving distance does not exceed 100 km for tourist and light utilitarian vehicles, while industrial vehicles do not exceed 1500 km, with the date of manufacture and the date of entry into Algeria being 12 months, as stipulated in Article 02 of the aforementioned decree.

B) Legal relations in connection with the marketing of new vehicles:

The commercialization of new vehicles in Algeria, although considered an economic investment activity, is surrounded by several restrictions and conditions that make the importer subject to them, because in fact there are two legal relationships that apply to this activity. On the one hand, a contract is concluded with the foreign vehicle manufacturer (1) and on the other hand, a contract with the authorized distributor (2). Therefore, we will be discussing these two relationships.

1: Contract concluded between the agent (concessionaire) and the manufacturer

In order to commercialise new vehicles in Algeria, the concessionaire must obtain the consent of the foreign manufacturer to distribute these vehicles, and this can only be done after a commercial concession contract has been concluded between the two parties for a period of not less than five years, in accordance with article 6/5. Prior to this, all the terms of the contract will be negotiated

¹¹ Husamuddin Khalil Faraj, *The Commercial Franchise Contract - and its provisions in Islamic jurisprudence*, Dar Al-Fikr Al-Jami'i, Egypt, 2012, p. 95.

¹² An agent is defined as "a natural or legal person who independently performs commercial representation as their usual profession and contracts in the name and on behalf of the principal for a fee." For more, see Muammar Taher Hamid Redman, *Contracts of Commercial Mediation*, New University House, Egypt, 2014, p. 23.

¹³ Fouad Mohamed Al-Hamdi - Anas Abdel Basset Abbas, 1439, *Principles of Marketing*, first edition, International Publishing House for Publishing and Distribution, p. 31.

between them, in particular the exclusivity clause, the non-competition clause, the need to accept control, the quantities to be provided in order to place them on the Algerian market, with everything related to the stock and the period agreed in the contract, as well as other conditions related to this contract.

In this regard, we note that Article 4 of Appendix I of the specifications¹⁴ stipulates what must be included in the contract concluded between the manufacturer and the agent (concessionaire), such as the identification of the signing parties, the duration and validity of the contract and the forms of renewal, cancellation clauses and possible compensation, as well as the exclusivity of the trademark relating to the vehicle covered by the contract and all the specifications relating to these vehicles to be agreed for their commercialisation on the territory of Algeria.

Moreover, it is necessary to specify the various technical and commercial assistance to be provided by this manufacturer and the support to be given to users working for the distributor of these vehicles. It should be noted that the most important clause is the exclusivity clause or the so-called monopoly clause, whereby the agent (concessionaire) is considered the exclusive distributor of this foreign manufacturer.

In fact, the Executive Decree 22-383 had stipulated this in order for this distributor to be able to exercise this activity in Algeria according to Article 2/12 of the same Decree.

What can be observed is that although the contract concluded is considered as a business contract¹⁵, the legislator intervened in regulating it in terms of the elements that must be included in this contract as mentioned above, this is considered as a kind of restriction because such contracts are originally characterized by flexibility and lack of regulation due to their special nature and given the specificity of the business environment related to evolving and changing activities governed by economic norms¹⁶.

However, in the field of the commercialisation of new vehicles, the legislator has intervened with strict provisions in order to monitor the activity of the distributor and to apply a series of procedures in order to protect the national economy as a result of the economic turmoil that Algeria has experienced in the past¹⁷.

2: Contract concluded between the agent (concessionaire) and the authorized distributor

Once the concessionaire has obtained authorisation from the foreign manufacturer to distribute new vehicles, he begins his activity on Algerian territory, after complying with the legal procedures to be introduced later, by choosing the person who will act as an intermediary between him and the customer for the purpose of selling these vehicles, i.e. the authorised distributor. A contract is concluded between the concessionaire and the authorized distributor, as defined in Article 2/16 of Executive Decree No. 22-383, as a distributor of new vehicles.

In fact, the provisions of this article indicate that this distributor will resell the new vehicles after purchasing them from the contracting party, the concessionaire, However, this is not accurate because the sale is conducted in the name and on behalf of the concessionaire, while the authorized distributor merely acts as an intermediary between the concessionaire and the customer. Additionally, the payment is made directly into the concessionaire's account.

¹⁴ Appendix I, Specifications defining the terms and conditions of the activity of agents of tourist, light utilitarian and industrial vehicles, motorcycles and special-use vehicles, published in the Official Gazette on 17/11/2022.

