

## **Electronic Commercial Records and Their Role in the Evidentiary Proof of Electronic Commercial Transactions**

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**Abstract:** Electronic commercial records have become a key legal mechanism adopted by modern legislation to keep pace with electronic commerce. They now rival traditional paper registers by officially documenting traders' data and enhancing transparency and credibility in online transactions. These records serve as legal evidence to prove commercial activity and trader status in case of disputes, thus reinforcing digital trust—provided that adequate legal and technical safeguards are ensured.

**Keywords:** Electronic commerce – Electronic commercial records – Commercial activity – Electronic evidence – Digital trust.

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## Introduction:

Technological development in the field of information and communication technology has profoundly influenced various aspects of society, including the legal framework. The practical use of information technology tools across different branches of law has created a new reality that demands legal regulation and adaptation. This is particularly evident in electronic commerce, where transactions are conducted between parties who often do not know each other and communicate through intangible digital means, both in the formation and execution of contracts. The traditional legal rules have proven insufficient to address the specific nature of such transactions, prompting the legislator to reform and modernize the existing legal framework by amending previous provisions and introducing new legal texts to regulate this emerging field.

Given that evidence constitutes a fundamental element in ensuring stability and reliability in commercial transactions—especially as their volume and complexity continue to increase—merchants traditionally relied on paper-based commercial records to document their operations. However, this method was not immune to technological progress, leading the Algerian legislator to recognize the importance of electronic commercial records as a modern alternative aligned with digital transformation in the economic sphere. In this regard, Law No. 04-08 on the Conditions for the Exercise of Commercial Activities, as amended and supplemented, officially acknowledged the legal validity of such records, marking a new phase in the documentation of commercial transactions in accordance with the requirements of the digital era<sup>1</sup>. Law No. 04-08 of 14 August 2004, as amended and supplemented, provides in its provisions for registration in the commercial register by electronic means. Regarding the rules of evidence, the recognition of written electronic proof was established by Articles 323 and 323 bis of the Civil Code, as amended by Law No. 07-05 amending Ordinance No. 75-58 containing the Civil Code<sup>2</sup>.

Furthermore, the Algerian legislator organized electronic transactions under Law No. 18-05 on Electronic Commerce, dated 10 May 2018, which defines the general rules governing the electronic trade of goods and services<sup>3</sup>. This law also refers to the preservation of electronic commercial records, as a step toward recognizing their probative value in evidence, since such records constitute the repository of all commercial operations carried out by traders—traditionally in paper form—and are of great importance in proving these transactions in case of disputes, whether between traders themselves or between traders and non-traders, in accordance with the provisions of the Commercial Code.

To address this question, a two-part structure has been adopted. The first section addresses the conceptual framework of the electronic commercial register under Algerian legislation,

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<sup>1</sup> Article 5 bis of Law No. 04-08 on the Conditions for the Exercise of Commercial Activities, as amended and supplemented, Official Gazette of the People's Democratic Republic of Algeria, No. 52, issued on August 18, 2004, p. 4.

<sup>2</sup> Law No. 07-05 of May 13, 2007, containing the Civil Code, amending and supplementing Ordinance No. 75-58 of September 26, 1975, containing the Civil Code, Official Gazette of the People's Democratic Republic of Algeria, No. 31, issued on May 16, 2007, p. 3.

<sup>3</sup> Law No. 18-05 on Electronic Commerce, Official Gazette of the People's Democratic Republic of Algeria, No. 28, issued on May 16, 2018, p. 5.

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while the second section examines the legal implications of recognizing electronic registers as a means of evidence.

### **Section One: The Conceptual Framework of the Electronic Commercial Register in Algerian Legislation**

The traditional commercial register serves as a repository for all transactions carried out by a trader, where every commercial act is systematically recorded. However, technological developments have given rise to a new type of register that differs from the long-standing paper-based system, as it is created and maintained through digital means rather than on paper.

Consequently, it has become necessary to examine the concept of the electronic commercial register, particularly given its significant importance under Algerian law. In this regard, the first subsection will address the definition and nature of the electronic commercial register, while the second subsection will focus on its content and components, aiming to compare it with the traditional register in terms of preparation and structure.

