



THE LEGAL REGIME GOVERNING E-COMMERCE CONTRACTS UNDER ALGERIAN LAW N°. 18-05

Mohamed ZEHZAH*

University Center of Aflou, Algeria

m.zahzah@cu-aflou.edu.dz

Laboratory of Legal and Economic Studies at the University Center of Aflou- Algeria

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Abstract:

Electronic commerce in Algeria has emerged as an important component of the digital economy, driven by the expansion of internet access and information and communication technologies. It enables commercial transactions to be conducted remotely through electronic platforms without the physical presence of the parties.

The Algerian legislator has regulated this activity through Law No. 18-05 on electronic commerce, which establishes a legal framework governing electronic contracts, defines the obligations of online suppliers, and protects consumer rights. The law recognizes the legal validity of electronic writings and signatures, ensuring evidentiary value equivalent to traditional documents.

Despite this legal framework, electronic commerce in Algeria still faces challenges such as limited electronic payment methods, issues of cybersecurity, and lack of consumer trust. Nevertheless, ongoing digital reforms and infrastructure development are expected to promote the growth of this sector in the near future.

Key words: Electronic Contracts, Online Payment, Cybersecurity, E-consumer

Introduction:

E-commerce is considered one of the fundamental pillars of what is known as the digital economy, which is essentially based on two main components: electronic commerce and information technology. The information industry, in the era of computing and communication, has contributed to establishing the actual foundation for the emergence of e-commerce as an activity based on communication

*Mohamed ZEHZAH



technologies and modern technological means in managing various aspects of commercial activity.

In this context, e-commerce has witnessed remarkable development at the international level, reflected in the increasing volume of trade transactions conducted through electronic means. In parallel with this development, many international and regional organizations have sought to establish legal frameworks aimed at regulating the various legal issues associated with this type of activity.

On this basis, the Algerian legislator has endeavored to keep pace with this international development by adapting the traditional legal system in the commercial field to meet the requirements of electronic transactions, which have become a practical reality requiring legal regulation. From this perspective, it has become necessary for public authorities in Algeria to establish a clear legal and legislative framework to regulate this field. This has been embodied in the enactment of a set of legal texts, notably Law No. 18-05 of 10 May 2018 relating to electronic commerce.

Based on the foregoing, the research problem may be formulated as follows: **To what extent does the development of the legal framework governing e-commerce in Algeria meet the requirements of this type of commerce?**

To address the various aspects of the subject, a number of sub-questions arise, most notably:

- What is the general conceptual framework of e-commerce? And how has the legislation governing it evolved in Algeria?
- What are the substantive provisions introduced by the E-commerce Law?

Importance of the Research

The importance of this research lies in the fact that it addresses a contemporary subject, namely e-commerce, particularly in light of the transition toward a digital economy. Its importance is further underscored by the rapid development in the field of information technology and the resulting changes in the nature of commercial and financial transactions. In this context, Algeria has enacted a set of legislative texts to regulate this field, which highlights the importance of studying and analyzing its governing legal framework.

Objectives of the Research

This research aims to achieve several key objectives, namely:

- To identify the fundamental concepts related to e-commerce and to define the relevant legal terminology;
- To trace the development of the legislative framework governing e-commerce in Algeria and assess its adequacy in addressing the various aspects of this activity;
- To highlight the importance of the adopted legislation in regulating e-commerce in Algeria.

Research Methodology

The descriptive method has been adopted to present the conceptual framework of e-commerce, while the analytical method has been employed to study and evaluate the legal framework governing it in Algeria.

Structure of the Research

This research is divided into two main sections. The first section is devoted to presenting the general framework of e-commerce, while the second section addresses:

1- The Conceptual Framework of E-Commerce

Given the rapid development of the concept of e-commerce, doctrinal and legal definitions have multiplied, varying according to the perspective from which this activity is examined, whether in terms of its technical means or its legal effects. Accordingly, it is necessary to define this concept by outlining its principal approaches.

