

The Electronic Contract: A New Mechanism for Contracting

العقد الإلكتروني آلية جديدة للتعاقد

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الملخص:

تخضع العقود الإلكترونية للقواعد العامة المنظمة لأحكام العقد ، و إن كان هذا النوع الجديد من العقود يحتاج إلى قواعد خاصة لمعالجته كونه يبرم في بيئة رقمية ، لذلك فالهدف هنا التطرق الى أهم النقاط التي تمثل خصوصية العقد الإلكتروني مع إبراز أهم خصائصه و قبل ذلك التطرق إلى مفهومه ، كما يهدف المقال لإبراز أهم الوسائل والاليات المستخدمة في إبرام هذا النوع الجديد من العقود ،مع كيفية إثباته و هذا للتقرب من غاية البحث لمعرفة هل الاحكام المنصوص عليها في القواعد العامة كافية لتنظيمه ام لابد لقوانين خاصة تتماشى مع طبيعة هذا العقد خاصة من حيث إبرامه الذي يعتبر جوهر الاختلاف ،من أهم النتائج التي توصلنا إليها ان مشرعنا أخذ بالمفهوم الواسع للتجارة الإلكترونية لعدم اعتماده على وسيلة معينة في التعاقد، كما انه يتخذ وصفا استهلاكيا ، كما ضيق من نطاقها من خلال ربطها بأطراف محددة بين المورد الإلكتروني و المستهلك الإلكتروني ،مع توفير الحماية لصالح الطرف الضعيف ،وخلصت المقال إلى نتائج منها أن الخصوصية التي يتميز الإلكتروني العقد بها يجب ان تنقرر لها حماية قانونية لتحقيق أمن التعامل من الإبرام الى غاية الاثبات.

الكلمات المفتاحية: العقد، الإلكتروني، مورد إلكتروني، مستهلك إلكتروني، توقيع إلكتروني.

Abstract:

Electronic contracts are subject to the general rules governing contracts, although this new form requires special rules to address its conclusion in a digital environment. The aim is to examine the points that define the particularity of the electronic contract, highlight its main characteristics and, first, explain its concept. The article presents the principal means and mechanisms for concluding this contract and the methods of proving it, to assess whether general rules suffice or whether special laws are needed that align with the contract's nature, especially regarding its conclusion, the core difference. Key findings show the legislator adopted a broad concept of electronic commerce by not relying on specific contracting means; it uses a consumer-oriented description and narrows scope by linking defined parties—the electronic supplier and the electronic consumer—while protecting the weaker party. The article concludes that the particularities of the electronic contract must receive legal protection to secure transactions from formation through proof and ensure evidentiary reliability and enforceability.

Keywords: Contract, Electronic, Electronic Supplier, Electronic Consumer, Electronic Signature.

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Introduction:

Algeria has been influenced by modern technological developments on the international economic scene and has worked to keep pace with these economic transformations that having once been an interventionist state, it has become a regulatory state, seeking to organize the market. Freedom of trade and industry has become a constitutionally enshrined right, as stipulated in Article 37 of the 1996 Constitution. This was reaffirmed by Article 46 of the 2016 Constitution through its guarantee of freedom of investment and trade, a principle also adopted in the 2020 Constitution.

It has also enacted a series of laws to accompany this economic transformation, among them Law No. 18-05 on electronic commerce. The latter is considered the lifeblood of the economy, with its essential foundation being the electronic contract. Although it does not differ from the classical contract in requiring the same essential elements for its formation—consent, subject matter, cause, and formality in certain contracts

it departs from the general rules in that it is concluded through electronic means, within a virtual digital environment. Here lies the specificity of this contract, which requires special rules adapted to this modern type of agreement.

On this basis, the present study seeks to examine the possibility of considering the electronic contract as an alternative to the classical contract, as a new mechanism and means of contracting in a digital environment. The importance of this study thus lies in highlighting the main distinctive features of the electronic contract, whether in terms of the contracting parties and the unilateral imposition of contractual terms by one of them, or in terms of the methods of conclusion, payment, and proof.

Electronic evidence emerged as a protective technical mechanism to safeguard personal data exchanged in a digital space, which has been exposed to numerous risks. Given the nature of intangible writings and instruments, it became necessary to seek a means compatible with that nature during signing and to afford such instruments evidentiary weight; thus, the electronic signature technique appeared.

What leads us to ask: What are the legal provisions regulating the electronic contract as stipulated in Algerian legislation that highlight its particularity vis-à-vis the traditional contract? And are the general provisions set forth in the general rules sufficient to regulate this new type of contract?