#### **Subsection One: The Nature of the Electronic Commercial Register**

The concept of the commercial register is not new in legislation, as traders have long been required to maintain their commercial records according to specific regulations. Algerian Commercial Law obliges traders to keep organized commercial books, documenting all transactions conducted, along with the supporting documents that substantiate these transactions. These records must be preserved under conditions ensuring their integrity, and the legislator has set a retention period. Compliance with these procedures grants the commercial register probative value, while failure to adhere to them entails sanctions<sup>14</sup>.

This requirement traditionally applied to paper-based commercial books. However, technological developments in information and communication technology, along with the use of digital tools in commercial transactions, have given rise to a new type of register: the electronic commercial register. In this context, Law No. 18-05, in Article 25, requires traders (or electronic suppliers) to record all elements of each commercial transaction in these electronic registers. This legal evolution raises the need to define the concept of the electronic commercial register and clarify its governing provisions.

Electronic records refer to information that is created, sent, received, or stored by electronic, optical, or similar means<sup>1</sup>. The Algerian legislator addressed this concept in Executive Decree No. 19-89, which establishes the procedures for maintaining electronic commercial transaction records and submitting them to the National Commercial Register, issued in application of Article 25 of Law No. 18-05 on Electronic Commerce.

According to Article 2 of Executive Decree No. 19-89:

"The commercial transaction register is an electronic file in which the electronic supplier records the following elements of each completed commercial transaction:

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<sup>4</sup>Article 9 of Ordinance No. 75-59 containing the Commercial Code, Official Gazette of the People's Democratic Republic of Algeria, No. 110, issued on 20 Ramadan 1395 corresponding to 26 September 1975.

- The contract,
- The invoice or its equivalent document,
- Any receipt during delivery, retrieval, or importation, as applicable<sup>5</sup>."

It is evident that the electronic commercial register serves as a tool for documenting commercial transactions as defined by Algerian legislation. In this regard, it functions similarly to the traditional paper-based register, in which traders record and review all daily commercial operations systematically. However, the electronic register encompasses any digital medium or platform designed for the creation, storage, and exchange of data and information, and it also performs functions of electronic preservation, transmission, and receipt.

Maintaining the electronic register is a crucial procedure during electronic information exchange, as the recorded data can be relied upon to initiate legal proceedings in case of disputes between the parties. Scholars in the field of electronic commerce have likened the electronic register to the mandatory commercial books required for traders under commercial law, representing a transition from traditional paper documentation to digital recording to regulate relations both among traders and between traders and non-traders<sup>6</sup>.

This approach is reflected in the legislative recognition of electronic commercial books, whereby the electronic register has become a means to preserve and document the data exchanged between parties in commercial transactions. Given its importance, most model agreements for electronic data interchange require parties to maintain a complete and official record of exchanged electronic messages. One prominent example is the European Model for Electronic Data Interchange, which stipulates that each party must store all electronically exchanged data messages in a complete, chronological, and unaltered manner, using appropriate security measures, in accordance with the terms and specifications of its national law<sup>7</sup>.

The electronic commercial register differs from its paper-based counterpart in that it does not require physical storage space, allowing large volumes of data to be stored electronically. It also provides technical protection through encryption, preventing unauthorized access or modification. Additionally, it reduces problems associated with traditional paper records, such as loss or damage, and allows the register to be maintained in a form that cannot be altered after creation. To serve as evidence in court, the electronic register must include a set of essential elements, which will be discussed in the following subsection.

### **Subsection Two: Content of the Electronic Commercial Register**

Traders maintain commercial books by recording the elements of each commercial transaction as stipulated in Article 2 of Executive Decree No. 19-89, including the contract, the invoice or its equivalent document, the receipt, and other documents related to the transaction.

An electronic contract is any agreement or arrangement aimed at selling goods or providing services, prepared in advance by one party and accepted by the other. The second party cannot

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<sup>5</sup> Executive Decree No. 19-89, specifying the procedures for maintaining electronic commercial transaction records and submitting them to the National Commercial Register, Official Gazette of the People's Democratic Republic of Algeria, No. 17, issued on 17 March 2019, p. 16.

<sup>6</sup> Abdel Fattah Bayoumi Hegazy, *E-Commerce*, First Edition, Dar Al-Fikr Al-Jamiai, Alexandria, 2008, p. 112.

