

LEGAL PROTECTION OF THE ELECTRONIC CONSUMER IN ALGERIAN LEGISLATION

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Abstract :

The legal protection of electronic consumers in Algerian legislation is one of the major topics that has surfaced in recent years. This study addresses this topic since it continues to be a fertile field for legal research, especially in light of the continued expansion of electronic commerce. Cross-border e-commerce and the subsequent procedures leading to electronic contracting, in which the consumer is one of the principal parties, emerged as a result of the latter's substantial influence on the legal framework governing traditional contracts. Law No. (18/05) of e-commerce only is believed to be the Algerian legislator's response to the newly revealed, aggressive electronic arena. To protect the parties to the electronic contract, Law No. (15/04) Further regulated electronic certification and signatures. In an effort to solve this issue, the researcher has questioned whether Algerian lawmakers' rules are adequate to ensure that electronic customers are effectively protected.

key words: *Electronic Commerce; Electronic Contract; Electronic Consumer; Legal Protection; Electronic Supplier*

Introduction:

The incorporation of electronic devices into our daily lives, especially in recent years, has been accelerated by advancements in communications and information technology. This shift has significantly influenced how business transactions and agreements are conducted, affecting both the establishment of these deals and the fulfilment of the legal obligations that arise from them.

The rise of e-commerce has significantly impacted the traditional legal system surrounding contracts, leading to the emergence of cross-border electronic shopping. As a result, new procedures for electronic contracting have developed, with the consumer being a key party in this

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process. In response to these changes in the electronic marketplace, the Algerian legislator introduced Law No. 18/05 on electronic commerce. Additionally, Law No. 15/04 was enacted to regulate electronic signatures and certification. These laws aim to protect all parties involved in electronic contracts, whether during the pre-contracting phase, at the moment of contract conclusion, or during the implementation stage. The legal protection of electronic consumers is crucial because they are often the weaker party in contractual agreements. To safeguard their interests and mitigate the risks associated with electronic transactions, consumers require legal guarantees and protections. Therefore, we have formulated the following research question: To what extent are the legal provisions established by the Algerian legislator adequate to ensure the protection of electronic consumers?

To answer this question, we relied on the analytical and descriptive approach by analysing the legal texts contained on the subject of the study, especially Law (18/05) related to electronic commerce, as well as familiarity with all the information that serves it, by dividing the study into two topics:

The First Topic: The Legal Regulation of the Electronic Contract

The Second Topic: Consumer Protection Guarantees in Electronic Contracting

The First Topic: The Legal Regulation of the Electronic Contract

The electronic contract¹ is regarded as a modern form of contract, emerging from the use of information technology and digitisation, which have become prevalent in various aspects of life. While electronic contracts are fundamentally governed by the general rules and principles of contract theory, their distinct electronic nature, where offers and acceptances occur online, sets them apart from traditional contracts. These contracts derive their legitimacy and provisions from the laws governing electronic exchanges and e-commerce. In cases where these rules are insufficient or fail to provide solutions, reference is made to the general rules.² We will address in this topic the conclusion of the electronic contract (the first requirement) and the proof of the electronic contract (the second requirement).

First Requirement: The Conclusion of the Electronic Contract

An electronic contract, like all contracts, must include the fundamental elements necessary for its formation. This includes an offer and acceptance (mutual consent), a subject matter, a legal reason, and all conditions related to determining the liability of the parties involved.

However, it differs from traditional contracts in that it can be formed without the physical presence of the parties during the contractual session. In the case of electronic contracting, the two parties engage through a virtual platform, creating what can be seen as a "virtual contract council." So what are its essential elements (first section), and how to determine the time and place of its convening (second section)

Section One: Essential Elements of Electronic Contract

The contract formed through electronic communication must include the essential elements: consent, subject, and reason.

1. Consent in the Electronic Contract

Consent is the core of a contract, representing the mutual agreement of the parties involved. In electronic contracts, this consent is communicated through electronic messages. These messages serve as a means to express the parties' legally recognised intention to either make an offer or accept one, thereby establishing a contractual obligation.³

– Electronic Offer

Clause 3/2 of the draft Model Contract on Electronic Transactions, which is attached to the United Nations Model Law on Electronic Commerce, states: "A message is considered an offer if it includes a proposal to conclude a contract addressed to one or more specific individuals, provided they are clearly identified, and it expresses the sender's intention to be bound by the offer in case of acceptance.",⁴ where the electronic offer, as in the case of the traditional offer, is required to be conclusive, specific or irrevocable.

The issuance of an electronic offer should be preceded by a negotiation stage, which is crucial and requires legal protection for the consumer. It is important to provide the consumer with essential and basic information to clarify their decision-making. In other words, the electronic offer, especially in the context of electronic commerce contracts, particularly electronic sales contracts, must include:

– Identification of the Offeror:

The offeror, which refers to the professional party, is obligated to disclose all information that clearly identifies their identity to the consumer, in accordance with the principle of good faith and trust. This includes details such as the company name, legal status, address, and headquarters.⁵

Digitisation has significantly impacted the regulation of the electronic commercial register, which requires that electronic suppliers maintain it. The Algerian legislator defines an electronic supplier as "any

natural or legal person who markets or offers the provision of goods or services through electronic communications." The legal framework for establishing the electronic commercial register is reflected in practical reforms within various aspects of the digital environment. The legislator has entrusted the National Centre for the Commercial Registry with the management and oversight of the electronic registration process, as stipulated in the second and third paragraphs of Article 05 bis 01 of Law No. 18-08, concerning the conditions for practising commercial activities, as amended. Furthermore, paragraph 1 of Article 05 of Executive Decree 18-112 states that the application to access the electronic record can be downloaded free of charge from the Commercial Register's website. Additionally, the Centre's services are responsible for updating the information contained in the encrypted code of the Commercial Register.⁶

