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Adequate Legislation in Regulating Electronic Banking Contracts and Ensuring the Protection of Parties

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Abstract:
This research aims to study and analyze electronic banking contracts as one of the most important aspects of digital development in the banking sector. These contracts have become a means of conducting financial transactions remotely using electronic media, thus facilitating and expediting banking operations. This research focuses on defining the concept of electronic banking contracts and their characteristics, explaining how they are concluded by examining the stages of electronic contract formation, particularly offer and acceptance, and the means of expressing intent in the digital environment.

The research also addresses the most significant legal and technical risks associated with electronic contracts. Furthermore, it examines the legal framework governing these contracts and assesses its effectiveness in keeping pace with technological advancements.

The research concludes that electronic banking contracts are an inevitable necessity in the digital age. However, their effectiveness requires continuous development of the legal framework and enhanced technical protection mechanisms to ensure a balance between facilitating transactions and protecting the rights of the contracting parties.

Keywords: Electronic contracts, Banking contracts, Electronic signature, Cybersecurity , Contracting parties.
Jel Classification Codes: G21, K12, K24.

Introduction :

Electronic banking contracts are among the most prominent manifestations of digital transformation in the banking sector. Banks now offer their services online and through smart applications, enabling customers to conduct various banking transactions, such as opening bank accounts, transferring funds, paying bills, and even applying for loans, without needing to visit a bank branch. This new contracting method has contributed to accelerating transactions, reducing costs, and

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achieving greater efficiency and flexibility in banking operations. However, this development has also given rise to several legal and practical challenges, particularly in the absence of direct interaction between the contracting parties and the reliance of these transactions on technological means that may be vulnerable to hacking or manipulation. Among these challenges is the issue of determining the legal nature of electronic banking contracts and the extent to which their essential elements are present. The question arises as to the extent to which written documents and electronic signatures are recognized as legally valid means of proof.

Faced with these challenges, many legislations have sought to establish a legal framework to regulate electronic transactions in general and electronic banking contracts in particular, through the recognition of electronic writing and signatures. Electronic banking contracts also raise issues related to determining the applicable law given the international nature of these transactions. This has prompted many national legislations and international organizations to intervene to establish a legal framework to regulate these transactions and ensure trust and security in the digital environment. Therefore, the following question arises: To what extent is legislation sufficient to regulate electronic banking contracts and guarantee the protection of the parties involved?

Sub-questions:

• What is the concept of electronic banking contracts?
• What are the characteristics of electronic banking contracts?
• What is their legal validity?

Importance:

The importance of studying electronic banking contracts stems from their status as a modern field that combines law and technology, necessitating a re-examination of many traditional legal concepts. This study aims to analyze the legal framework of these contracts, explain their characteristics and mechanisms for their conclusion, and assess their evidentiary value, in addition to identifying the most significant risks and challenges they face.

Objectives:

• To clarify the concept of electronic contracts in general;
• To propose legislative developments to enhance trust in electronic banking transactions;
• A study of the legislation governing electronic banking contracts and its adequacy in keeping pace with digital development**;**

ethodology:

The descriptive-analytical approach, following a classical structure of an introduction two chapters, and a conclusion.

Hypotheses:

H1 Financial legislation is insufficient to keep pace with the rapid development in the electronic banking sector, necessitating its continuous updating;
H2 Electronic proof methods are exposed to significant technical and legal risks, requiring enhanced protection and security systems;
H3 Despite their legal recognition, electronic proof methods, particularly electronic signatures, still pose practical difficulties in proving evidence before the courts**;**

1- The Nature of Electronic Contracts

The electronic contract is a modern form of contracting that emerged as a result of technological advancements. It is concluded via electronic communication methods without the physical presence of the parties.

1-1 The Concept of Electronic Contracts

1-1-1 Legal Definition:

A review of various Algerian laws regulating contracts reveals some attempts to integrate technology into the contractual process, but without adopting a clear and direct definition, unlike comparative legislation which addressed this type of contract during the years 2000-2001-2002. Among these are:

- The Tunisian Law on Electronic Commercial Transactions of 2000, which stipulates in Article 28 that "an electronic contract is established in the name of the seller and on the date of the seller's acceptance of the order by means of an electronic document signed and addressed to the consumer, unless the parties agree otherwise."
- The Jordanian Electronic Transactions Law of 2001, which explicitly defines an electronic contract in Article 2 as an agreement concluded entirely or partially by electronic means.
- The UAE Law on Electronic Transactions and Commerce of 2002, Article 2 of which states that electronic transactions refer to any transaction, contract, or agreement concluded electronically. Or its execution wholly or partially by means of electronic correspondence.