<sup>7</sup> Khaled Mamdouh Ibrahim, *Conclusion of the Electronic Contract – A Comparative Study*, Second Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2011, p. 226.

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make any substantial modifications without being present simultaneously with the first party, using electronic communication technologies<sup>8</sup>. Moreover, the law obliges any natural or legal person who markets or offers to market goods or services via the Internet—whether through a website or email—to provide a detailed and documented commercial offer under an electronic contract, in accordance with Articles 10 and 11 of Law No. 18-05 on Electronic Commerce.

Conversely, the offer is received by a person wishing to purchase a good or service for final use, referred to as the buyer under general rules and as the consumer under this law, through the exchange of offer and acceptance using the specified electronic communication means, so that electronic consent does not differ from traditional consent under general rules<sup>19</sup>.

Once both parties' wills coincide, the contract is documented through electronic writing and signature, and it must include all information stipulated in Article 13 of Law No. 18-05. This contract creates obligations for both parties: the supplier is required to provide the requested goods, while the consumer is obliged to pay the price using the authorized payment methods under Articles 27 and 28 of Law No. 18-05, including modern payment methods such as various bank cards or electronic checks.

The invoice is a fundamental commercial document for executing and evidencing commercial transactions. Despite technological developments, the invoice has maintained its role, transitioning from a paper-based format to an electronic one. Commercial law did not specify the form of the invoice—paper or electronic—but it addressed the transfer of invoices in Article 543 bis 14 and subsequent articles, emphasizing that it must be written.

The Algerian legislator addressed this legislative gap in Executive Decree No. 05-468<sup>10</sup>, issued on 10 December 2005, which regulates the issuance of invoices, transfer vouchers, delivery receipts, and summary invoices, and specifies the data that must be recorded by the trader. The decree explicitly recognized electronic invoices in Article 10(2), stating that an invoice is legally valid if issued based on the invoice book, whether in paper form or electronically using information technology.

The provisions of this decree specify the information to be recorded in both paper and electronic invoices. Additionally, Law No. 18-05, in Article 20, obliges the electronic supplier to prepare and deliver the invoice to the consumer electronically.

The Algerian legislator regulated the provisions of the alternative document to the invoice in Executive Decree No. 16-66, dated 16 February 2016, which specifies the model of the document replacing the invoice and the categories of economic agents required to use it<sup>11</sup>. This decree aims to monitor commercial transactions and designates this document as the "Commercial Transaction Voucher", which may be issued on either paper or electronic media.

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<sup>8</sup> Article 6 of Law No. 18-05 on Electronic Commerce, dated 10 May 2018, Official Gazette of the People's Democratic Republic of Algeria, No. 28, issued on 16 May 2018, p. 5.

<sup>9</sup> Yamina Houhou, *Electronic Sales Contract in Algerian Law*, First Edition, Dar Belqis, Algiers, 2016, p. 56.

<sup>10</sup> Executive Decree No. 05-468, specifying the conditions for issuing invoices, transfer vouchers, delivery receipts, and summary invoices, Official Gazette of the People's Democratic Republic of Algeria, No. 80, issued on 11 December 2005, p. 18.

<sup>11</sup> Executive Decree No. 16-66, specifying the model of the document replacing the invoice and the categories of economic agents required to use it, Official Gazette of the People's Democratic Republic of Algeria, No. 10, issued on 22 February 2016, p. 3

It contains information about the goods or products involved in the transaction, as well as the electronic signatures of both the trader and the consumer.

This document requires formal conditions to be valid as a commercial paper. The electronic invoice must include data related to the trader and the buyer or consumer, and it must comply with a set of technical requirements specified in the decree, which will be discussed subsequently.

### **1- Trader-related Information:**

The mandatory data for traders, as specified in Article 3(1) of Executive Decree No. 05-468, include: the full name of the individual or the name and commercial title of the legal entity; address, phone, fax, and email (if applicable); legal form and type of activity; company capital (if applicable); commercial register number; statistical identification number; payment method and date; invoice date and serial number; description and quantity of goods sold or services provided; unit price excluding taxes; applicable fees, rights, or contributions; and total price including all applicable fees, expressed in numbers and words.

Article 4(1) adds the requirement for the trader's electronic signature and official seal on the electronic invoice.