– **Description of the Good or Service in Question:**

The supplier is required to accurately describe the product or service outlined in the contract using clear and precise terms. This ensures that the consumer is fully informed about the product without any ambiguity. Additionally, electronic advertisements must honestly represent the product or service, free from fraud or deception. According to Law No. 18/05 in Algeria, electronic advertising is defined as "any advertisement aimed directly or indirectly at promoting the sale of goods or services through electronic communications." Similarly, Article 01-111 of the French Consumer Regulation mandates that the seller must inform the consumer about the essential characteristics of the product or service, including the price, general terms of sale, and the specific delivery date for the product or service.⁷

– **Price of the Goods or Remuneration for the Service:**

The electronic offer, also known as an electronic advertisement, must include the specified monetary consideration—the price—at the time it is issued. This serves as a commitment to inform consumers about the prices of goods or the services provided. The price should be accurate and detailed, clearly stating shipping costs as well.⁸

– **Electronic Acceptance:**

Electronic acceptance occurs through electronic means and requires that the acceptance match the offer for the contract to be concluded. This concept is defined by the 1980 Vienna Convention on the International Sale of Goods. According to Article 18(1), "Any statement or any other act issued by the offeree that indicates approval of the offer shall be considered acceptance."⁹ Acceptance represents the definitive expression of the will

of the party receiving the offer, indicating their consent to the terms presented. It constitutes the second essential will in forming a contract. A contract is only finalised when there is mutual agreement between both parties. For acceptance to effectively conclude the contract, it must fully align with the offer in all respects; otherwise, the contract cannot be established. If the acceptance differs from the offer in any way, it is regarded as a new offer rather than an acceptance.¹⁰

Acceptance is the action in which the offeree expresses their intention to agree to the contract. This means that the person to whom the offer is made, either explicitly or implicitly, indicates their approval of the terms proposed. For acceptance to be valid, it must occur while the offer is still valid. A contract is only formed when the wills of both parties converge, agree, and align.¹¹

Section Two: Time and Place of Conclusion of the Electronic Contract

A contract is formed when an offer is made and accepted, and this occurs at the agreed-upon time and place of the contracting parties. If the time and place are not specified, general contract theory rules and the provisions of the Commerce and Electronic Transactions Law apply. Establishing the time and place for concluding an electronic contract is crucial, especially since these contracts often involve parties who are not physically present.¹²

1- Time of Contract Conclusion

- The time of electronic acceptance: In cases where the electronic contract is assumed to be concluded between two absent parties, a time gap exists between the offer and the acceptance. This raises the problem of determining the time to conclude this contract.*
- Theory of declaration of acceptance: The contract is concluded at the time and place in which the offeree declares his acceptance of the offer.*
- Theory of dispatch of acceptance: The contract is concluded when the offeree sends their acceptance. In order to conclude the contract, it is not sufficient for the offeree to merely declare acceptance; it must be sent to the offeror.*
- Theory of receipt of acceptance: The acceptance is made upon its receipt by the offeror. The contract is concluded either through the receipt of the data message or by clicking on the designated area. This approach is adopted in Article 15 of the 1996 UNCITRAL Model Law on Electronic Commerce.*

- *The theory of knowledge of acceptance: The contract is concluded on the knowledge of the offeror of acceptance; it is not enough to send the message of the offeror, but the offeror must open it, read it and know its conformity with the offer.*
- *Time of electronic acceptance in case that the electronic contract is assumed to be between the two present parties.*
- *The moment of contract conclusion via the web on the network is once the model contract is approved, and the word OK is printed.*
- *The moment of the contract is concluded via e-mail; the time of its conclusion varies.¹³*
- *According to the theory of Dispatch of acceptance, the contract is concluded when the offeree sends the electronic message containing their acceptance. It is concluded at the moment he clicks on the send button.*
- *According to the theory of receipt of acceptance, the contract is concluded via e-mail at the moment the message containing the acceptance reaches the offeror's mail. This was adopted in Article 15 of the UNCITRAL Model Law.¹⁴*

2- The Place of Contract Conclusion

The importance of determining the place where a contract is concluded is crucial for identifying the competent court responsible for resolving disputes that arise from the contract, whether these disputes pertain to its formation or its effects. This is based on general rules for establishing jurisdiction.

The place of contract conclusion typically determines which court has territorial jurisdiction. However, challenges arise when it comes to identifying the place of electronic contracts made via the Internet. This is particularly complex because it involves determining both the location from which the messages and data expressing the parties' intent are sent and where they are received.

The UNCITRAL Model Law, along with some Arab legislations on e-commerce, addresses the issue of territorial jurisdiction for contracts concluded online. They have established that the location of the electronic message's dispatch corresponds to the origin of the message, which is the location of the offeror (the sender). Meanwhile, the place of receipt is considered to be where the addressee (the receiver) is located.

These guidelines apply unless the contracting parties have agreed on a specific place of contract conclusion. In such cases, the law upholds the principle of freedom of contract (party autonomy) in all aspects of the agreement.¹⁵

Second Requirement: Proof of the Electronic Contract

The electronic contract operates through paperless support facilitated by communication devices and is signed by those sending the electronic message using an electronic signature. In Chapter II of Law No. 18/05, Article 08, the Algerian legislator states that "The activity of electronic commerce is subject to registration in the electronic register or the register of traditional industries and handicrafts (Section One), as applicable. To publish a website or an electronic page on the Internet, hosted in Algeria with the domain extension 'com.dz', the electronic supplier's website must include features that allow verification of its authenticity, specifically electronic writing (Section Two) and an electronic signature (Section Three).