To answer this problematic, our research will follow the descriptive-analytical method by describing the parties to the contractual relationship, the manner of contracting, payment and proof, and by analyzing the legal provisions contained in the Electronic Commerce Law.

We will address the concept of the electronic contract in the first section, then examine the provisions governing the conclusion of the electronic contract and its evidentiary force in the second section.

1- The concept of the electronic contract its legal nature and characteristics

The electronic contract constitutes the legal instrument for e-commerce transactions, and with the widespread use of this new type of contract definitions have diverged; therefore,

we will address its definition, legal nature, and characteristics in the first section and its particularity in the second section.

1.1- Definition of the Electronic Contract and Its characteristics

The electronic contract is characterized by its modern and innovative nature, and its use has become increasingly widespread in recent years as a new mechanism for concluding agreements. In order to understand this type of contract, it is necessary to examine its definition and to delineate the scope of its application.

1.1.1- Definition of the Electronic Contract

The use of the electronic contract has become increasingly widespread, to the extent that it is now formally recognized in many jurisdictions. Several states have devoted specific sections, chapters, and even entire laws within their domestic legislation to regulate this new form of contract, setting out its provisions and the manner in which it is to be applied. Consequently, a variety of definitions have been proposed, both in legislative texts and in legal scholarship. In this study, we shall first examine the statutory definition of the electronic contract, before turning to its doctrinal (jurisprudential) definition as developed by legal scholars.

Firstly: Legislative Definition

The Egyptian legislator defined the electronic commercial contract in the Egyptian Law on Electronic Commerce as: a contract in which the will of one or both parties is expressed, or which is negotiated or whose documents are exchanged, wholly or partially, through an electronic medium.

As for the Jordanian legislator, he defined it in the Jordanian Electronic Transactions Law as: an agreement concluded by electronic means, whether wholly or partially, to include any contract concluded electronically. This definition is found in Article 2 of Law No. 85 of 2001 on Electronic Transactions, which states: an agreement concluded by electronic means, wholly or partially¹.

The Algerian legislator, in turn, defined it in Article 6(2) of Law No. 18-05 on Electronic Commerce as: a contract concluded at a distance without the physical and simultaneous presence of the parties, relying exclusively on electronic transmission technology².

Secondly: Doctrinal Definition

French doctrine defined it as: an agreement in which offer and acceptance meet concerning goods and services, through an international network of remote communication, by an audiovisual means enabling interactive dialogue between the offeror and the offeree³.

Some jurists consider the electronic contract to be: an agreement in which offer and acceptance meet on an open international network of remote communication, by audiovisual means, thanks to the interaction between the offeror and the offeree.

Others have defined it as: the binding of the offer made by one contracting party with the acceptance of the other, in such a way that its effects are established on the subject matter of the contract, and which is concluded by electronic means⁴.

Another definition holds that it is: a contract involving the exchange of messages between seller and buyer, based on pre-prepared forms processed electronically, which create obligations for the contracting parties⁵.

From these legislative and doctrinal definitions, we conclude that they converge on a single meaning: the electronic contract is characterized by the electronic means through which it is concluded.

It can also be inferred that these definitions focused on the means used in contracting, namely all modern communication technologies, foremost among them the Internet. These means were not exhaustively enumerated, but rather generalized, in order to adapt to scientific and technological progress. The legislator thus sought to open the door to benefit from all future developments.

From the foregoing, we deduce that the electronic contract does not differ from the classical contract except in the means used for commercial exchanges. Its rules are derived primarily from the Law on Electronic Commerce, and more generally from the general rules and the theory of contract.

1.1.2- The Legal Nature and Characteristics of the Electronic Contract

We shall examine the principal characteristics that distinguish the electronic contract, while also identifying the position adopted by the Algerian legislator in its legal characterization.

Firstly: The Electronic Contract as a Contract of Adhesion

The general principle in the method of contract formation is contractual freedom, whereby the contract is considered the law of the parties. This is what is stipulated in Article 106 ⁶ of the Civil Code, which ensures equality between the parties in determining terms and obligations.

However, with continuous economic and technological developments, contracts have increasingly been prepared in advance, in standard forms, leaving the second contracting party—the weaker party—no choice but to accept these pre-established terms without the right to negotiate. This is what is referred to as a contract of adhesion.

Here arises the question: does the electronic contract fall within contracts of adhesion, or is it a negotiable contract?

A part of legal doctrine considers the electronic contract to be a contract of adhesion whenever all its conditions are met, since the offer is directed to the public in a permanent, continuous, and indefinite manner, and the second contracting party does not participate in drafting or determining the contractual terms, which are predetermined.