### **2- Buyer or Consumer Information:**

The invoice must include data on the buyer or consumer as specified in Article 3(2) of Executive Decree No. 05-468, including the full name of the individual or the name and commercial title of the legal entity, legal form and type of activity, address, phone, fax, and email (if applicable), commercial register number, statistical identification number, and for a consumer, the name, surname, and address.

Article 10 of the decree requires the invoice to be clear and readable, whether in paper or electronic form, and free of any marks or defects such as erasures or insertions that may raise doubts about its validity.

For repeated commercial transactions with the same customer, a delivery receipt may replace the invoice. This receipt must include the issuance date, the name, surname, and identification number of the recipient or carrier, as well as the electronic invoice data in accordance with Articles 14 and 15 of the decree.

The provision requires invoices to be recorded in the invoice book, either on paper or electronically, with strict chronological order and organization, as stated in paragraph 4: "The new invoice book may not be used until the previous book is fully completed." The electronic exchange system must use suitable IT devices and systems to ensure proper execution, while the procedures for sending are addressed in Article 11 of the decree.

It is noted that the content of the electronic register, including contracts and invoices, adheres to electronic writing and signatures, and its preparation follows the forms and procedures set out in Articles 10, 11, and 12 of the Commercial Law. This raises the issue of applying the presumption of regularity used for paper commercial registers to electronic registers, which will be discussed in the next section.

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### **Section One : The Legal Effect of Recognizing Electronic Registers as Evidence**

The Algerian legislator, by equating **paper-based and electronic writing as evidence** under Articles 323 and 323 bis of the Civil Code, allows electronic registers to serve as a practical alternative to traditional commercial registers and to be relied upon in proving transactions before the court.

This chapter addresses:

1. **Section One:** Types of electronic registers;
2. **Section Two:** Their evidential value.

#### **Subsection One: Emerging Forms of Commercial Registers**

Methods of storing electronic documents vary due to rapidly evolving technology, requiring special technical procedures to ensure their legal validity. The French Association for Standardization established a standard for electronic registers known as the AFNOR standard on 04/07/1998<sup>12</sup>.

The AFNOR standard represents an academic application for leveraging technical expertise in electronic archiving systems within institutions, specifying the technical requirements for electronically recording data, its preservation, and validity, alongside security measures such as control procedures and encryption.

Key recommendations include:

1. Implementing a flexible technical system to ensure secure and reliable daily record-keeping.
2. Requiring institutions to conduct regular audits of electronic registers to build professional traders' confidence<sup>13</sup>.

Similarly, the Algerian legislator adopted these principles in Article 10 of Executive Decree 05-468, mandating that transactions recorded in the electronic register follow chronological order and structured organization, providing a presumption of regularity akin to paper registers that courts can rely on in disputes.

Electronic document storage media include physical supports such as magnetic disks, hard drives, optical or compact discs, as well as intangible outputs linked to the Internet, noting that information technology continuously evolves.

1. Internet: Widely used for data storage due to ease of retrieval via login using email, personal identification code, electronic signature, and password. Electronic documents are stored with the ability to retrieve them in their original form; however, this method is less secure due to network vulnerabilities and hacking attempts<sup>14</sup>.

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<sup>12</sup> Yamina Houhou, Ibid., p. 128.

<sup>13</sup> Khaled Mamdouh Ibrahim, Conclusion of the Electronic Contract – A Comparative Study, 1st ed., National Publishing Center, Cairo, 2009, p. 229.

<sup>14</sup> Lornis Mohamed Obeidat, Proof of the Electronic Document, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2005, p. 84.

2. Microforms: Miniaturized versions of documents printed on small films for easy retrieval. Unlike standard microfilm, data is recorded directly from the computer for retrieval via a reader device that converts it into displayable information. Microforms provide a visible and long-lasting proof and allow extraction of paper copies, ensuring the evidentiary validity of electronic documents<sup>15</sup>.
3. Magnetic tape: A plastic strip coated with a high-density metallic layer for data storage, recording information similarly to audio tapes, with markers indicating the start and end of the recording. It provides high storage capacity and long retention if safety conditions are met, and data can only be read using a computer<sup>16</sup>.
4. Hard disk: The primary storage unit in computers, capable of holding large amounts of data including the operating system and programs. It provides permanent memory that can be easily retrieved and performs reading and writing simultaneously.
5. Optical / Compact Disc (CD): An electronic medium for storing data, written and read with a low-power laser beam. Introduced in 1982, composed of metallic layers containing audio, video, and other data, and is resistant to alteration or tampering. Using these media serves as an alternative to paper records for storing commercial transactions<sup>17</sup>.

