

E-Commerce and the Electronic Contract: A Legal Study

Dr. Sayoud Zahra¹

¹Laboratory of Economic Law, Faculty of Law, University of Algiers 1, Algeria, Email:

z.sayoud@univ-alger.dz

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Abstract

E-commerce currently plays an important role in the development of countries due to the way it facilitates commercial transactions and saves effort, money and time, particularly given the contribution of the digital transformation revolution to this development.

Algeria has established a direct legislative framework for this type of commerce through Law No. 18-05. Following the emergence of the 2019-nCoV pandemic, this form of commerce experienced significant growth worldwide, particularly in Algeria, to the extent that electronic contracts began to replace traditional in-person contracts.

Keywords: Commerce, Contract, Electronic.

Introduction

The increasing incorporation of information technology into individuals' daily activities, coupled with their growing reliance on it in various areas of their lives, has led to the emergence of new legal relationships. In terms of commercial transactions, information and communication technologies have contributed to international trends in trade and services in one way or another. Information technology has therefore become a prerequisite for competing in this field, transforming certain commercial practices and leading to new forms of commercial transactions. It has also changed the traditional concept of commerce into the modern concept of digital or electronic commerce.

Today, e-commerce is the backbone of the contemporary economy and one of the most important emerging concepts in finance and business. It established itself firmly during the last decade of the 20th century and subsequently became one of the pillars of the electronic economy.

The emergence of e-commerce is associated with the advent of the internet because it is the most important medium through which commercial activities and transactions are carried out. However, it would be more accurate to say that the Internet led to the expansion of e-commerce rather than to its creation, since electronic commercial transactions existed before the Internet was invented.

E-commerce has also given rise to electronic payments as an alternative to traditional payment methods, which are no longer effective enough to accommodate e-commerce. Consequently, electronic payment methods have become a central component of e-commerce, constituting the means by which commercial transactions, including buying and selling, are completed without the need for cash transactions at physical counters. Furthermore, any commercial or economic activity

involves the transfer of funds, making this system one of the most important developments in electronic financial services.

Based on the foregoing, we address this subject through the following research question: What is e-commerce, and what does the electronic commerce contract consist of, given that it is the means by which e-commerce is realised?

To answer this question and address the subject, the study has been divided into two sections as follows:

Section One: E-Commerce

Section Two: The Electronic Commerce Contract

Section One: The Concept of E-Commerce

The world is currently experiencing a significant transformation in communications technology. This has given rise to the digital economy, increasing interconnection among global markets and giving commercial transactions a global character. This has led to the emergence of e-commerce. Although the concept of e-commerce emerged in the 1970s, it did not become widely adopted or developed until the 1990s with the spread of the internet and its introduction to the public¹. Following the advent of the World Wide Web and the development of interactive systems in the second half of the decade, e-commerce grew and spread, becoming the successor to the idea of establishing unified markets, particularly with regard to products and services that can be transferred electronically.

Like other systems, e-commerce operates within a general framework. This framework is embodied in the electronic commerce contract, which constitutes the means through which this type of commercial transaction is carried out.

Determining the nature of e-commerce has recently become a priority, given the diversity of technologies used in this type of commerce and its distinctive nature.

To determine the nature of e-commerce, it is first necessary to address the concept and then highlight its advantages and disadvantages through evaluation, which will be the subject of the second part.

First: Definition of E-Commerce

The term e-commerce is considered one of the modern terms in the world of finance and business. This term, and the type of economic activity associated with it, did not become established and widespread on a tangible scale until 1996. Nevertheless, it should be noted that conducting certain commercial activities through electronic means is not entirely new, as financial markets and stock exchanges, banks, airlines, and others had been engaged in such activities since the 1960s².

¹- Interactivity: A type of relationship with a machine involving reciprocal exchanges. A conventional film induces a passive relationship, whereas a program on CD-ROM or computer software is interactive. See: CEDRO, Jean-Michel, Multimedia, Milan Publishing House, 1998, p. 62.

²- Nabila Djaidja, "E-Commerce in the Arab World and the Main Obstacles Limiting Its Development," Afaq Ulum al-Idara wa al-Iqtisad Journal, University of M'Sila, No. 4, 2018, p. 278.

Firstly, it is necessary to define e-commerce and distinguish it from similar terms. Finally, its characteristics must be identified.