Another part of doctrine argues that the electronic contract cannot be considered a contract of adhesion in an absolute sense, even if one or two conditions are met. This view is based on the fact that the consumer has the option to accept the contract—by clicking the acceptance button—or to refuse, exit, and close the page. Moreover, negotiation is possible if conducted via email or through communication tools.

For a contract to be considered one of adhesion, the offer must come from a contracting party who holds an actual or legal monopoly over a necessary good or service, making it difficult for the consumer⁷ to dispense with it. If we apply this condition to the

digital environment, it appears almost impossible, since electronic stores and websites now offer a wide variety of goods and services, leaving the consumer free to browse and choose what suits him.

As for the position of the Algerian legislator, by referring to the Law on Electronic Commerce (Law No. 18-05), we find that it refers us to the Law on Commercial Practices (Law No. 04-02). Article 3, paragraph 4 of the latter considers a contract to be any agreement or arrangement aimed at selling goods or providing services, prepared in advance by one of the parties, with the other party adhering to it, such that the latter cannot effect any real modification to it⁸.

Thus, the Algerian legislator adopted a broad concept of the contract of adhesion. It is sufficient that one of the parties—the electronic supplier, who is the stronger party and more experienced in his field—unilaterally sets the contractual terms independently and in advance, while the electronic consumer, the weaker party, accepts those terms without the freedom to discuss or negotiate them.

- Accordingly, the Algerian legislator granted the electronic consumer the same protection afforded to the weaker party in contracts of adhesion under the Law on Commercial Practices, by granting the judge the authority to amend or annul abusive terms, and by interpreting ambiguous clauses in favor of the consumer⁹.

Secondly: The electronic contract is characterized by its international and commercial nature.

Each of these characteristics will be examined separately:

- The Commercial Nature of the Electronic Contract

To determine the commercial scope of the electronic contract, it is necessary to refer to the forms of electronic commerce, which include:

- **Business to Business (B2B):** representing electronic commercial exchanges between companies. Their activity includes all exchanges between two companies through electronic means, such as the exchange of information and the conclusion of commercial contracts. This type of contract is often used to reduce costs and increase profits¹⁰.
- **Business to Consumer (B2C):** representing electronic commercial exchanges between companies on the one hand and individual consumers on the other, through the sale of products and services by companies to consumers via electronic retailing¹¹.
- **Consumer to Consumer (C2C):** representing contracts concluded between groups of consumers among themselves, using the Internet to display and sell their products and services. In other words, it refers to sales of goods and services by consumers to other consumers electronically, where consumers sell directly to one another.
- Referring to the Electronic Commerce Law (18□05), Article 1/6 defines electronic commerce as the offer or guarantee of providing goods and services remotely by the electronic supplier to the electronic consumer through electronic communications. We infer that the electronic contract contemplated by the regulation assumes a commercial□consumer character: the legislator linked its parties to two actors, namely the electronic supplier and the electronic consumer. Thus, on the one hand, the scope of electronic commerce is narrowed, and on the other hand, the subject matter of contracting is limited to the provision of goods and services.

- **The International Nature of the Electronic Contract**
- Since the electronic contract is concluded through electronic means of communication—foremost among them the Internet, which is an international network that eliminates the geographical borders of states¹²—contracts concluded through it are considered cross-border contracts. This has given rise to significant doctrinal debate over whether the electronic contract should be classified as an international contract or as a domestic contract with international characteristics.

First opinion: The electronic contract may be described as an international contract, but it may also be described as a domestic contract, provided that it is concluded within the territory of a single state, where both parties belong to the same state, and the place of conclusion and performance of the contract are within that state.

Second opinion: The electronic contract is described as an international contract whenever one of the following elements is present:

- **The means used:** most electronic contracts are concluded via the Internet, which is a global network not confined to the jurisdiction of any single state, even if the contract is concluded within the same state.
- **The foreign element:** it is sufficient for one foreign element to exist in the contract, such as when the parties belong to two different states, thereby giving the contract an international character¹³.
- **The economic criterion:** the electronic contract is considered international whenever it concerns foreign trade interests. This is the approach adopted by the Algerian legislator in Law No. 18-05, in its second chapter on the practice of electronic commerce, which in its first section addresses cross-border commercial transactions.

We therefore conclude that the electronic contract regulated by the legislator may acquire an international character through the application of international standards to it, although it did not grant the contracting parties the freedom to choose the law applicable; conversely, it may be characterized as a domestic contract if concluded between contracting parties belonging to the same state within its borders, which necessitates the application of national law.