The Algerian legislator also issued complementary legal texts amending the Civil Code regarding rules of evidence after recognizing the legal validity of electronic documents. Article 25 of Law No. 18-05 on Electronic Commerce obliges traders to maintain electronic ledgers and store them at the National Commercial Registry, stating:

"Every electronic supplier must maintain records of completed commercial transactions along with their dates and electronically submit them to the National Commercial Registry. The methods for implementing this article shall be determined by regulation."

Pursuant to this article, Executive Decree No. 19-89 was issued, specifying the procedures for maintaining and transmitting electronic commercial transaction records to the National Commercial Registry, including technical and organizational measures to ensure the electronic ledger has evidentiary value.

Executive Decree No. 19-89 stipulates the procedures required to ensure the evidentiary value of electronic commercial ledgers, as follows:

1. Ledger entries must be legible and clear, allowing the parties or other interested persons to read and understand them via a computer<sup>18</sup>.
2. The ledger must maintain continuity, recorded on a stable medium capable of preserving data for extended periods to ensure its reliability in evidence<sup>19</sup>.

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<sup>15</sup> Abbas Al-Aboudi, *Explanation of the Law of Evidence*, 1st ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, 2005, p. 250.

<sup>16</sup> Lornis Mohamed Obeidat, *op. cit.*, p. 84].

<sup>17</sup> <https://www.eshami.com/Terms/0/>. Accessed: 06/04/2025

<sup>18</sup> Samah Abdel Wahid El-Tahami, *Contracting via the Internet – Comparative Study*, Dar Al-Kutub Al-Qanuniya, Egypt, 2008, p. 504.

<sup>19</sup> Al-Mu'tasim Billah Fawzi Adham, *Evidence of Electronic Contracting – Comparative Study*, Al-Halabi Legal Publications, Beirut, 2017, p. 257.

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3. Ledger entries must be preserved in their original form or in a manner that prevents modification or destruction, including electronic signatures and certification lists, in accordance with the useful-life principle indicated in Executive Decree No. 16-142 .
4. A copy of the ledger must be sent to the National Commercial Registry, including the transaction's subject, date, total amount with fees, payment method, and invoice or equivalent document number.

### **Second Subsection: Scope of the Evidentiary Value of Electronic Ledgers**

Legislation aims to regulate commercial ledgers to control commercial transactions and their economic effects, ensuring their admissibility as evidence in court. The evidentiary value of these ledgers refers to the court's acceptance of the recorded data—whether paper-based or electronic—to establish the facts and acts performed by the merchant, with proper organization being a fundamental condition for their recognition. However, these ledgers are not public documents, as they pertain to the merchant's profession, and persons without legitimate interest may not access or request them in court except in specific cases defined by general rules. Therefore, the scope of the evidentiary value of electronic ledgers can be summarized as follows:

1. Their use for or against the merchant in judicial proceedings.
2. Circumstances under which they may be submitted to the court for inspection.
3. Other related issues regarding the legal recognition of electronic ledgers under Algerian law.

### **1-Use of Electronic Ledgers for or Against the Merchant**

Algerian law regulates the evidentiary value of commercial ledgers in Article 330 of the Civil Code and Article 13 of the Commercial Code. Electronic ledgers may serve either as evidence against the merchant or in their favor.

#### **A- Electronic Ledgers as Evidence Against the Merchant:**

Paragraph 2 of Article 330 states that "merchants' ledgers are evidence against them," meaning that a counterparty may rely on the data recorded in electronic ledgers against the electronic supplier or paper ledgers, whether the counterparty is a merchant or not, and whether the data were recorded by the merchant or under their supervision <sup>20</sup> . The court retains discretion in evaluating the weight of this evidence. Electronic ledgers are considered issued by the merchant, but this constitutes a rebuttable presumption. They are distinguished by special procedures, particularly their filing with the National Commercial Register via electronic communication methods.