Section One: Electronic Register

The rapid advancement of electronic data interchange technology has created a demand for effective means of preserving, authenticating, and storing data and information. This need has led to the development of the electronic register, which is crucial in the realm of electronic data interchange. In the event of a dispute between the parties involved in a transaction, it is possible to initiate legal action to validate claims based on the data exchanged and recorded on the computer. Additionally, the records of electronic transactions can be documented in commercial books, as required by Algerian law, which mandates that merchants maintain and demonstrate their commercial transactions.

1. Definition of Electronic Commercial Register

As previously mentioned, Article 5 bis of Law No. 13-06, which governs the conditions for conducting commercial activities and has been amended and supplemented, introduced the ability to register through electronic means for the first time. It also established the option to obtain an extract from the commercial register via an electronic procedure.¹⁶ The electronic register is defined as a record, contract, or message of information generated, sent, delivered, or stored by electronic means.

The electronic register can serve as proof in court in cases of doubt or disagreement between the contracting parties. However, judges still retain the right to assess and evaluate the authenticity of these electronic records as evidence. By using appropriate data encryption, it becomes challenging for unauthorised individuals to access, modify, or falsify

documents stored electronically. Additionally, electronic registers do not require physical space like paper records do. Moreover, utilising electronic registers helps eliminate the issues associated with traditional storage methods.¹⁷ The storage of the electronic register must meet several conditions:

- The data must be stored in the same format as the original in which it was created, sent, or received, or in any other format that demonstrates that the electronic register contains the same original information as when it was transmitted.
- The electronic register should be stored in a manner that allows authorised personnel easy access to the data contained within it.¹⁸

2. The National Card of the Electronic Supplier

The Algerian legislator outlined in Article 09 of Law No. 18/05 that a national electronic supplier card will be created at the National Centre of the Commercial Register. This card will include electronic suppliers who are registered in either the Commercial Register or the Industrial and Craft Industries Register.

E-commerce activities can only be conducted after registering a domain name with the National Centre for the Commercial Register. The national card for electronic suppliers will be published through electronic communication channels and made accessible to online consumers. The Algerian legislator defines a domain name in Article 6 of the relevant law as "a sequence of standardised letters and/or numbers registered with the National Registry of Domain Names, which enables identification and access to a website."

Section Two: Electronic Writing

Writing plays a crucial role in supporting legal actions. Reliable written proof can take one of the following forms:

- An official document verified by an authorised official with power over all parties involved.
- A customary document that, although not drafted by an official, is signed by the contracting parties and can only be enforced against those who have signed it.¹⁹

1. Definition of Electronic Writing:

The Model Law on Electronic Commerce states in Article 5 that information retains its legal effect and validity even when it is presented in a data message. Articles 6, 7, and 8 further specify that certain basic criteria must be met for a data message to fulfil the same functions as traditional written documents. This is particularly important concerning

the parties' consent to their commitments and the assurance of the integrity of the information.

The text within the electronic document is represented by algorithmic equations that are executed through operations shown on a computer screen or other electronic devices. Key features of electronic documents include:

- The capacity to retain the information contained within them.*
- The ability to preserve the integrity of the electronic document.²⁰*

2. Conditions of Electronic Writing:

Electronic writing must meet several conditions to fulfil its legal function as evidence. These conditions include:

• Legibility of Writing: *The document must be clearly written and understandable to the person against whom it may be used as evidence. It should be recorded using recognisable letters and symbols.*

• Continuity of Recording: *The writing must be inscribed on a medium that ensures its stability and durability, allowing for future reference. This medium can be either paper or an electronic format, and it should be stored in computer memory, magnetic disks, or email. While electronic storage methods can be sensitive and vulnerable to damage, this risk can be minimised by employing reliable electronic storage technologies.²¹*

• Immutability of Writing: *Electronic writing must be free from any defects that could compromise its validity. It should be protected against deletion, erasure, or scraping. This is a fundamental characteristic that ensures electronic writing is a legally sound medium for storing information and data. Additionally, memory cards designed for electronic data storage can meet the requirement for durability.*

Section Three: Electronic Signature

Electronic writing is not deemed valid evidence unless it includes a signature, which is one of its key components. A signature identifies the document as belonging to the person who signed it, even if the content was written by someone else.

– Definition of Electronic Signature

The UNCITRAL Law on Electronic Signatures (2001) defines an electronic signature as "data in electronic form that is attached to or logically associated with a data message. The identity of the signatory can be derived from the information contained in the data message." Electronic signatures can take various forms, including those created with an

electronic pen, electronic fingerprint, digital signature, or biometric signature.²²

The Algerian legislator stated in Article 10 of Law No. 18/05 that "Each electronic commercial transaction must be preceded by an electronic commercial offer and documented by an electronic contract approved by the consumer."

– **Conditions of Electronic Signature:**

Article 5 of the Model Law states that information does not lose its legal effect, validity, or enforceability simply because it is presented as a data message. Therefore, an electronic signature cannot be dismissed solely on the basis that it is in electronic form. The European Directive further clarifies the essential conditions that must be met for an electronic signature in its second article, as follows:

- To be uniquely linked to the signatory.
- To enable the identification of the signatory.
- To be created by means through which the signatory can retain and control it exclusively.
- To be linked to the data in such a form that any subsequent change in the data is detectable.