1.2- The Specificity of the Electronic Commercial Contract

The electronic contract, concluded in an electronic space characterized by immediacy, specificity, and universality, possesses particular features that distinguish it from the classical contract, whether in terms of the contracting parties or the method of payment. As for the method of contracting, it will be addressed later in Section Two.

1.2.1- Specificity in Terms of the Contracting Parties

The electronic contract, like other contracts, involves contracting parties bound by a contractual relationship. The first party is referred to as the electronic supplier, while the second party is the electronic consumer, as defined in Article 6, paragraphs 3 and 4.

Firstly: The Electronic Supplier

Every natural or legal person who markets or proposes to provide goods or services through electronic communications¹⁴. The role of the electronic supplier in the Law on Electronic Commerce is limited to the marketing of goods and services remotely through electronic means. We may conclude that his role is narrower compared to the prerogatives of

the economic operator as defined in the rules of commercial practices and in the Law on Consumer Protection and Fraud Repression.

The Algerian legislator required that any person wishing to engage in electronic commerce, whether a trader or an artisan, must register his activity with the competent authorities. The trader must register his activity with the commercial register services, once he has fulfilled the legally prescribed conditions.

Similarly, the artisan who wishes to engage in electronic commerce must register with the register of traditional industries and crafts, once he has fulfilled the legally prescribed conditions. A national database of electronic suppliers is established at the National Center of the Commercial Register. This includes electronic suppliers registered in the commercial register or in the register of traditional industries and crafts. This database is published through electronic communications.

Thus, the electronic supplier is identifiable, and contracting does not take place with an anonymous party. He has a tax identification number, physical and electronic addresses, a telephone number, a commercial register number, or a professional card number. When the electronic supplier presents his commercial offer, it must be in a visible, readable, and understandable manner¹⁵.

Secondly: The Electronic Consumer

Every natural or legal person who acquires, for consideration or free of charge, a good or service through electronic communications from the electronic supplier, for the purpose of final use¹⁶.

From this definition, we may conclude that the Algerian legislator retained the concept of the traditional consumer as defined in Law No. 09-03 on Consumer Protection and Fraud Repression, in Article 1(3). The only difference lies in the use of electronic communication technologies during the conclusion of the contract.

Referring again to the definition of the electronic consumer, it is stipulated that the acquisition of the good or service must be for final use. By way of contrast, anyone contracting for professional purposes is not considered an electronic consumer. Thus, the legislator adopted a narrow concept of the electronic consumer.

1.2.2 - Specificity in Terms of Electronic Payment

It is the means by which individuals settle their obligations through the payment of goods and services obtained. This method has evolved with technological development, leading to the emergence of what is known as electronic payment.

Firstly: Definition of Electronic Payment:

Several doctrinal definitions have been proposed with regard to electronic payment systems. Most of these definitions revolve around comparing payment conducted through electronic means with the traditional forms of payment established under earlier systems.

As for the Algerian legislator, he did not define electronic payment, but rather defined means of payment in Article 69 of Ordinance No. 03-11 on money and credit as: “all instruments that enable any person to transfer funds, regardless of the instrument or technical method used¹⁷.”

With the promulgation of Law No. 18-05 on electronic commerce, Article 5(6) defined means of payment as: “a means of payment authorized in accordance with the applicable legislation, enabling its holder to make payments either in proximity or remotely through an electronic system¹⁸.”

Thus, the definition came comprehensive of all means of payment. The legislator did not precisely specify the intended means of payment, but rather adopted a broad meaning, encompassing any new developments in payment technologies. Electronic means of payment fall into two categories: either means of payment initially issued in a traditional form and then processed electronically, or modern means of payment issued from the outset on electronic bases¹⁹.

Secondly: Electronic Means of Payment

Electronic means of payment can be divided into two categories. The first includes developed instruments, which had a prior existence but have evolved significantly as a result of technological advancement. The second comprises new instruments, which are entirely novel and had no precedent in earlier payment systems.

A. Second: Developed Electronic Means of Payment

These consist of digital commercial papers such as the electronic cheque, the electronic bill of exchange, and the electronic promissory note.

- **The Electronic Cheque** Referring to the rules governing the traditional cheque, the Algerian legislator regulated it through Articles 472 to 543 of the Commercial Code. Article 472 of the same law specifies the data that must be included in the cheque, leaving its definition to doctrine, which considers the cheque to be a written instrument by which the drawer issues an order to a credit institution to pay a sum of money to a third party called the beneficiary²⁰.