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<sup>20</sup>Mohamed Hazit, Evidence in Civil and Commercial Matters in Algerian Law, Dar Houma Printing & Publishing, Algiers, 2017, p. 111.

Paragraph 2 of Article 330 of the Civil Code states: "However, if these ledgers are organized, one who seeks to rely on them as evidence may not selectively use parts of the entries and exclude those contradictory to their claim."

This provision applies to electronic ledgers, which must include all data related to the commercial transaction in a complete and mandatory manner, in accordance with Article 02 of Executive Decree 19-89. Thus, a counterparty does not have an absolute right to rely on only part of the ledger or to exclude entries contrary to their claim. The court retains discretion, and may accept the electronic ledger as evidence or substitute it with other evidence<sup>21</sup>.

### **B- Evidentiary Value of Electronic Ledgers in Favor of the Merchant**

The legislator allows an exception to the rule prohibiting self-serving evidence, permitting a merchant to rely on their commercial ledgers as evidence before the court in disputes with another merchant. Articles 330 of the Civil Code and 13 of the Commercial Code stipulate that organized commercial ledgers may serve as proof of transactions between merchants.

Electronic ledgers are presumed to be organized if they meet legal requirements, including containing all elements of the commercial transaction and being stored with trusted government authorities, such as the National Commercial Register, the Tax Authority, and the National Electronic Certification Authority. If the ledgers—whether paper or electronic—are properly organized and the court is satisfied with the accuracy of the recorded data, they constitute full evidence with legal validity.

### **C- In Cases Between a Merchant and a Non-Merchant**

Article 330 of the Civil Code provides that "merchant ledgers are not binding on non-merchants; however, if the ledgers contain data regarding supplies made by merchants, the court may direct a complementary oath to one of the parties for matters requiring proof by testimony."

Accordingly, a merchant may rely on commercial ledgers against a non-merchant, subject to the court's discretion, which may either accept the ledger data or require one party to take a complementary oath.

The court may also compel a merchant to present their commercial ledgers for inspection under Articles 15 and 16 of the Commercial Code, either fully—for matters such as inheritance disputes, company divisions, or bankruptcy—or partially, relevant only to the dispute. If the ledgers are located remotely, judicial assistance may be requested according to Article 108 of the Code of Civil and Administrative Procedure<sup>22</sup>.

It can be stated that electronic records merely represent a transition from paper-based to electronic media, maintaining the same legal function and evidential value, albeit in a different environment. The Algerian legislator is moving towards digitization and the gradual replacement of paper commercial registers, according to Article 2, paragraph 3 of Executive

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<sup>21</sup> Raymond Malak Shenouda, *The Evidentiary Value of Electronic Evidence before Courts*, 1st Edition, National Publishing Center, Cairo, 2016, p. 315.

<sup>22</sup> Article 108 of Law No. 08-09 on the Code of Civil and Administrative Procedure, amended and supplemented, dated 23/02/2008, Official Journal No. 21, issued on 23/04/2008, p. 02.

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Decree No. 20-154, which establishes the model of commercial register extracts issued through electronic procedures <sup>23</sup>.

### **Conclusion:**

The need for conducting commercial transactions remotely via electronic means has increased due to technological advancements. These methods have replaced traditional practices and overcome obstacles related to evidence, particularly in identity verification and document preservation. This study demonstrates that electronic commercial records hold the same legal evidential value as paper records under Algerian law, provided that technical preparation and storage conditions, as stipulated in Executive Decree No. 19-89, are met.

The research reached the following conclusions:

- Evidence through electronic records is governed by general rules in civil and commercial law, as well as specific laws and decrees related to electronic commerce.
- The legislator explicitly recognizes the principle of equality between traditional written evidence and electronic evidence, making electronic records equivalent to paper records for evidentiary purposes.
- Electronic records must meet specific technical conditions to ensure their validity and legal weight.
- Regular records are considered a presumption relied upon by the judge, although the law does not explicitly address the preference between paper and electronic records in case of conflict.
- The legislator is moving towards the gradual replacement of paper commercial registers, under Executive Decree No. 20-154, obliging traders to register electronically and imposing penalties for non-compliance.

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<sup>23</sup> Executive Decree No. 20-154, Official Journal, No. 35, issued on 14/06/2020, p. 15.