1.1- The Concept of E-Commerce

Before defining the technical (terminological) concept of e-commerce, it is necessary to refer to its linguistic meaning. Trade refers to a set of activities and transactions aimed at the circulation of goods and services through buying and selling operations. The term "electronic" refers to the use of modern technological means, particularly information and communication technologies, in conducting economic activities, most notably via the Internet. (Meshmesh, R., & Hajj Khamnash, N. (2019). Future of e-commerce in Algeria. *Journal of Legal Studies*, (19), 91.)

Accordingly, the concept of e-commerce reflects the convergence of these two meanings, whereby commercial transactions are conducted within a digital environment based on electronic means.



However, the multiplicity of definitions does not stem from a difference in the essence of the concept, but rather reflects the diversity of analytical approaches addressing this activity.

In this regard, e-commerce has been defined as: all operations through which transactions relating to the sale and purchase of goods and services, or the exchange of information of a commercial nature, are concluded and executed via computer networks, including the Internet, using electronic means.

(Abu Shnab, I. A. (2012). *Electronic services*. Amman: Cultural Book House.)

It has also been defined as: a system of legal acts of a commercial nature through which offer and acceptance are exchanged and mutual consent between the parties is established regarding the elements of the transaction via electronic means, whereby the contract is concluded remotely without the physical presence of the parties, while the performance of certain obligations, particularly the physical delivery of the subject matter of the contract, remains subject to traditional means.

(Salama, A. A. K. (2012). *Private international law (qualitative, electronic, tourism, environmental)*. Cairo: Arab Renaissance Publishing House.)

1.1.1- Doctrinal Definition of E-Commerce

Doctrinal definitions of e-commerce have varied depending on the perspectives adopted by legal scholars, whether in terms of the technological means used or the nature of the legal relationships arising therefrom.

E-commerce has been defined as: the conduct of commercial activities related to the exchange of goods and services through the use of modern means of communication and other tools associated with information and communication technologies.

(Al-Abdi, A. (2012). *Electronic insurance in Islamic countries (reality – challenges – prospects)*. In *Proceedings of the Third Islamic Conference*. Mecca: Umm Al-Qura University.)

It has also been defined as: a set of digital transactions associated with commercial activities, conducted between businesses, between businesses and individuals, or between businesses and public administrations, within an electronic environment based on data exchange via networks.

(Youssef, H. Y. (2011). *Algerian and Maghreb legislation* (PhD dissertation). Faculty of Law, University of Mostaganem.)

1.1.2- Definitions by International Organizations

E-commerce has received considerable attention from various international organizations concerned with regulating trade exchanges. These bodies have sought to provide different conceptualizations of this modern form of commerce:

(Al-Essawi, B. (2003). *E-commerce* (1st ed.). Cairo: Academic Library.)

A. United Nations (UNCITRAL)

The United Nations Commission on International Trade Law addressed e-commerce through the Model Law on Electronic Commerce (1996). However, it did not adopt an explicit definition of e-commerce; rather, it focused on regulating electronic data interchange as a fundamental component of electronic transactions.

(Meshmesh, R., & Hajj Khamnash, N. (2019). Future of e-commerce in Algeria. *Journal of LegalStudies*, (19), 13.)

B. World Trade Organization (WTO)

The WTO defines e-commerce as: “the production, distribution, marketing, sale or delivery of goods and services by electronic means.” This definition indicates that electronic commercial transactions involve several interrelated stages, including:

- Product identification, advertising, and search;
- Order placement and electronic payment;
- Delivery of goods or provision of services, whether through traditional physical means or digital channels.



C. Organisation for Economic Co-operation and Development (OECD)

The OECD defined e-commerce in its 1998 report as: all commercial transactions conducted between enterprises or individuals based on automated data processing, whether textual, audio, or visual. The report also highlighted several issues associated with this activity, particularly those relating to digital infrastructure, taxation, consumer protection, privacy, domain names, and intellectual property rights.