The electronic cheque is a certified and secured electronic message sent by the issuer of the cheque to the recipient, who endorses it and presents it to the bank operating online. The bank first transfers the monetary value of the cheque to the holder's account, then cancels the cheque and returns it electronically to the recipient as proof that it has indeed been cashed. The recipient can verify that the cheque amount has actually been transferred²¹.

The electronic cheque is an electronic document containing the following data: cheque number, name of the drawer, account number, name of the bank, name of the beneficiary or

the amount to be paid, the currency unit used, the validity period, and the electronic signature of the drawer.

– **The Electronic Bill of Exchange** The Algerian legislator regulated the provisions of the bill of exchange in Articles 389 to 464 of the Commercial Code, and specified its conditions in Article 390 of the same law, without defining it, leaving the definition to doctrine. Doctrine considers it a document issued by a person called the drawer, ordering another person called the drawee to pay, within a specified period, a sum of money to a third party called the beneficiary²².

The electronic bill of exchange does not differ in definition from its paper counterpart. It is a tripartite instrument, processed electronically in whole or in part, whereby the drawer orders the drawee to pay a sum of money to a third party called the beneficiary.

– **The Electronic Promissory Note** The Algerian legislator did not define it, but regulated its provisions in Articles 465 to 471 of the Commercial Code. The promissory note is the instrument by which a person called the maker undertakes to pay, within a specified period, a sum of money to another person called the beneficiary.

The electronic promissory note does not differ from the traditional one except in being processed electronically, either wholly or partially.

b. Modern Electronic Means of Payment

Bank cards and electronic money are types of payment that did not previously exist; they are products of modern technological developments.

– **Bank Cards** A bank card is a magnetic card that allows its holder to purchase goods or pay for services without the need to carry large amounts of cash²³.

In terms of form, the cards are made of plastic, printed on both sides, and follow a standardized model. They contain essential data along with strips, including:

- The name and logo of the international organization (e.g., MasterCard, Visa Card).
- The name and logo of the issuing bank.
- The card number and expiration date.
- A strip bearing the cardholder's signature specimen.
- A magnetic strip along the card for reading by ATMs and point-of-sale devices²⁴.

The Algerian legislator adopted both debit and withdrawal cards. A debit card is any card issued by banks or legally authorized financial institutions that allows its holder to withdraw and transfer funds. A withdrawal card, on the other hand, is issued by banks and financial institutions and allows its holder only to withdraw funds²⁵.

– **Electronic Money** It is prepaid monetary value stored electronically, widely accepted, used as a payment instrument, and does not require a bank account when making a payment²⁶.

Its forms include:

- The prepaid card, also called the stored-value card or electronic wallet.
- Network money (net money), which is a stored-value payment mechanism allowing payments through computer networks²⁷.

2- Rules of Concluding the Electronic Contract and Its Probative Value

For the electronic contract to be concluded, the offer must be linked to the acceptance, as both express the will to contract in a digital environment. In the event of a dispute between the contracting parties, there is a mechanism of proof. We will address the rules of concluding the electronic contract in the first requirement, and the probative value of the electronic contract in the second requirement.

2.1- Rules of Electronic Offer and Acceptance

The expression of will in the electronic contract is made through electronic means, usually via the Internet. This is the essence of the difference from the traditional contract, as it gives this will a special nature, whether in terms of the electronic offer or the electronic acceptance. Therefore, this study will focus on these two elements.

2.1.1- The Rules Governing Electronic Offer

– **Firstly: The Electronic Offer** the offer is when a person makes a firm proposal expressing his will to conclude a specific contract, and once acceptance is issued, the contract is formed²⁸.

It is the definitive and binding expression issued by one of the contracting parties and directed to the other party with the intention of producing legal effects.

The Algerian legislator referred to the classical offer in the general rules under Article 60 of the Civil Code: “The expression of will may be by words, writing, customary signs, or by adopting a position that leaves no doubt as to its meaning²⁹.”

As for the electronic offer, it was defined through electronic advertising in Article 6(6) of Law No. 18-04 as: “any announcement aimed directly or indirectly at promoting the sale of goods or services through electronic communications³⁰.”

Referring to Articles 10 and 11 of Law No. 18-05, we find that the law expressly addressed the electronic offer. Article 10 stipulates that every electronic commercial transaction must be preceded by a commercial offer and must be documented by an electronic contract approved by the electronic consumer. Article 11 specifies the manner in which the electronic commercial offer is made, in addition to the information that the electronic supplier is obliged to provide to the electronic consumer, in a visible, readable, and understandable form. It must include at least, by way of example and not limitation:

- The commercial register number or professional card number.
- The characteristics and nature of the goods and services, including all applicable fees.
- The methods, deadlines, and costs of delivery.