¹⁵ Business contracts are the means by which the economic agent seeks to impose control over a specific market on the one hand, and on the other hand, it is the means by which the competition and rivalry between the various actors in the economic field takes place

¹⁶ Djebbar Rokia, The legal system of business contracts in Algerian legislation, collective book "Business Contracts" in 2019/2020, p. 1

¹⁷ Azizi Jalal, The activity of new vehicle dealerships: Any new regulation? Journal of Legal and Political Research, Vol. 06, No. 01, 2021, p. 36

This view on the transfer of the ownership of vehicles to the authorised distributor can be confirmed by consulting the Code of Economic Activities ¹⁸ subject to registration in the Commercial Register, amended and supplemented, published in the Official Journal of 19/01/1997 No. 05], the code of the activity subject to registration in the Commercial Register is 503 138 under the name of new vehicles retail trade "authorised distributor" and the content of the activity is the retail sale and resale of new vehicles, including locomotives and trailers, except for off-road tourist and utilitarian vehicles, and an additional activity has been added to this activity, which is the maintenance and after-sales services.

Notwithstanding the activity is registered in the Code of Economic Activities under "authorized reseller", this distributor supervises the sales process without being a part of it, therefore, we can adapt his legal status to an agent because he acts in the name and on behalf of his client, and all the obligations imposed when concluding the vehicle sales contract with the customer are specific to the agent (concessionaire), as stipulated in Article 16 of Appendix I.

We therefore conclude that the contractual relationship between the parties is one of agency and that the term "authorised reseller" does not correspond to the powers granted to him.

Although the activity is registered in the Code of Economic Activities as "authorised reseller", this distributor supervises the sales process without taking part in it, so we can adjust his legal status to that of an agent, because he acts in the name and on behalf of his client, and all the obligations imposed on the conclusion of the vehicle sales contract with the customer are specific to the agent (concessionaire), as stipulated in Article 16 of Appendix I [The aforementioned former appendix]. We therefore conclude that the contractual relationship between the parties is one of agency, and that the term "authorized reseller" does not accurately reflect the powers granted to them.

The authorised distributor will also enable the agent to expand the distribution and marketing of new vehicles to new customers in many parts of the country, provide after-sales and maintenance services, and provide all the information related to the market and customer behavior that helps to make the right decisions in this regard.

Section II: Commercialization of new vehicles between restriction and regulation

The activity of commercializing new vehicles is a regulated economic activity due to its direct relationship with public interests and concerns. This means that the agent (concessionaire) must meet the conditions for commercializing new vehicles (A) and is subject to oversight (B).

A) Conditions for the commercialisation of new vehicles:

The activity of vehicle commercialization is subject to several conditions established by the Algerian legislator, including the conditions for access to this activity (1) and the conditions for the actual exercise of the activity (2).

1. Entry requirements

Prior to being able to market new vehicles in Algeria, the agent must meet a number of conditions in order to prepare the file for this activity, including the following:

First: Agent (concessionaire) must take the form of a commercial company

The investor who wishes to enter the field of commercializing new vehicles must adopt one of the legal forms of companies specified in the Commercial Code, as only a legal entity can engage in this activity; a natural person is not permitted to conduct it. This is probably the reason that the commercialization of new vehicles is a heavy investment and this person cannot alone bear all the obligations imposed on him, either by the foreign manufacturer under the terms of the commercial concession contract, or by the restrictions imposed by the administration and the customers.

It is necessary to note that the current Decree does not require full ownership of the capital for national resident operators, as it did in the previously mentioned Executive Decree 20-227 in its

¹⁸ Executive Decree No.97-39 dated on 18/01/1997 on the Code of Economic Activities Subject to Entry in the Commercial Register, amended and supplemented, published in the Official Gazette of 19/01/1997 No. 05

Article 03 and repealed. This may be the embodiment of the principle of equality between national and foreign economic operators, as confirmed by the new Investment Law 18/22.¹⁹

Second: The agent is required to contract with the foreign manufacturer

The legislator defined it in the Executive Decree No. 22-383 by the contract or the protocol of the exclusive agency agreement concluded between the assigning manufacturer and the subscriber to exercise the activity of distribution of new vehicles in Algeria, according to its article 6/5. The contract between the two parties is regarded as a commercial concession contract, although some scholars refer to it as an exclusive distribution contract. Under this arrangement, the importer, acting as the concessionaire, must exclusively deal with a single assignor for distributing new vehicles within the national territory, as outlined in Article 04 of the same Decree. The concessionaire is subject to ongoing supervision by the manufacturer, as ownership of the trademark has not been transferred to them, only the ownership of the vehicles. At the same time, the concessionaire benefits from various forms of assistance provided by the manufacturer.