D. European Union

The European Union defines e-commerce as: all activities carried out electronically between commercial enterprises, between such enterprises and consumers, or between them and public administrations. This definition encompasses a wide range of operations such as electronic invoicing, online auctions, digital purchase orders, and the delivery of goods and services, whether through traditional physical means or digital methods such as software delivery, electronic publications, and information and entertainment services, as well as electronic financial transfers.

E. Definition by the Algerian Legislator

In addition to scattered references made by the Algerian legislator in various legal texts concerning commercial activity in general, a more precise and explicit regulation was introduced through Law No. 18-05 relating to electronic commerce. Article 5 thereof defines e-commerce as: an activity whereby an electronic supplier offers or ensures the provision of goods and services remotely to an electronic consumer via the Internet.

This definition reflects the legislator's intent to establish a legal framework governing electronic transactions by defining the parties and determining their rights and obligations, thereby ensuring the necessary legal protection in line with the rapid developments in information and communication technologies.

In this context, the legislator has laid down several requirements regulating the practice of this activity, most notably:

- The obligation for the website to include information establishing its identity and credibility;
- The requirement to register the domain name with the National Center of the Commercial Register.

2- E-Commerce Law in Algeria and the Requirements for Its Implementation

2.1- Analysis of Law No. 18-05

This section aims to highlight the main components of this law as follows:

A. General Framework of the E-Commerce Law The adoption of a national policy aimed at building an integrated information society requires the development and promotion of various electronic services, particularly those of a commercial nature. Establishing a legal framework governing e-commerce is one of the fundamental mechanisms for building trust in electronic transactions, thereby contributing to their expansion, especially in the economic sphere. In this context, e-commerce has become a necessity for various actors in economic life, including banks, traders, and financial institutions. Law No. 18-05 of 14 May 2018 aims to regulate and structure the activities of various economic operators providing services via electronic communication means. From a legislative perspective, the enactment of this law forms part of Algeria's efforts to align its legal system with international rules and standards in this field.

(Meshet, A. (2019). E-commerce in Algeria. *Journal of Legal and Political Research Studies*, (13), 243.)

1.2.1- Scope of Application of the Law

A. Personal Scope Article 2 sets out the conditions relating to the parties to the electronic contract, namely:

- Algerian nationality;
- Lawful residence in Algeria;
- If a legal person, it must be governed by Algerian law;
- The contract must be concluded or performed within the national territory.

B. Material Scope Article 3 provides that e-commerce activities are subject to the legislation governing traditional commerce, with certain exceptions, including:

- Trade in alcoholic beverages and tobacco;
- Pharmaceutical products;
- Gambling and betting activities;



- Goods infringing intellectual, industrial, or commercial property rights;
- Prohibited goods;
- Sensitive equipment and products, as well as anything that may affect national defense, public order, or public security.

C. Electronic Commercial Transactions

C 1. Conditions for Practicing E-Commerce

Article 7 stipulates two essential conditions:

- Registration in the commercial register or in the register of crafts and handicrafts;
- The creation of a website or electronic page hosted in Algeria with the “.dz” domain.

Article 8 adds another requirement, namely the obligation to deposit the domain name with the National Center of the Commercial Register, subject to legal penalties in case of non-compliance.

C 2. Electronic Contract

Article 9 requires that every electroniccommercial transaction be preceded by an electronic commercial offer, formalized in an electronic contract validated by the consumer. This contract must include, under penalty of nullity, essential information, including:

- Detailed characteristics of goods and services;
- Terms and conditions of delivery;
- Warranty and after-sales service conditions;
- Conditions for concluding the electronic contract;
- Payment terms and methods;
- Return conditions and procedures;
- Complaint handling mechanisms;
- Pre-order conditions where applicable;
- Trial sale conditions where applicable;
- Designation of the competent judicial authority in case of dispute.