The Algerian legislator was slow to keep pace with this development and to regulate these important rules until the issuance of Law 18-05, which took explicit steps and addressed the definition of the electronic contract in Article 6 as: “A contract, as defined by Law No. 04-02… that establishes the rules applicable to commercial practices, and is concluded remotely, without the actual and simultaneous presence of its parties, by resorting exclusively to electronic communication technology.”

Referring to the definition of a contract in Article 3/4 of Law 04-02, it stipulates that: “Any agreement or convention aimed at selling a good or providing a service, drawn up in advance by one party with the acquiescence of the other party, such that the latter cannot make any real changes to it…” (MOUHEB & HELIS, 2021, p. 103)

1-1-2 Jurisprudential Definition:

Jurisprudence has differed in defining the electronic contract. Some have defined it based on one of the means of its conclusion, considering that “an electronic contract is a contract concluded via the internet.” Others have defined it by stipulating a means. An electronic contract is defined as: “any agreement where offer and acceptance meet on an open international network for remote communication, via audio-visual means, thanks to the interaction between the offeror and the offeree”. Some define it based on its inclusion of all electronic means, but stipulate that all its elements must be completed electronically until its conclusion, as: “any contract concluded remotely using an electronic means until the contract is finalized”. (ACHIR & GACHI, 2002, p. 708)

1-2-1 Types of Electronic Banking Contracts

There are several contracts that a bank concludes with its customer depending on the situation. These include banking contracts related to deposits, banking contracts

related to loans, and electronic banking contracts related to electronic payment methods.

1-2-1-1 Opening an Electronic Deposit Account

Recently, some private banks in Algeria have begun offering remote electronic deposit account opening services using remote communication technology. The process involves the following steps:

- Filling out the registration form;
- Signing the contract electronically;
- Activating the account;

After opening the electronic account remotely and depositing an initial amount to set up the electronic bank card, the account holder can deposit various amounts of money into their account or receive deposits from others for their various professional and commercial activities.

1-2-1-2 Electronic Loan Contract:

Consumer loans are now possible online, and the beneficiary obtains an electronic bank loan. The procedures are carried out legally. Loans can be electronic, at least, and can be secured by movable assets. The purpose can be consumer-related. Algerian law does not regulate these transactions.

1-2-1-3 Electronic Bank Transfer Contract:

Algerian law does not define this contract. However, Article 543 bis 19 of the Commercial Code outlines the elements of a transfer order. This includes the transfer of funds, securities, or bonds, the statement of the account from which the debit is made, and the statement of the account to which the transfer is made. Article 46 of Law 180, which establishes the general rules relating to postal and electronic communications, also recognizes an electronic bank transfer contract that is executed through electronic payment methods. (FAKIR & KAHIL, 2002, p. 119)

1-3 Characteristics of Electronic Banking Contracts

From the above, it is clear that the electronic contract is characterized by the following:

1-3-1 Conclusion by Electronic Means

The most important characteristic that distinguishes the electronic contract from other contracts is that it is concluded by electronic means. The means by which the contract is concluded is what acquires this characteristic. The electronic contract does not differ from the traditional contract in terms of subject matter, but rather in terms of the method of conclusion and means of proof. The subject matter of the contract can include all things and services that are permissible to trade. As for its parties, they are the same as in any other contract (sellers, service providers, lessees, consumers, etc.). The contract is also concluded between individuals and legal entities (private or public).

1-3-2 Conclusion by Distance

Distance contracts are defined as “any contract related to the provision of a product or service that is initiated by the supplier without the simultaneous physical presence of the supplier and the consumer, using remote communication technology for the purpose of transferring the goods and the purchase order from the consumer” Distance contracts are concluded without the physical presence of the two parties, and there is no time difference between them. Offer and

acceptance, as well as fulfillment, occur without the physical presence of the contracting parties.

Considering an electronic contract as a type of distance contract necessitates that it adhere to certain specific rules not found in contracts concluded through traditional methods. Therefore, geographical distance does not preclude the possibility of a virtual meeting place for the contract, such as one concluded via the internet using chat and lives video conferencing.

1-3-3 Predominantly Commercial in Nature:

E-commerce is the domain where electronic contracts are particularly prominent, being the most important means of this type of commerce. This has led some legal scholars to use the term "e-commerce" to refer to electronic contracts, which are defined as commercial relationships and transactions conducted between parties using electronic devices and tools such as the internet. This type of contract is characterized by its consumer nature, as it is often between a merchant and a consumer.