In this regard, it is defined as "a contract which binds a supplier or producer, called the assignor, to another trader, called the concessionaire, and grants him the exclusive right to resell his products within a given geographical area, in return for which the concessionaire is obliged to comply with the assignor's conditions and accept his control over him"²⁰.

In fact, this definition corresponds to the activity of the dealer (franchisor) of new vehicles, and therefore the ownership of these vehicles is transferred to him as soon as the franchise contract is concluded between them, taking into account the subsequent executive contracts. This is because in such contracts we find the framework contract[A framework contract that contains general rules that predetermine how subsequent contracts will be concluded and executed, and to which the parties are bound, followed by subsequent application or implementation contracts for the distribution requirements associated with successive iterations of the process], which organises the general conditions of the contractual relationship, followed by the executive contracts for the requirements that are made each time, especially since the contract has a duration of at least five years, i.e. it is considered a time-consuming contract that lasts quite a long time.

Third: The Agent (concessionaire) must obtain a prior license

The legislator requires a prior licence²¹ for the agent (concessionaire) in order to enable him to carry out all the legal procedures for the legal commencement of the import activity, since it is not an actual licence, but a legal instrument that enables and qualifies him to go before the administrative bodies to complete the procedures and finally obtain the accreditation.

In order to obtain the provisional licence, the applicant must submit, in accordance with Article 6 of the aforementioned Decree, a file consisting, in brief, of:

- An application for a the provisional licence
- Specifications, including the contract document
- A copy of the company's articles of association, including the activity code.
- A declaration of probity for the natural person managing the company
- A contract or memorandum of agreement relating to the distribution of new vehicles, which, as we have seen, is called a commercial concession contract with a duration of not less than 05 years.

The file shall be submitted to the secretariat-general of the committee responsible for examining the file, provided that, within a maximum of 30 days from the date of submission and after consultation with the committee, the licence shall be delivered to the applicant and shall be valid for a period of 12 months. If refused, the applicant has the right to appeal within 15 days of receiving the notification.

¹⁹ Law 18/22 on investment dated on 24 July 2022, published in the Official Gazette dated on 28 July 2022, No. 50.

²⁰ Azema Jean, *Juris classeur, commercial concession*, 1995, p 2.

²¹ It is one of the means of state intervention to control the activities exercised by individuals. For more, see Abdelrahman Azzaoui, *The legal system of administrative licences in Algerian legislation*, PhD thesis, University of Algiers, 2007.

Obtaining a provisional license does not permit the agent (franchisee) to engage in the marketing of new vehicles. Instead, it authorizes the establishment of a commercial company in the field of importation and serves as a preliminary step. This step allows the agent to undergo subsequent evaluations by relevant agencies and bodies, with the goal of receiving accreditation to conduct the activity²².

2- Conditions for effective exercise

The effective exercise of the activity shall remain subject to obtaining the accreditation issued by the competent administrative authority. In accordance with the provisions of Decree 22/383 in its article 9, the agent (concessionaire) is required to submit to the Technical Secretariat his file containing the application for accreditation with a copy of the previous licence, as well as the tax identification number, a copy of the digital extract from the Trade Register, a settled tax assessment, an updated social security document, a copy of the concession contract (exclusive agency contract as defined by the legislator), as well as the following conditions aimed at obtaining accreditation, namely

- Documents proving that the agent (concessionaire) has the appropriate facilities for display and storage

The facilities required depend on specific technical specifications for warehousing and display in accordance with safety and technical standards, and a strong infrastructure must be provided. These characteristics are reflected in the spaces required for storage, as their minimum areas are specified in the specifications, with the need to provide warehouse insurance procedures and security guidelines, in addition to the presence of service workshops to provide after-sales services.

It is worth noting that, before starting the process of importing new vehicles, the agent (concessionaire) must have a private warehouse approved by the customs service, otherwise he must conclude an agreement with the operator of a public warehouse under customs control, in accordance with Article 14 of the specifications (Appendix 1) of Decree 22/383.

-The list of employees along with their certified qualifications

It is mandatory to provide proof of the qualifications and experience of these employees in the field of vehicle distribution, and their knowledge must be regularly updated and improved from the beginning of the commercialisation of the vehicles. In fact, this condition is laid down in the contract between the concessionaire and the foreign manufacturer in the form of technical and commercial assistance provided by the latter, since its aim is to protect the brand it owns, even if the ownership of the vehicles is transferred to this importer, the concessionaire.