2.2- Civil and Criminal Protection of Electronic Commerce in Light of Law No. 18-05

2.2.1- Civil Protection of Electronic Commerce under Law No. 18-05

Civil protection of electronic commerce, pursuant to Law No. 18-05, enshrines the principle of liability of the electronic supplier for the

performance of its obligations towards the consumer, whether such obligations arise from his own acts or from the acts of persons or service providers acting on his behalf.

However, this liability is not absolute, as the electronic supplier may be exempted where he proves that non-performance or improper performance is due to the consumer's fault or to force majeure.

The recognition of the civil liability of the electronic supplier constitutes one of the most important legal mechanisms ensuring effective protection of the electronic consumer within digital transactions, thereby enhancing trust in this form of commerce. Accordingly, this section addresses the main legal guarantees afforded to the electronic consumer.

A. Civil Liability of the Electronic Supplier for Non-Compliance with Electronic Advertising Rules

The electronic consumer is entitled to request the annulment of the contract if it is proven that it was concluded under the influence of false or misleading advertising, or advertising that does not comply with the conditions set out in Article 30 of Law No. 18-05 on electronic commerce.

This right is based on the fact that the consumer's consent is vitiated by defects of consent, particularly fraud (dol) or mistake, in accordance with the general principles of civil law. The consumer may also claim compensation for damages suffered, on the basis of tort liability, provided that its constituent elements are established, pursuant to Article 124 of the Civil Code.

B. Civil Liability of the Electronic Supplier for Breach of Pre-Contractual Information Obligations

The failure of the electronic supplier to provide essential information to the consumer, or the provision of incomplete or inaccurate information, constitutes a breach of a legal obligation giving rise to civil liability and, in certain cases, criminal liability as well.

(Rabhi Taboub, F. Z. (2022). *Electronic transactions law according to Law 18-05* (2nd ed.). Algeria: Ideas House.)



Where the electronic supplier breaches its information duty in violation of the applicable provisions—particularly Articles 10 and 11 relating to the commercial offer, and Article 13 relating to the content of the contract and mandatory information—it is permissible for the electronic consumer to request the annulment of the contract, in addition to claiming compensation for the damage suffered.

Article 14 of Law No. 18-05 expressly grants the consumer the right to annulment and compensation where Articles 10 and 13 are not respected by the supplier.

It is noteworthy that the Algerian legislator used the term “annulment” (relative nullity) rather than “nullity,” which is consistent with Article 99 of the Civil Code, according to which annulment is a relative nullity that may only be invoked by one of the contracting parties and may not be raised by the court of its own motion.

As for compensation, it is governed by Article 176 et seq. of the Civil Code, which adopts the principle of full reparation of damage.

(Mehna, M. F., & Toumi, H. (2023). The electronic supplier between obligation and sanction under E-commerce Law 18-05. *Voice of Law Journal*, 9(2), 62.)

Furthermore, the legislator requires the electronic supplier, in case of breach of the information obligation, to refund any advance payments made by the consumer where payment was made before the product was available in stock, in accordance with Article 15(3) of Law No. 18-0

C. Protection of the Electronic Consumer against Unfair Contract Terms

Unfair terms in electronic consumer contracts are defined as clauses imposed by the trader or service provider that create a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer.

(Said, K., & Khaled, A. (2012). *Electronic consumer protection*. Alexandria: New University House.)

Although Law No. 18-05 does not expressly define unfair terms, reference is made to general legislation, particularly Law No. 04-02 laying down the rules governing commercial practices, whose Article 3 defines an unfair term as any clause that, alone or in combination with other clauses, significantly disrupts the balance between the rights and obligations of the contracting parties.

In this context, the Algerian legislator grants the electronic consumer the right to request annulment of the contract as well as compensation for damages resulting from unfair terms. This reflects the legislator's intention to protect consumers in adhesion contracts, which are typically drafted in advance by professionals without any real possibility for the consumer to negotiate or amend them, thereby requiring legal mechanisms to restore contractual balance and protect the weaker party

(Ladghash, S. (2021). Electronic consumer protection at all stages of contracting. In *Legal Protection of Consumers in Electronic Transactions* (Collective work). Algeria: Alpha Doc.)