– **Authenticity of Electronic Signature:**

Granting legal recognition to electronic signatures and equating them with traditional signatures relies on specific conditions that enhance their reliability and provide assurance. The European Directive outlines these requirements in Article 2, Section 2, stating that a signature must be uniquely attributable to its owner, under their effective control, verifiable, and linked to the data it certifies.²³

The Second Topic: Consumer Protection Guarantees in Electronic Contracting

Electronic consumers require significant protection due to the various risks they may face, whether before concluding a contract, at the moment of contracting, or during the contract's execution. This necessity arises particularly because consumers are often the weaker party compared to suppliers, who have more experience and economic knowledge. The rise of electronic contracting has heightened the risks of consumer exposure to fraud and cybercrime. Notably, the inability of consumers to inspect the contracted items beforehand has increased the supplier's obligation to provide clear information to electronic consumers throughout the contracting process.

First Requirement: Protection Guarantees during the Pre-Electronic Contracting Stage

Electronic advertising results from a contract between two parties: the advertiser and the advertising agency. It is one of the contracts concluded and implemented through the Internet or other electronic means.

Section One: Consumer Protection against Electronic Commercial Advertisements

Electronic commercial activities usually begin with some form of advertising or publicity through the Internet or other electronic channels. There is no doubt that advertising has become one of the most important tools for commercial activities, supporting both competition and profit generation through the electronic network.²⁴

1. Definition of Electronic Advertising Directed to the Consumer

The Algerian legislator outlines in Article 6, paragraph 6 of Law 18/05 the following definition: "Any advertisement that directly or indirectly promotes the sale of goods or services through electronic communications." Additionally, it is defined as "any means aimed at psychologically influencing the public for commercial purposes." From these definitions, it is clear that advertising includes any action or behavior designed to psychologically influence consumers in order to persuade them of the advantages and benefits of a product or service, regardless of the methods employed.²⁵

2. Conditions of the Electronic Commercial Offer

The Algerian legislator stipulates in Article 11 of Law 18/05 the following: "The electronic supplier must present the electronic commercial offer in a visual, legible and understandable manner. It must include, at a minimum and without limitation, the following information: "Tax identification number, physical and electronic addresses, and the telephone number of the electronic supplier..."

3. Legal Nature of Electronic Advertising

Advertising aimed at consumers on the Internet does not constitute an "offer"; rather, it serves as an invitation to negotiate or enter into a contract. It is important that such advertising includes the essential elements of the contract. For instance, simply displaying goods in an online storefront without stating their prices does not qualify as an offer. This is similar to a traditional storefront, where the mere display of items without indicated prices is not considered an offer. However, if the online presentation of goods and services includes their prices, it may then be considered an offer, just as it is in physical stores when both the prices and

products are displayed.²⁶ The inclusion of price information is regarded as one of the essential elements of electronic contracting.

Electronic advertising must be specific and clear. When electronic advertising is directed at consumers, it is considered an invitation to negotiate or form a contract. This is because such advertising often lacks essential contract details, such as pricing for the goods and services offered online. In other words, if there is uncertainty about critical contractual information, the electronic advertising is not considered an offer, but rather an invitation to negotiate.²⁷

4. Rules for Consumer Protection against Electronic Advertisements

A.Requirement of Clarity in Electronic Advertising

The advertisement must provide adequate information about the product or service offered. This is intended to encourage thoughtful and informed decision-making by the consumer as they engage in electronic contracting.²⁸ As mentioned earlier, the advertisement should be clear and unambiguous, enabling the consumer to give informed and conscious consent to the contract.

B.Preventing Misleading Electronic Advertising

Commercial electronic advertising represents a form of legitimate competition and plays a crucial role in marketing, as well as in informing the public about various products and services. Some legal scholars define misleading commercial advertising as "an advertisement that is likely to deceive consumers or could lead to deception." It can also be described as "advertising that contains misleading information intended to confuse or deceive regarding important elements and descriptions of the product."²⁹

Most laws and regulations have addressed issues of fraud, deception, and misinformation in electronic advertising. In this context, the Algerian legislator specified in Article 14 of Law 18/05 that if an electronic supplier fails to comply with the provisions outlined in Article 10 or Article 13, the electronic consumer has the right to request the annulment of the contract and seek compensation for any damages suffered.

To evaluate whether advertising constitutes misleading fraud, three conditions must be satisfied:

- There must be the use of deceptive methods that lead the consumer to make a purchase.
- There must be an intention to achieve an illegitimate goal.
- The fraud must be the primary reason for the consumer's decision to enter into the contract.

Section Two: The Consumer's Right to Electronic Information

The electronic supplier is required to provide the consumer with several pieces of information before finalising the electronic contract. This requirement is known as the "pre-contractual obligation of disclosure." Its main goal is to ensure that the consumer enters into the contract with informed consent, which includes being aware of the identity of the electronic supplier as well as the characteristics of the product or service being offered.

The Algerian legislator outlined the duties and responsibilities of electronic suppliers in Chapter 5. The reason for establishing a pre-contractual obligation of disclosure is based on the theories of satisfaction, protection against hidden defects, and assurance of entitlement. However, this may not offer adequate protection or sufficient legal security for electronic consumers, as they often find it challenging to prove that they were misled about the essential qualities of the product being sold.

To benefit from the protection guaranteed by the obligation to be informed before entering into a contract, the consumer must provide essential sales and personal information to the electronic supplier.