- The general conditions of sale, particularly regarding the protection of personal data.
- The conditions of commercial warranty and after-sales service.
- The method of calculating the price, when it cannot be determined in advance.
- The procedures of payment.
- The conditions of contract termination, where applicable.
- A complete description of the various stages of executing the electronic transaction.
- The validity period of the contract, where applicable.
- The conditions and deadlines for withdrawal, where applicable.
- The method of confirming the order.
- The date of delivery of the means of the product subject to the prior order and the manner of its cancellation.
- The method of returning, replacing, or compensating the product.
- The cost of using electronic communication means when calculated on a basis other than the one normally applied.

Secondly - Secondly: Forms of the Electronic Offer

The electronic offer takes several forms, including:

- **Offer via the Web** The World Wide Web (WWW) is considered one of the most important technical protocols on the Internet and serves as an accessible gateway to the Internet. It is a unified user interface for many available network tools. Through this technology, Internet users can navigate millions of websites and various electronic pages containing different types of media such as text, graphics, images, sounds, and other forms³¹.

The offer via the web does not differ from ordinary advertisements, whether television or print, such as newspapers. It is directed to all people and the general public present on the Internet. It is an offer not limited to a specific time but available around the clock for the sale of goods and the provision of services. The offeror is not bound by a time period, although it may be conditional upon the availability of the product or service.

- **Offer via Email**

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This is the process of sending and receiving messages through the Internet instead of the traditional mailbox. The user must create an address on the Internet, which can be used for commercial, educational, or entertainment purposes, directed to the recipient's email address.

- The offer via email may be directed to a single person, in which case it is not binding unless it is time-limited, obliging the offeror to remain bound by his offer during that period.
- Alternatively, it may be directed to unspecified persons, i.e., to the general public. In this case, the electronic consumer, upon opening his email, finds a firm and binding offer issued by the offeror, and the consumer has absolute freedom to accept or reject it³².

The offer may also be merely an invitation to contract or negotiate, and not an actual offer, such as in the case of publications, advertisements, or price lists³³.

- **Offer via Chat or Video:** Conferencing This is a means that allows presence through online chat and dialogue technology, enabling conversations between network users through text, audio, or video chats using a microphone and a digital camera installed on each participant's device, allowing them to see and hear one another³⁴. One party issues an offer, which is met with acceptance by the other party, and the contract is concluded³⁵.

2.1.2- The Rules Governing Electronic Acceptance

Firstly: Electronic Acceptance: The offer alone is not sufficient to conclude the contract; it must be met with acceptance. Acceptance is the expression of consent by the person to whom the offer is directed, agreeing to contract under the conditions specified by the offeror. Acceptance must be definite and precise, issued while the offer is still valid, and must correspond to it. It may not add to or subtract from it; otherwise, it is considered a new offer. This is in accordance with Article 66 of the Civil Code³⁶. Referring to Law No. 18-05 on electronic commerce, we find that the Algerian legislator did not regulate the rules of electronic acceptance. It is therefore subject to the provisions of the general rules, with the difference lying in the method of expression, which is through electronic means. Thus, electronic acceptance is subject to the same conditions as traditional acceptance.

It may take one of the following forms:

Secondly: Methods of Expressing Electronic Acceptance

– **Expression of Electronic Acceptance via Email**

The specificity of electronic acceptance lies in the methods of expressing it. It may be expressed in writing, through the use of a website, via email, or verbally through chat. For example, the offeree may send a message via email containing an explicit acceptance of the offeror's proposal. If the offeree sends an email message informing the offeror of his acceptance and agreeing to all essential matters, the contract is considered concluded, even if some secondary matters are left unresolved, provided that the contract is not conditional upon agreement on those matters.

– **Expression of Electronic Acceptance via the Web**

This is done by clicking "accept" on the designated acceptance icon. The word "accept" is considered an expression of the consumer's will to enter into the contract. However, acceptance expressed by clicking the mouse on the acceptance icon raises the possibility that the click was made by another person or occurred accidentally. Therefore, some emphasize the necessity of ensuring proof that the acceptance was indeed made. Examples include requiring the offeree to click the acceptance button twice

- Using a purchase order document
- Posing a set of questions to the buyer to provide him with the opportunity to reflect before accepting the offer³⁷.
- **Expression of Electronic Acceptance via Video or Audio Communication** This is carried out through audiovisual or audio-only communication, such as when the contracting parties use social media platforms available on the Internet (e.g., WhatsApp, Viber). In this way, each party can see and speak with the other, negotiating through words and gestures that express explicit acceptance. The computer thus becomes a visual mobile phone, creating a virtual presence similar to an actual contract meeting. In this

case, the provisions of Article 64 of the Civil Code apply, whereby the offer is not binding unless it is immediately accompanied by acceptance³⁸.