D. Recognition of the Electronic Consumer's Right of Withdrawal

Electronic consumer contracts are concluded in a context characterized by the absence of physical interaction between the parties, which may lead to a lack of adequate information and affect the consumer's consent. This justifies the need for specific protective mechanisms, foremost among which is the right of withdrawal.

The right of withdrawal allows the consumer to unilaterally withdraw from the contract within a legally or contractually defined period, without having to provide reasons and without incurring costs, except for return shipping expenses.

(RabhiTaboub, F. Z. (2022). *Electronic transactions law according to Law 18-05* (2nd ed.), 200.)

The Algerian legislator expressly recognized this right under Law No. 18-09 amending Law No. 09-03 on consumer protection and fraud repression, where Article 19(2) defines withdrawal as the consumer's right to retract from the purchase without providing justification and sets out the conditions for its exercise.



Although Law No. 18-05 on electronic commerce does not explicitly define the right of withdrawal, it implicitly enshrines it by granting the consumer the right to return a product if it does not conform to the order or is defective, within a maximum period of four (4) working days from the date of delivery, provided that the reason for refusal is indicated. The consumer is also entitled to reship the product within the same period and to claim damages where applicable.

Accordingly, the right of withdrawal is confirmed as a fundamental guarantee for consumer protection, both under general consumer law and under the specific provisions governing electronic commerce, particularly in cases of breach by the supplier such as non-compliance with delivery deadlines or delivery of non-conforming or defective goods.

2.2.2- Criminal Protection of Electronic Commerce under Law No. 18-05

The rapid increase in crimes related to electronic commerce—whether targeting traders or consumers, or affecting personal data and financial transactions—has made it necessary to establish a specialized criminal protection framework adapted to the technical nature and specific features of digital transactions.

(Algeria. (2009/2018). Law No. 03-09 on consumer protection and anti-fraud (as amended by Law No. 18-09), Article 19 bis; and Law No. 18-05 on electronic commerce, Articles 14–15. *Official Gazette*, (15), (28).)

Accordingly, Algerian Law No. 18-05 on electronic commerce dedicates Title III to “Offences and Penalties,” which defines the criminalized acts giving rise to criminal liability. It also designates the authorities empowered to monitor electronic suppliers and to record offences in accordance with applicable legal procedures

(Algeria. (2018). Law No. 18-05 on electronic commerce. *Official Gazette*, (28), Chapter III. Ben Khalifa, A. R. (2018). *Consumer protection in Algerian legislation*. Algeria: BelkysPublishing House).

A. Crimes Related to Electronic Commerce under Law No. 18-05

The Algerian legislator devoted Title III of Law No. 18-05 to regulating offences and penalties in electronic commerce, establishing a specific

punitive system targeting various breaches of legal obligations imposed on electronic suppliers, in order to ensure trust in the digital environment and protect users' rights.

A 1. Criminal Liability for Breach of Electronic Advertising Rules

Electronic advertising is subject to strict legal regulation due to its impact on consumer consent. Any violation of Articles 30, 31, 32, and 34 of Law No. 18-05 engages the criminal liability of the electronic supplier.

This liability is particularly evident in two main cases:

Misleading or ambiguous advertising:

Although Law No. 18-05 does not contain a specific penal provision, such conduct is punishable under general consumer protection law, particularly Law No. 09-03 on consumer protection and fraud repression, which criminalizes deceptive practices intended to mislead consumers regarding product characteristics, use, or expected results. Such practices are considered unfair commercial practices and are subject to enhanced penalties when carried out through advertising media, including electronic channels.

Advertising prohibited products or services:

Electronic suppliers are prohibited from promoting, through any electronic communication means, products or services that are legally forbidden from being marketed online. Violation of this prohibition triggers criminal liability and the imposition of statutory fines.