It can be concluded that the pre-contractual obligation to provide electronic information involves a prior commitment from the electronic supplier to inform and educate the electronic consumer. This obligation encompasses providing comprehensive information about the supplier's identity and details regarding the online sales process or any electronic means involved. The purpose of this requirement is to ensure that consumers are well-informed and can make decisions based on their needs and goals when entering into an electronic contract.³⁰ Disclosing the supplier's identity to electronic consumers enhances legal security in remote contracting, clarifying the supplier's responsibilities and the extent to which they can be fulfilled.

Second Requirement: Protection Guarantees at the Stage of Concluding the Electronic Contract

The electronic contract is an agreement where the offer and acceptance occur over an open international network for remote communication through audiovisual means, facilitated by the interaction between the offeror and the offeree.³¹

This requirement investigates how consumer protection is upheld during the conclusion stage of electronic contracts, particularly in relation to arbitrary conditions. It also addresses the safeguarding of consumer rights concerning consent, information, and electronic signatures.

Section One: Consumer Protection against Arbitrary Conditions

The fundamental principle of contracting is mutual consent. However, when one party has significantly more financial resources than the other, it may impose its terms without engaging in discussion. This type of agreement is commonly known as an adhesion contract. In recent times, modern principles have introduced greater protections for consumers.

1. Contracts of Adhesion

Jurisprudence defines a contract of adhesion as "a contract in which one party accepts the predetermined conditions set by the other party without the opportunity for negotiation. This typically pertains to necessary goods or services that are subject to legal or de facto monopolies, or in situations where the scope for negotiation is limited."

Interestingly, the Algerian legislator provided a specific definition of this type of contract in Law No. 04/02, enacted on June 23, 2004, which establishes the rules applicable to commercial activities. Paragraph 4 of Article III defines a contract of adhesion as "any agreement or contract aimed at selling a good or providing a service, drafted in advance by one of the parties with the agreement of the other party, such that the latter cannot make any substantial changes." This indicates that the legislator has classified consumer contracts as contracts of adhesion.

In these contracts, only one party has the freedom to choose and negotiate the terms, which results in a legal or de facto monopoly over important services. The consumer has no option but to accept the contract, and once accepted, it is considered finalized.

The economic power of companies creates a need for protection for electronic consumers, particularly against unfair contractual terms and conditions.³² Contracts of adhesion often require consumers to agree to terms for essential goods or services such as gas, electricity, water, and telephone services. In these cases, the offeror holds an actual legal monopoly, as they provide their offerings to all consumers under the same terms continuously and indefinitely.

When applying these concepts to e-commerce contracts, we can see that while such contracts may meet the criteria of being necessary for the consumer and being accessible to all under the same conditions, the condition of the offeror's monopoly, whether an individual or an organisation, is not always applicable.

2. Arbitrary Condition

The term "arbitrary condition" refers to a requirement imposed on the consumer by the supplier due to the latter's abuse of economic power³³, which leads to an unfair advantage. This condition is characterized by an

imbalance between the rights and obligations that arise from the contractual relationship. The Algerian legislator has established legal protections in this situation, as outlined in Article 110 of the Algerian Civil Code. It states: "If a contract is concluded through adhesion and includes arbitrary conditions, the judge may amend these conditions or exempt the adhering party from them in accordance with the principles of justice. Any agreement to the contrary shall be null and void."

Section Two: Consumer Rights in Electronic Contracting

Several rights need to be protected in electronic contracting. These include ensuring consumer satisfaction, providing all essential information about the product or service at the time of contracting, respecting the consumer's right to privacy, safeguarding consumers during electronic payment transactions, and protecting the integrity of electronic signatures.

1. Protection of Consumer Consent

Consent in electronic contracting is established when it is provided by a competent party who is free from any defects. There are several measures in place to protect consumers from fraud, mistakes, and deception in electronic contracting. If an electronic consumer identifies any form of deception or fraud, they have the right to terminate the contract and seek compensation from the electronic supplier.³⁴

2. Informing the Consumer of the Essential Information about the Sold Item during Electronic Contracting

As previously discussed, it is essential to inform consumers of the basic conditions of sale even before concluding an electronic contract. According to general legal principles, the object of the contract must be specific or determinable.

In an electronic consumer contract, the object is clearly described on the computer screen via the Internet, ensuring that potential buyers are well-informed. The Algerian legislator addressed this issue in Law 18/05, which imposes obligations on suppliers to inform consumers about all the essential qualities of the contract's subject matter.

Furthermore, informing the consumer during the conclusion of the electronic contract goes beyond merely describing the characteristics of the product or service. It also includes the consumer's ability to inspect these offerings.³⁵ Article 20 of the same law states that any sale of a product or provision of a service through electronic communications must include an invoice prepared by the electronic supplier and delivered to the electronic consumer.

The consumer's right to privacy must be upheld by ensuring the confidentiality of customer information and data. This obligation entails refraining from disclosing, publishing, or broadcasting any information related to their identity, private lives, and banking details. Additionally, consumer protection in electronic payments encompasses several aspects. When consumers shop online and enter into a contract or make a purchase, it typically involves electronic payment methods. This is outlined in Article 20 of Law 18/05 on electronic commerce, which addresses invoice payments and the transfer of funds to parties outside of banking institutions. This process is carried out using electronic payment cards or credit cards (including debit cards), which are defined as "a plastic card that authorizes the cardholder to transfer a specified amount of money from their account to the supplier's electronic account with proof of identity."³⁶

3. Protection of the Consumer's Electronic Signature

The use of electronic signatures has grown alongside the increasing reliance on computers and advancements in technology. This progress has made computers an integral part of everyday life for individuals and nations alike. As a result, there is a pressing need to protect consumers who engage in electronic transactions and contracting.³⁷