- **Method of Contracting** To engage in electronic commerce, Article 8 requires that the activity of electronic commerce be registered in the commercial or industrial registers, as previously discussed, in addition to the requirement that the activity be published on a website or page hosted in Algeria (e.g., emdad.dz.com).

The contracting process is carried out by placing the contractual terms at the consumer's disposal, enabling him to contract. Once these conditions are met, the electronic supplier offers his goods or services in a digital space through one of the electronic means previously discussed. This constitutes the offer. After the electronic consumer verifies the details of the order—such as the specifications of the product or service, its price, and other details—and confirms the order, the contract is concluded as soon as acceptance is issued by one of the forms previously examined.

It can be concluded that electronic offer and acceptance differ from ordinary offer and acceptance, insofar as they are issued electronically, which confers upon them a particularity that requires protection in the absence of electronic security; the electronic medium by which they are concluded, namely the Internet, generally does not provide the necessary protection for exchanged data, which indicates a real risk — namely, an intrusion upon the privacy of personal data.

2.2- The Probative Value of the Electronic Contract

This mechanism was introduced to protect personal data exchanged in the electronic space, through the incorporation of techniques that safeguard this privacy. Therefore, we shall address: the electronic signature in the first branch, and its probative value in the second branch.

2.2.1- Definition of the Electronic Signature

With regard to the Algerian legislator, under the Civil Code (Law No. 05-10), electronic writing was recognized. It was stated that proof by writing may result from a sequence of letters, descriptions, numbers, or any signs or symbols with an intelligible meaning, regardless of the medium in which they are contained or the methods of transmission. This is what Article 323 bis of the Civil Code provides. It also established that proof by writing in electronic form is equivalent to proof on paper, provided that two conditions are met:

- Verification of the identity of the person who issued it.
- That it is prepared and stored under conditions that guarantee its integrity³⁹.

From these two provisions, we find that the Algerian legislator recognized electronic writing and electronic proof, which implies recognition of the electronic signature under certain conditions, although it did not define it. This shortcoming was later addressed. Referring to Executive Decree No. 07-162, the electronic signature was defined as data resulting from the use of a working method that meets the conditions set out in Articles 323 bis and 323 bis 1.

The second paragraph of the same article specified the conditions of the secure signature, which must be specific to the signatory, created by means that the signatory can

retain under his control, ensuring its connection with the act to which it relates, and capable of being detected in the event of any modification⁴⁰.

Referring to the Civil Law (Law No. 15-04) dated 10 April 2015, which sets out the rules relating to electronic signatures and certification, it defined them as electronic data linked to other electronic data used as a means of authentication⁴¹.

Among the forms of electronic signature are:

- **The simple electronic signature:** one of the simplest types of signatures, not relying on any means to secure the created signature or protect it from intrusion and tampering. This generates doubt as to its attribution to its owner and does not provide sufficient reliability.
- **The biometric electronic signature:** related to the physical characteristics of individuals, identifying each person through fingerprint analysis, retinal scans, voice recognition, etc. This type is more secure, as it is directly linked to the person and his or her physical traits.
- **The electronic pen signature:** this type of signature is executed when the sender of the message uses his personal handwritten signature with a special electronic pen on the computer screen. Through a specific program, the validity of the signature is verified by identifying the signatory and confirming his identity by comparing it with the signature stored in the computer's memory⁴².

2.2.2- The Probative Value of the Electronic Signature

Trust in the electronic signature is ensured through verification of its validity by means of an accredited certification. The electronic certification service is essential for authenticating electronic transactions and ensuring security and confidence in the signature.

- The electronic certification authority is considered a third party external to the contractual relationship, acting as a neutral party that guarantees the validity and confidentiality of data, verifies identity, and preserves information.

Electronic certification is thus a condition for the validity of the electronic signature. The legislator did not recognize any other means of authenticating electronic transactions except through electronic certification, which is provided by electronic certification service providers⁴³.

Referring to Article 7 of Law No. 15-04, the conditions of the qualified signature were specified as follows:

- It must be created on the basis of an electronic certification.
- It must be linked exclusively to the signatory.
- It must enable the identification of the signatory.
- It must be designed by a secure mechanism specific to the creation of the electronic signature.
- It must be generated by messages under the control of the signatory.