A 2. Criminal Liability for Breach of the Scope of Electronic Activity (Articles 3 and 5)

The legislator has restricted the scope of electronic commerce by excluding certain goods and services from online trading. Violation of Article 3 results in a fine and may also include an additional penalty consisting of temporary closure of the website through which the offence was committed.

In case of violation of Article 5, the sanctions are more severe, both in terms of fines and supplementary penalties, which may extend to permanent



closure of the website or removal from the commercial register, reflecting the seriousness of such prohibited acts.

A 3. Criminal Liability for Breach of Pre-Contractual Obligations (Articles 11 and 12)

The electronic supplier is required to comply with a set of pre-contractual information obligations, particularly the provision of a clear, legible, and understandable electronic commercial offer containing essential information, as well as compliance with mandatory ordering procedures. Failure to comply gives rise to criminal liability, including fines and possible suspension of access to electronic payment platforms for a specified period.

A 4. Criminal Liability for Failure to Maintain Data Records (Article 25)

The legislator imposes on the electronic supplier the obligation to maintain records of completed electronic transactions and to transmit them to competent authorities. Failure to comply constitutes a breach of transparency and audit requirements, giving rise to criminal liability and the imposition of fines.

A 5. Operating Without Commercial Registration

The legislator requires prior registration in the commercial register to carry out electronic commerce activities. Failure to comply results in the suspension of the electronic supplier's domain name until legal regularization is achieved.

A 6. Provisional Suspension of Domain Names

Competent authorities may adopt a precautionary measure consisting of the suspension of the electronic supplier's domain name, by administrative decision, where serious violations justify the closure of the activity under applicable commercial legislation.

A7. Criminal Liability for Invoicing Obligations (Article 20)

The legislator requires the electronic supplier to issue and deliver invoices for each electronic transaction in order to ensure transparency and proof of

rights. Failure to comply triggers penalties provided under commercial legislation.

Conclusion

The Algerian consumer in electronic commerce does not differ in legal nature from the traditional consumer; however, the specific nature of the electronic environment—particularly the absence of physical presence and direct interaction—confers a distinct character on contractual relations, requiring enhanced legal protection.

Law No. 18-05 constitutes a fundamental milestone in regulating digital commerce in Algeria, moving electronic activity from an unregulated sphere to a structured legal framework. However, its effectiveness depends not only on its normative content but also on its capacity to adapt to a rapidly evolving digital environment.

The analysis shows that, in theory, the law contributes to transparency and consumer protection and provides legal recognition to electronic transactions. However, in practice, it still faces structural challenges, including slow administrative adaptation to digitalization, limited development of electronic payment systems, and insufficient digital legal awareness among stakeholders. Moreover, some provisions remain general or traditional in addressing complex digital phenomena, raising issues of legal adaptability.

Consumer protection in electronic commerce is not limited to ex post sanctions but extends to a preventive framework combining civil, criminal, and technical protection mechanisms, thereby strengthening trust in the digital environment.

In this context, Law No. 18-05 represents an important legislative step toward structuring electronic commerce in Algeria. However, its effectiveness depends on its ability to keep pace with rapid technological developments. Remaining gaps persist, particularly regarding the tax framework of electronic commerce, the legal protection of electronic payment systems, and the need for more efficient regulatory and technical control mechanisms to ensure a balance between innovation and consumer protection.

Accordingly, several strategic recommendations may be proposed, including the transition from mere regulation of electronic commerce to the construction of an integrated digital ecosystem, the adoption of smart regulatory tools based on technology, and the



strengthening of international cooperation in combating cybercrime. Digital and legal education should also be integrated into training programs to raise awareness of the risks and opportunities of the digital economy.

Ultimately, the future of electronic commerce in Algeria depends not only on legal reform but on the creation of a comprehensive digital trust environment, where law functions as an enabling tool rather than merely a control mechanism.

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