The need to protect electronic signatures arises from concerns about security and privacy on the Internet. Many consumers and suppliers are worried about these issues, which have led to a degree of mistrust in online transactions. To address this, electronic signature technology has been developed to enhance security and privacy for users on the Internet. This technology allows for the confidentiality of information and helps to accurately identify both the sender and recipient in electronic contracts.³⁸

Trust in electronic signatures is established by verifying their validity through an approved certification process. This verification is carried out by a neutral third party, specifically a provider of documentation services, in the realm of electronic contracts. It is important to note that modern legislation offers legal protection for electronic signatures by imposing several requirements. Additionally, the challenges associated with forging or falsifying electronic signatures serve to enhance security in electronic contracting, protecting consumers effectively.³⁹

Third Requirement: Protection Guarantees at the Stage of the Electronic Contract Implementation

After concluding the electronic contract, with the offer and acceptance coming together, the parties proceed to the critical stage: the execution of the contract.⁴⁰ At this stage, each party is obligated to fulfil

the terms of the contract. The supplier is responsible for transferring ownership of the sold item to the consumer, provided that such ownership is properly assigned. The item must be specific, owned by the seller, and free from any legal restrictions that would prevent its transfer.

Additionally, the supplier must guarantee the item against hidden defects that the consumer cannot detect at the time of contracting, as well as ensure proper disclosure and entitlement. According to Article 23 of Law 18/05 on Electronic Commerce, "The electronic supplier must recover their goods in the event of delivering an item that does not conform to the order or if the product is defective..." In this context, the Algerian legislator has established a legal framework addressing these issues.:

- Delivery of a new product corresponding to the order or*
- Repair of defective product or*
- Replacement of the product with a similar one or*
- Cancellation of the order and refund of the amounts paid without prejudice to the consumer's right to claim compensation in case of damage.*

The refunds must be made within fifteen days from the date of receipt of the product.

Section One: Warranty against Hidden Defects

The obligation to guarantee hidden defects arises from the nature of the products and the intentions of the contracting parties. When a consumer purchases a specific product online from a supplier, they expect the product to be free of defects and suitable for its intended use. If the consumer had been aware of any defects beforehand, they would likely not have agreed to the purchase or paid the stated price.⁴¹

– Determination of Hidden Defect:

A defect is an issue that affects a product or service, whether in its description or characteristics, rendering it unsuitable for its intended purpose or causing damage to the product, which may decrease its value. Various legal systems allow for a specific lawsuit in cases involving such defects, known as a lawsuit to address hidden defects.⁴²

If damage is proven, the consumer is entitled to compensation for both material and moral damages. The amount of compensation is determined according to general provisions, as outlined in Article 131 of the Algerian Civil Code: "The judge shall estimate the extent of compensation for the damage caused to the injured party in accordance with Articles 182 and 182 bis, taking into account the circumstances. If a final assessment is not possible, the judge may reserve the right for the injured party to request a reassessment within a specified period."

Regarding the statute of limitations, Article 133 of the same Code establishes a period of 15 years from the date of the harmful act for civil liability lawsuits seeking recourse against the manufacturer for damages caused by the sold item to both individuals and property.⁴³

Section Two: Guarantee of Exposure and Entitlement

When a consumer makes an online purchase, they benefit from specific protections outlined in general sales regulations. A sales contract facilitates the transfer of ownership and includes the seller's obligation to guarantee the product against hidden defects. Additionally, the seller must ensure that they have proper ownership of the item being sold, protecting the consumer from any personal interference. No third party should have rights that could affect the consumer's ownership. The term "guarantee of exposure" refers to the seller's responsibility to protect the buyer from any actions, whether by themselves or a third party, that may violate the buyer's rights to fully enjoy ownership of the sold item.⁴⁴

Section Three: Newly Introduced Consumer Rights at the Stage of Contract Implementation

Consumer rights during the implementation stage of electronic contracts are fundamental to ensuring that individuals benefit from the products or services they purchase. Modern legislation has introduced enhanced protections for consumers, including the seller's obligation to provide information at this stage and the supplier's commitment to deliver the item as agreed. Additionally, protections now include the consumer's right to withdraw from the electronic contract.

– The Consumer's Right to Post-Contractual Information and the Obligation to Deliver a Conforming Product

The requirement for information disclosure after the conclusion of a contract is essential to ensure that consumers provide full and informed consent in the context of electronic contracts. Consequently, suppliers are obligated to confirm certain information provided to the consumer after the contract has been finalised. In this regard, the Algerian legislator, as outlined in Article 19 of Law 18/05, states: "Once the contract is concluded, the electronic supplier must send an electronic copy of the contract to the electronic consumer."

It can be concluded that the information disclosed during the implementation phase relates to the consumer's right to either replace the product or obtain a refund, as well as their right to receive a product that conforms to the terms of the contract. Since the online buyer makes a purchase based on the displayed descriptions of the item, without the ability

*to physically inspect it, the supplier must deliver a product that is identical to what was presented.*⁴⁵

– The Consumer's Right of Withdrawal

*The right to withdraw from an electronic contract is entirely voluntary and at the consumer's discretion, in accordance with legal regulations. This right impacts the binding nature of the electronic contract. Legal scholars view the right of withdrawal as a personal right that consumers can exercise based on their own interests. In other words, when a consumer chooses to exercise this right, it does not carry any liability because it is a fundamental right.*⁴⁶ *This provision is important because consumers often do not have the opportunity to inspect the product or fully understand the service prior to the conclusion of the electronic contract. Therefore, consumers are granted this right due to the remote nature of the transaction.*

*This right is affirmed by Article 121-20-26 of the French Consumer Code No. 949 of 1993, in accordance with Decree 741 of 2001. The right of withdrawal is characterised by its discretionary nature; it is a purely voluntary right that is entirely subject to the electronic consumer's discretion within the legal limits.*⁴⁷

Conclusion

This study addresses the issue of electronic consumer protection, which has become one of the most controversial legal topics in modern times, especially given the rapid and ongoing developments in this area. Despite numerous efforts by the judiciary and legal scholars to interpret existing laws in order to find solutions for electronic transactions, it has become evident that these laws are insufficient to comprehensively regulate all electronic contracts.