1-3-4 It has a predominantly international character.

This is due to the fact that the prevailing method of its conclusion is the internet, which connects most countries of the world. This characteristic raises many legal issues, such as determining the applicable law and the competent court for disputes arising from the conclusion of electronic contracts.

1-3-5 Execution of the Electronic Contract and its Specificities

An electronic contract can be concluded and executed via the internet, as it has become possible to deliver products in a physical form or deliver them electronically, such as computer programs, music recordings, or medical consultations**.**

1-3-6 Proof and Fulfillment of Obligations Electronically

An electronic contract can be proven through electronic documents and electronic signatures. Electronic payment methods can also be used to fulfill obligations, such as electronic money, bank cards, and electronic commercial papers. (BARNI , 2006, p. 06)

2- The Legal Framework for Electronic Banking Contracts

2-1 Conditions for the Formation of an Electronic Contract

2-1-1 Consent:

Article 59 of the Civil Code stipulates that "a contract is concluded as soon as the two parties exchange expressions of their identical will, without prejudice to legal provisions." Therefore, for consent to be valid, there must be an intention, and this intention must be directed towards producing a legal effect and expressed in accordance with what is stipulated by law. Furthermore, the acceptance issued by the party to whom the offer is made must be identical to the offer made by the offeror. In traditional legal principles, consent is expressed verbally, in writing, or through customary gestures. The essence of consent is that both parties to a contract express their desire to enter into the contract, whether verbally, in writing, through customary gestures, or by taking a stance that leaves no doubt as to its meaning. This is what Article 60 of the Civil Code stipulates. According to the general principle, there is no specific method for expressing consent; a person may express their will in any way they see fit. Exceptions are made only in specific cases where the law requires a particular form for the contract to be valid. Consent

may be expressed without restriction to a specific method or in a particular way. It may be expressed precisely, as is common practice, or in writing, whether handwritten, printed, or typed, on a document or letter. There is nothing preventing the expression of consent through gestures, provided they are commonly and spontaneously used in a way that leaves no doubt as to their true meaning. Consent may also be expressed through actual exchanges indicating agreement, even if these are later withdrawn by words, or through the selection of a specific stance that does not leave any room for doubt regarding the circumstances**.** (BELHADJ, 2018, p. 81)

2-1-2 Legal Capacity:

Legal capacity is an established right that cannot be conceived except as belonging to natural or legal persons. This person must have reached the age of majority to be legally competent to perform their duties. Legal capacity is a person's eligibility to acquire rights and bear obligations, regardless of the period at which this eligibility begins. The Algerian legislator stipulated in Article 40 of the Civil Code“ that every person who has reached the age of majority, is of sound mind, and has not been declared legally incapacitated is fully competent to exercise their civil rights**”.** (GUERNANE, 2022, p. 889)

2-2 Proof of Electronic Contracts

2-2-1 Electronic Signature:

The Algerian legislator defined an electronic signature as data in electronic form, accompanied or logically linked to other electronic data, used as a means of distribution. The legislator further clarified the meaning of the signatory, who is a natural person possessing the data for creating the electronic signature and acting on their own behalf or on behalf of the natural or legal person they represent.

Regarding the data used to create an electronic signature, it is defined as unique data such as symbols or private encryption keys used by the signatory to create the electronic signature. As for the function of the signature, the legislator clarified in Article 6 of the law that an electronic signature is used to authenticate the signatory's identity and prove their acceptance of the written content in electronic form **.** (HOUES, 2021, p. 2989)

2-2- Electronic Writing:

The Algerian legislator adapted the rules of civil law relating to evidence to accommodate non-paper messages and media. Electronic writing was addressed in Article 323 bis and Article 323 bis 1 of Law 10-05 amending the Algerian Civil Code. Article 323 bis stipulates “ that proof in writing results from a sequence of letters, descriptions, numbers, or any meaningful signs or symbols, regardless of the medium used or the methods of transmission”.

It was also indirectly recognized in Law 02-05 of 06/02/2005 amending and supplementing the Commercial Code, which permitted the physical presentation of a bill of exchange for payment by any electronic means of exchange, as stipulated in Article 414 of the Commercial Code. It also stipulated the possibility of presenting a check for payment by any electronic means of exchange specified in Articles 543 bis and 543 bis 23 of the Algerian Commercial Code. The Algerian legislator adopted a broad definition of writing, leaving a wide scope for its application. Open to all media, even those that may emerge, including traditional and electronic writing, and without restricting methods of transmission, which can

be physical (such as paper or magnetic transfer, like fax and telex) or electronic (such as computer and internet). This is evident in Article 543 bis, which closely resembles Article 1316/1 of the French law. (BATLI, 2020, p. 10)

2-3 Challenges and legal protection of electronic banking transactions.