The Algerian legislator distinguished between the simple electronic signature and the qualified electronic signature, equating the latter with the traditional handwritten signature. Article 8 of the same law considered the qualified electronic signature as the only one equivalent to the written signature, whether issued by a natural or legal person.

Any ambiguity or disagreement regarding the nature of the ordinary electronic signature in determining its probative value and effectiveness is addressed by Article 9 of the

same law, which stipulates that the electronic signature cannot be deprived of its legal effect or rejected before the courts on the grounds that:

- It is in electronic form.
- It does not rely on a qualified electronic certification.
- It was not created by a secure mechanism for signature creation⁴⁴.

From this we conclude that the Algerian legislator regarded the qualified electronic signature alone as equivalent to the traditional signature; however, it did not exclude the simple signature as evidence before the courts when it does not rely on a qualified electronic certification or when it was not created by a secure electronic signature creation mechanism. In other words, the contracting parties may rely on this type of signature between themselves to prove their transactions. To ensure the reliability of the electronic signature, the Algerian legislator established, by Law 15-04, an electronic certification mechanism that entrusts the task of confirming the relationship between the signer and their electronic signature to a neutral and trusted third party.

Conclusion:

The electronic contract, imposed by reality and recognized by law, has been acknowledged by most legislations, which have regulated its provisions through special laws such as the Law on Electronic Transactions and the Law on Electronic Commerce. The best step taken by the Algerian legislator was the issuance of a specific law on electronic commerce, considering the electronic contract as its essential core, since transactions concluded within its framework are carried out through it.

In this article, we addressed the concept of the electronic contract, its conclusion, and its proof, and we concluded the following:

- It is a contract characterized by modernity and contemporaneity, aligned with recent technological developments; it also possesses particularities that distinguish it from the traditional contract from the stage of its formation through to the manner of its proof, and the means of formation constitute the essence of the difference.
- The Algerian legislator left the matter of contract formation, its conditions, and other substantive issues to the general provisions set out in the general rules of contract; therefore, all matters related to electronic commerce in general and the electronic contract in particular must be regulated.
- Referring to the provisions that govern the electronic contract, we find them insufficient to accommodate the particularities that distinguish it from the traditional contract; specific provisions must be drafted to regulate all its aspects in order to close legal gaps and provide legal certainty for electronic transactions.
- Our legislator adopted a broad conception of electronic commerce by not relying on any specific means through which it must be conducted, reflecting a desire to benefit from all technological developments.
- With reference to the provisions of this law, the Algerian legislator addressed the electronic contract, defined its parties, adopted a narrow concept of the electronic supplier with a specification of its powers, and adopted a broad concept of the electronic consumer, granting special protection to the latter while limiting the subject matter of contracting to the provision of goods and services only.

- It has been characterized as a contract of adhesion, since the legislator referred us to the Commercial Practices Law and embraced the broad notion of adhesion contracts, namely the electronic supplier's unilateral setting of contract terms.
- Expressions of will occur by electronic means, whether in writing, by sign, or orally, and may be made via e-mail, the web, or through chat and audiovisual media; these represent forms of electronic offer and acceptance and therefore require specific legal provisions suited to this new type of contract, since what is provided in the general contract rules is insufficient.
- The possibility of proving contracting over the Internet by electronic writing and electronic signature exists in order to ensure the security of electronic dealings.

From this study we reached several recommendations:

- Some of its provisions regulate certain aspects, while other issues and aspects were not regulated and were left to the general rules; our legislator must remedy this legislative deficiency by enacting provisions that align with the electronic contract.
- The Algerian legislator should reconsider the definition of the electronic contract contained in Article 6/2 of Law 18-05 on Electronic Commerce, which referred to Law No. 04-02 and treated it as a contract of adhesion; the wording of the article should be that the electronic contract is a contract concluded at a distance, without the actual and simultaneous physical presence of its parties, resorting exclusively to electronic communication technology.
- Dealing in a digital environment generates a sense of informational insecurity and perceived informational risk, which deepens the psychological reluctance to engage in electronic contracts; technical specialists and legislators must confront this problem by providing protection through technical and legal means, which requires regulating all matters related to the electronic contract.
- Expand the dissemination of electronic culture to keep pace with international developments in the field of electronic commerce.
- It is necessary to provide specialized human resources in the field of information law, including enforcement officers and judges, which will ensure proper adjudication in the event of a dispute.
- It is necessary to accede to all regional and international instruments in order to benefit from their provisions that regulate this new type of contract and the protections they establish for its use.

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