This research demonstrates that e-commerce, similar to traditional commerce, can offer mutual benefits and transparency for both parties involved in a transaction. A key aspect of modern digitisation is the electronic contract, which is distinguished by its intangible nature. Electronic contracts are created and supported digitally rather than through paper-based methods, a situation that arises from the absence of physical presence between the contracting parties.

We have analysed the nature of e-commerce and concluded that most systems recognise electronic writing as equivalent to traditional writing in terms of proof, provided that the electronic writing is not amendable.

In the second topic, we emphasised the importance of protecting electronic consumers during online transactions. The Algerian legislator has granted electronic consumers the right to pre-contractual information,

ensuring they are informed of all contractual details before making a commitment. This provision aims to safeguard them from the risks associated with misleading and false advertisements.

Furthermore, the legislator has established conditions for suppliers, including the requirement to be registered in the commercial register and to possess a national supplier card, as outlined in Law 18/05 on electronic commerce.

Finally, electronic consumers are afforded protections such as warranties against hidden defects and the right to demonstration, entitlement, and withdrawal if a product is found to be non-conforming to the electronic contract.

Recommendations

- A dedicated law for electronic transactions should be established to provide a clear legal framework.
- Electronic transactions must be secured technically to ensure legal protection for individuals engaging in this type of transaction.
- There is a need to adopt common legal concepts related to electronic commerce to create a unified legal language.
- The Algerian legislator should develop new legal systems that address contemporary technological challenges.
- This requires an understanding of e-commerce and the aspects of modern digitisation, along with training qualified professionals in the legal field who can implement and enhance electronic commerce frameworks and applications.

¹ Referring to the provisions of the Model Law on Electronic Commerce issued by the United Nations, we find that it defines an electronic contract in Article 2(a). This definition outlines a data message as follows: "Information that is generated, sent, received, or stored by electronic, optical, or similar means, including but not limited to electronic data interchange, email, telegraph, or telex."

Similarly, the Algerian legislator defines an electronic contract in Article 6 of Law No. 18/05 as: "The activity whereby an electronic supplier offers or guarantees the provision of goods and services remotely to an electronic consumer, using electronic communications."

The Algerian legislator defines an electronic contract by referencing the definitions of contracts found in Articles 3 and 4 of Law No. 04/02. According to this law, an electronic contract is described as "any agreement or convention aimed at selling a good or providing a service, prepared in advance by one party with the consent of the other party, such that the latter cannot make significant alterations to it." This definition allows for agreements to be formed without the

physical and simultaneous presence of the parties, relying entirely on electronic communication technology.

² Masoudi, G.J. (n.d.). *Al-tanzim alqanuni lil-'aqd al-electroni fi Filastin*. [The Legal Regulation of the Electronic Contract in Palestine] (Master's thesis). Birzeit University, Palestine, p.11. [in Arabic]

³ Al-Otaibi, M.D. (2013). *Al-nizam al-qanuni lil-'aqd al-elektroni*. [The Legal System of the Electronic Contract] (Master' dissertation, Middle East University, Amman, Jordan), p.52. [in Arabic]

⁴ Gamal, S.H.A. (2006). *Al-ta'auqud 'abr taghiyat al-ittisāl al-hadītha*. [Contracting via Modern Communication Technologies]. (1st ed). Dar Al-Nahda Al- Arabia, p. 104. [in Arabic]

⁵ Abdelaziz, F.M.K. (2008). *Al-himayāya al-qānuniya li -'uqud al-tijārah al-elektruniya*. [Legal Protection of Electronic Commerce Contracts] (Doctoral Dissertation, Faculty of Law, Cairo University), p.221. [in Arabic]

⁶ The text of Article 5 of Executive Decree No. 18-212, which establishes the model of the commercial register extract issued by means of electronic procedure, as amended and supplemented.

⁷ Ben Said, *op.cit*, p 80.

⁸ *Ibidem*.

⁹ Zahra, M.M. (2008). *Al- himaya al-madaniya li al-tijara al-elctroniya* [Civil Protection of Electronic Commerce] (1st ed) Dar Al-Nahda Al Arabia, Egypt, p.43 [in Arabic]

¹⁰ Al- Sanhuri, A.R (1986). *Al-wasīt fi sharh al-qanun al-Madanī al-Misrī juz' 4* [The Medium in the Explanation of the Egyptian Civil Law, vol 4]. 2nd ed, Cairo: Dar al-Nahda al-Arabiya, p 269. [in Arabic]

¹¹ Shelqami, S.G.M.(2005). *Al-ta'āqud ql-elektruni fi al-tashri'at al-arabiya* [Electronic Contracting in Arab Legislation] Cairo: Dar al-Nahda al-Arabiya, p.96. [in Arabic]

¹² Mutalqah, M.F. (2008). *Al-wajiz fi 'uqud al-tijarah al-electroniyah* [The Essentials of Electronic Commerce Contrates] 1st ed. Amman: Dar Al- Thaqafa li- Nashr, p.70. [in Arabic]

¹³ Ibrahim, K.M. (2008). *Ibram al-'aqd alektuni* [Formation of the Electronic Contract]. Alexandria: Dar al-Fikr al-Jami'i, pp. 347- 351. [In Arabic]

¹⁴ Hasan, Y.Y.F. (2007). *Al-tanzīm al-qanuni li l'uqud al-elektruniya* [The Legal Regulation of Electronic Contracts](Master's Dissertation, Faculty of Post Graduate Studies, Al Najah Natiional University, Palestine), pp.58-64. [in Arabic]

¹⁵ Mutalqah, *op.cit*, p. 74.