2-3-1 Difficulty in Identifying Parties

Online transactions often lack the ability to update the identity of the contracting party because the electronic address is frequently not linked to a specific country. Furthermore, monitoring the electronic addresses used by contracting parties to verify the identity of the other party is challenging. Merchants are not permitted to store customer addresses in their databases for identity verification. For the consumer, identifying the supplier allows them to determine the applicable law of the contract, which is often the supplier's law. Similarly, merchants prioritize the identity of the party receiving the service to ensure the eligibility of their contracting partners**.** (ZIGHEM & TROUZINE , 2020, p. 351)

2-3-2 Fraud

Fraud, in its general sense, is a behavior that involves deceiving the victim to seize their money. It entails deception, fraud, and misrepresentation. However, in the field of information technology, numerous definitions of electronic fraud, also known as information fraud, have emerged, differing in the elements required for its establishment. Some define it as"the deliberate manipulation of information and data that represents a valuable asset. Material data stored by a computer system, unauthorized input of accurate information and data, manipulation of commands and instructions governing the programming process, or any other means that could influence the computer to perform operations based on this data in order to obtain illicit profit and harm others". (BOURBABA & ABDELKAFI, 2022, p. 414)

2-3-3 Legal Protection of Banking Operations

2-3-3-1 Compensation Based on the Bank's Contractual Liability

The existence of a contract between the bank and the client obligates the bank to adhere to it. Any breach of the obligations stipulated in the contract establishes the bank's contractual liability, which necessitates compensation. Three conditions must be met for contractual liability to arise:

- The existence of a valid contract. If the contract is void and one of the contracting parties is harmed by the other, the liability is tortious due to the absence of a contractual relationship. If one of the contracting parties breaches an obligation arising from the contract, they must fulfill it. The breach may be due to non-performance of an obligation or performance after the time specified in the contract. However, if a contract exists between the parties and the breach is unrelated to reason, then the liability is considered tortious in this case, as the breach is not related to the contractual obligation. The non-performance or delay in performance must result in harm to the other contracting party.

2-3-3-2 Compensation based on the bank's tortious liability:

A bank's tortious liability is considered to arise from a breach of the general obligation of due diligence imposed by law on the bank, or from negligence or failure to fulfill specific legal duties such as the duty of inquiry and investigation, the duty to inform and provide information, and the duty of security and safety. A bank's tortious liability is also considered when the contract between the client and the bank is void and the client suffers harm, or when there is a contract subject to

an annulment. In these cases, the client has the right to seek compensation from the bank for the harm suffered based on tortious liability. Three conditions must be met for tortious liability to be established. 1. The existence of a tort, which is a breach of a legal obligation.
2. The occurrence of harm, which is the injury suffered by a person that warrants compensation because it infringes upon a legitimate right or interest.
3. That the tort is the cause that led to the occurrence of the harm, i.e., the existence of a causal link between the tort and the occurrence of the harm. (BELHADJ, Legal Protection for the Consumer in Electronic Banking Transaction, 2022, p. 807)

Conclusion:

Despite its numerous advantages, digital transformation has also given rise to a number of legal and technical challenges that necessitate a re-evaluation of traditional contractual rules by legislators. The electronic environment raises issues concerning the expression of intent, the fulfillment of contractual obligations, and the admissibility of digital evidence. Furthermore, the recognition of electronic signatures as an alternative to traditional signatures has prompted questions about the legal liability of banks, particularly in cases of technical errors or electronic fraud. The study raises the question of the bank's obligation to ensure the security of its information systems and protect customer funds. The prevailing trend suggests that banks bear a stronger responsibility due to their professionalism and the nature of their operations, while also acknowledging the customer's responsibility for safeguarding their confidential data.

Based on the foregoing, it can be said that the success of electronic banking contracts hinges on achieving a delicate balance between encouraging technological innovation on the one hand and ensuring legal protection for the contracting parties on the other. Banking contracts have become an imperative in the digital economy, offering significant advantages in terms of speed and efficiency. However, they still face numerous legal and technical challenges, as the legal framework is insufficient in some aspects.

Recommendations:

Update legislation related to electronic transactions;
Strengthen cybersecurity in banking institutions;
Develop and expand the adoption of electronic signature mechanisms;
The topic of electronic contracts remains a fertile ground for scientific research due to its continuous development and close connection to technology.

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