- The Agent (concessionaire) must obtain a stock of spare parts in a sufficient quantity

This obligation is directly related to the after-sales service obligation, as it includes the periodic review covered by the warranty, care, maintenance and repair with the sale of spare parts and original supplies, which the agent (concessionaire) must have with sufficient stock or quality equipment certified by the contracted manufacturer.

Moreover, it should be noted that the legislator was unclear on the need for the concessionaire (importer) to invest in the mechanical and automotive industry by opening factories related to this activity, as Decree 22/383 did not specify the quota system and quantities allowed for the import of new vehicles, as was previously done in Decree 15/58 (repealed) related to the same activity²⁴, in accordance with what was stated in the Finance Law of 2014, we believe that the repeal of these measures was due to the chaos that prevailed in this sector at the time, and the experience revealed the failure of such investments that were made in an indiscriminate manner.

Therefore, we believe that the legislator has withdrawn from such obligations which burden the agent (concessionaire) who wishes to resell vehicles and not manufacture them, since the establishment of such factories requires procedures and negotiations with the manufacturer and the provision of all legal guarantees to accept such offers.

²² Azizi Jalal, The activity of new vehicle dealerships in Algeria: A new regulation, Journal of Legal and Political Research, Vol. 06, No. 01, 2021, p. 43

B) Commercializing New Vehicles Activity Control:

The activity of commercializing new vehicles is a regulated activity²³. An investor who wishes to exercise this activity cannot initiate the investment directly, but must follow and comply with procedures set up by the inter-ministerial technical committee appointed by the Minister of Industry and composed of the representatives of the ministries of Industry, Interior, Finance, Mines and Commerce.

We must point out that the membership of the Commission was enlarged compared to the one established by Law 20/227, with the inclusion of a representative of the Ministry of Traffic, The Ministry of Labour and the Ministry of Environment may be involved due to the impact of vehicle commercialization on the environment, as well as its implications for traffic and employment of workers.

Upon submission of complete file, the ministerial technical committee, headed by the provincial director in charge of industry who is regionally competent, conducts inspection and field investigation visits to the facilities in order to draw up a report within 10 days, as stipulated in Article 12 of the Decree 22/383.

After reviewing the technical and administrative file, the Minister of Industry, upon receiving a favorable opinion from the competent committee, grants the concessionaire accreditation within 30 days of receiving the deposit receipt. This accreditation, as per Article 1/10 of the aforementioned Decree, is valid for a renewable period of five years. In case of reservations, they must be communicated to the party concerned within 30 days from the date of notification, Article 3/10 of the same Decree.

The tasks of the Technical Committee include reviewing files related to the granting of the license and accreditation for the effective exercise of vehicle commercialization. Additionally, the committee may issue an opinion on the withdrawal of accreditation in cases of non-compliance with the legal conditions outlined in this Decree. For this purpose, it may call upon experts, specialists or qualified bodies in the field of technical assistance, in accordance with Article 17 of the Decree.

The monitoring of the commercialisation of new vehicles is not limited to the Technical Committee. The Ministry of Industry also monitors the activity of the agent (concessionaire), who is obliged to inform the Ministry of any modification or renewal of the contract linking him to the foreign manufacturer (assignor), as well as of the lease contracts for expiring equipment, and even of the Commercial Register if any modification is made.

In addition, in accordance with the specifications annexed to the Decree, he must declare any change in the distribution network at national level.

In accordance with Article 16 of the specifications document, the sales contract linking the agent to the customer must be replaced by a new vehicle that complies with the legal criteria and standards, particularly as regards the conditions for the safety and security of the vehicle.²⁴

In the event of failure to comply with the conditions laid down in Decree 22/383 and in the specifications annexed thereto, the monitoring services order the agent to remedy his situation within the prescribed legal period.

He is required, under penalty of revocation of his accreditation, to comply with all the legal conditions relating to the exercise of the activity of a new vehicle agent, in accordance with Article 31 of the specifications.

The necessary conditions and means to effectively and quickly intervene in order to control and monitor this activity and sanitize this sector by excluding dealers who do not meet the legal

²³ Regulated activities are activities that are characterized by their specificity and require the provision of special conditions in order to allow their practice due to their nature and the means they require. For more see Amina Hohach, *Regulated Activities as a Restriction on Freedom of Investment in Algerian Legislation*, 2021, *Journal of Legal and Economic Studies*, Vol. 04, No. 03.