¹⁶ Article 5 bis of Law No. 13-06 on the conditions for exercising commercial activities, amended and supplemented dated 13/07/2013 (O.G No. 39 dated 31/07/2013)

¹⁷ Abdelfattah, S.T. (n.d). *Al-hujiya alqanūniya li -wasā'il al-ma'lūmāt al-mustahdatha fī al-ithbā* [The Legal Authority of Modern Information Means in Proof]. Phd thesis, Faculty of Law, Cairo University, pp.60-61. [in Arabic]

¹⁸ Ben Said, op.cit, pp.134-135.

¹⁹ Ibidem, p.140.

²⁰ Hasan, op.cit, pp.72-73

²¹ Gomaei, H.A.B.(2000). *Ithbāt al-tasarrafāt alqānūniya allatī taimm ibrāmuhā 'an tarīq al-'internet* [Proof of Legal Acts Concluded via the Internet] Cairo: Dar Al-Nahda Al Rabia, p.21. [in Arabic]

²² Shaat, A.N.(2017). *Al-ithbāt wa al-Iltizāmāt fī al-'Uqūd al-iliktruniya* [Evidence and Obligations in Electronic Contracts]. Alexandria: Maktabat al-Wafā al-Qānūniya, p.314.[in Arabic]

²³ Al-Sari,I.A.S.(2016).*Al-Nizām al-Qānūnī li-Ibrām al-'Aqd al-iliktrūnī* [The Legal Framework for Concluding Electronic Contracts]. Beirut: Al-Halabi Legal Publications, p.153.[In Arabic]

²⁴ Ibrahim, K.M.(2007). *Himāyat al-Mustahlik fī al-Mu'āmalāt al-Iliktrūniya* [Consumer Protection in Electronic Transactions]. 1st ed. Egypt: Al-Dār al-Jāmi'ia, p.79.[in Arabic]

²⁵ Mahmoud, A.D. (2012). *Himāyat al-Mustahlil fī al-Ta'āqud al-Iliktrūnī* [Consumer Protection in Electronic Contracting]. Master's dissertation in Private Law.1st ed. Jordan: Dār al-Thaqāfa, p.36. [In Arabic]

²⁶ 'Alwān,R.M.(2002). *Al-Ta'bīr 'an al-irādah 'abr al-Internet wa Ithbāt al-Ta'āqud al-Iliktrūnī* [Expression of Will via the Internet and the Proof of Electronic Contracting]. Majallat al-Huqūq (Journal of Law), issue n°4, p.244.[in Arabic]

²⁷ Mahmoud, op.cit, p. 73.

²⁸ Ibrahim, op.cit, p.89.

²⁹ Ibid, p.93.

³⁰ Mahmoud, op.cit, pp. 86-87.

³¹ Al-Mataliqa, M.F. (2008). *Al-wajeez fī 'uqud al-tijara al-Iliktroniya* [The Concise Guide to Electronic Commerce Contracts] (1st ed.) Amman: Dar Al-Thaqafa, p.25. [in Arabic]

³² Suleymān, A. (1992). *Al-Nazariya al-'Amma li-iltizām al-Madanī al-Jazā'iri* [The General Theory of Obligation in Algerian Civil Law]. Algiers: Diwān al-Matbū'āt al-Jāmi'ya, p.62. [in Arabic]

³³ Ahmad, B.O. (2005). *Himāyat al-Mustahlik fī al-Ta'āqud ql-Iliktrūnī* [Consumer Protection in Electronic Contracting].1st ed. Egypt:Dār al-Jāmi'a alJadīda, p.191. [in Arabic]

³⁴ Mahmoud, op.cit, pp. 140.

³⁵ Ibid, p. 142.

³⁶ Hegazy, A.F. (2004). *Al-Tijārah al-Iliktrūniya wa Himāyatuhā al-Qānūniyah* [Electronic Commerce and its Legal Protection]. 1st ed. Egypt: Dār al-Fikr al-Jāmi'ī, p.106.[in Arabic]

³⁷ Hegazy, A.F.B. (2006). *Himāyat al-Mustahlik 'abr Shabakat al-Internet* [Consumer Protection over the Internet]. 1st ed. Egypt: Dar al-Fikr al-Jāmi'ī, p.80.[in Arabic]

³⁸ Ibid, p88.

³⁹ Mahmoud, op.cit, p. 152.

⁴⁰ Ibrahim, op.cit, p.215.

⁴¹ Mahmoud, op.cit, p.173.

⁴² Ibrahim, op.cit, p.244.

⁴³ Qatāf, I. (2006). *Al-'Uqūd al-Iliktrūniya wa Himāyat al-Mustahlik* [Electronic Contracts and Consumer Protection]. Master's Dissertation, Faculty of Law, University of Algiers, Algeria, p.76.[in Arabic]

⁴⁴ Mahmoud, op.cit, p.182.

⁴⁵ Ibid, p.195.

⁴⁶ Ibrahim, op.cit, p.200.

⁴⁷ Mahmoud, op.cit, p. 199.