²⁴ Bouhatana Amel, *Non-compliance with the security and safety conditions in new vehicle marketing contracts. -As a cause of traffic accidents in Algeria-* *Al-Bahith Journal of Academic Studies*, Volume 06, No. 03, 2019. Page. 46."

requirements²⁵ or do not comply with the import rules or the provisions of the Decree 383/22 relating to the importation of new vehicles in Algeria.

In our view, the continuous monitoring of the agent's (concessionaire's) activities by the competent authorities is a control of this activity, because they monitor the administrative aspect and the extent to which it is respected by this distributor and any change in the procedures must be informed, as well as the activity itself and its conformity with this decree and its annexed term sheet.

Conclusion:

The commercialization of new vehicles in Algeria has garnered considerable attention from the legislator, likely due to efforts to regulate this activity and balance several interests. On one hand, there is the enshrinement of investment freedom recognized by the Constitution, exercised within the framework of the law, and the freedom to import and export goods in accordance with Decree 04/03. On the other hand, there is the need to protect the national economy from all imported goods, including new vehicles, which must comply with safety standards as per the legislation in force.

The new measures will undoubtedly encourage car manufacturers to invest in the marketing of new vehicles in Algeria. This, in turn, will have a positive impact on the national economy, allowing for the creation of employment opportunities and providing Algerian consumers with an additional source of income.

In this regard, we find Executive Decree 22/383, the subject of the current study, although it corrected some of the deficiencies that existed under previous regulatory texts, it still suffers from some defects that we see may weaken the effectiveness of embodying this activity on the ground, and these deficiencies must be corrected.

The Algerian market is also witnessing a growing interest on the part of major car brands, which will inevitably lead to the provision of quality vehicles at reasonable prices within the framework of distribution, and to the introduction of competition within the framework of the legislative and regulatory texts relating to the marketing of new vehicles, particularly Executive Decree 22/383, which aims to establish a strong and clear strategy for marketing new vehicles.

The intervention of the legislator to regulate this activity in Decree 383/22 has corrected some of the shortcomings that existed in the previous regulatory texts, but at the same time we note that it bears some ambiguity regarding the terminology used in it. As legal experts, we know that every term has legal implications and must be precisely defined so that there is no ambiguity in the application of these texts.

In this regard, we have come to the following conclusions after studying this issue:

- Some of the key terms in this regulatory text have different meanings in the context of the marketing of new vehicles.
- The concept of an agency contract is quite different from that of a concession contract.
- The term agency corresponds to the French version of the same decree, concession, and these two concepts are legally distinct.
- The procedures imposed on the distributor of new vehicles are complex and burdensome for this importing distributor and do not encourage investment in this area.
- The frequent modifications to the legal texts governing the marketing of new vehicles in Algeria undermine the effectiveness of market regulation.
- The lack of regulation of the legal conditions governing the marketing and distribution of new vehicles on the market gives the impression of a lack of control over activity on the market.

Therefore, the following can be proposed:

- The need to review the terms agent, agency, granting manufacturer, commercialisation established in this decree and replace them with the terms: Concessionaire, Commercial Concession Contract, Assignee, Distribution respectively.
- The need to distinguish between the exclusive distributor represented by the importer and the authorised distributor operating within the distribution network of this importer.

²⁵ Benkheda Hassiba, Rules of commercial practices applied in the field of importation, PhD thesis, Faculty of Law, University of Algiers 1, 2021/2022, Page. 348.

- There is a need to simplify the administrative procedures for obtaining the license and authorization to distribute new vehicles, as the importer-distributor will have already fulfilled part of the required conditions upon concluding the agreement with the manufacturer.
- It is necessary to reconsider the conditions required to exercise the activity of commercialisation of new vehicles in Algeria.
- Reconsidering the control of the activity of importing new vehicles in accordance with what is required by the provisions relating to competition, in particular exclusivity, and what is related to the control of this activity within the jurisdiction of the Competition Council, as it is the market regulator.
- The introduction of electronic transactions regarding the administrative aspect and the procedures to be followed in order to obtain authorisation to carry out the activity of marketing new vehicles.
- Maintaining legal certainty in the field of the regulation of the marketing of new vehicles and the control of the practice by not changing and introducing new regulatory texts in short periods, which affects the credibility and stability of the activity in the Algerian market.

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