1. Definition of E-Commerce

E-commerce is a compound term consisting of ‘commerce’, referring to commercial and economic activities through which goods and services are exchanged in accordance with established and agreed rules and systems, and ‘electronic’, referring to the use of modern communication technologies, such as the internet and electronic networks, for economic and commercial activities³.

Providing an exhaustive and comprehensive definition of e-commerce is complex, not due to a lack of definitions, but rather due to their abundance and variation, given the different perspectives from which it is viewed, whether from the standpoint of legal scholarship or legislation. Accordingly, we will present some definitions of e-commerce put forward by legal scholars before examining definitions provided by legislation.

A. At the jurisprudential level: The scholarly definitions of e-commerce differ considerably. The following are some of these definitions:

- ‘The process carried out between two parties — one or more sellers and buyers — through the use of a computer over the internet.’⁴
- ‘A new concept that describes the process of selling, purchasing or exchanging products, services and information via a computer network, including the internet’⁵.
- “The process of selling, purchasing, transferring, and exchanging products (goods, services, and information), as well as other forms of commercial transactions, carried out electronically through the global information network using information and communication technologies⁶.”

E-commerce is a term used to refer to the process of selling, purchasing or exchanging products, services or information via computer networks and the internet⁷.

It refers to any commercial transaction between a supplier and a consumer in which the internet has played a partial or overall role, such as providing information relating to a particular good or service for subsequent acquisition via the internet or other commercial networks, regardless of

³- Raafat Abdel Aziz Ghoneim, The Role of the League of Arab States in Developing and Facilitating E-Commerce among Arab Countries, November 2002.

⁴- Hoda Hamed Qashqoush, Criminal Protection of E-Commerce over the Internet, Dar Al Nahda Al Arabiya, Cairo, 2000, p. 5.

⁵- Abdel Sabour Abdel Qawi Ali Masri, The Legal Regulation of E-Commerce, 1st ed., Maktabat Al-Qanun wa Al-Iqtisad, Riyadh, Saudi Arabia, 2012, p. 17.

⁶- Medhat Abdel Halim, Criminal Protection of E-Commerce: A Comparative Study, 1st ed., Dar Al Nahda Al Arabiya, Egypt, 2001, pp. 19–20.

⁷- Ezza Al-Attar, E-Commerce between Construction and Application, Mansha'at Al-Maaref, Alexandria, Egypt, 2003, p. 2.

whether payment is made electronically, by paper cheque, in cash upon delivery, or by any other means⁸.

- 'It is the use of communication and information technologies between commercial parties to complete business activities and transactions through the exchange of information, market services and virtual enterprises⁹.'

As can be seen from the above definitions of e-commerce, they vary considerably. Some scholars have focused on the process of buying and selling carried out through modern communication technologies, thereby adopting a narrower conception of e-commerce. Others, however, have adopted a broader conception, encompassing all transactions carried out through modern communication technologies.

B. At the legislative level: International and domestic legislation has sought to establish a definition of e-commerce. The following presents some legislative definitions of e-commerce, beginning with international legislation and moving on to domestic legislation.

At the international level: Our discussion will focus on the definitions of e-commerce provided by UNCITRAL and the World Trade Organization (WTO).

Definition of e-commerce under the UNCITRAL Model Law on Electronic Commerce:

The UNCITRAL Model Law on Electronic Commerce did not define e-commerce. Instead, it defined the data messages used in such transactions. Article 2(a) provides the following definition: "Data message" means information generated, sent, received or stored by electronic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy.

Paragraph (b) of the same article defines electronic data interchange as follows: "Electronic data interchange (EDI)" means the electronic transfer of information from computer to computer using an agreed standard to structure the information.

These two paragraphs did not define e-commerce; rather, they referred to the means used in such transactions, which were mentioned by way of example and not limitation. Consequently, it left the door open to other means. Furthermore, in defining the exchange of information, it referred exclusively to computers without mentioning other means through which information may be exchanged, such as fax and telex.

The World Trade Organization (WTO) defines e-commerce as follows:

The WTO defined e-commerce as 'the production, distribution, marketing, sale or delivery of goods and services through electronic means'. According to this definition, e-commerce encompasses three types of operations:

- Product advertising and product search operations.
- Submitting purchase orders and paying for consumer goods.
- Delivery of consumer goods.

⁸- See: Bakhti Ibrahim, E-Commerce: Concepts and Strategies for Implementation in the Enterprise, Office of University Publications, Algeria, 2005, p. 42.

⁹- Al-Sayed Aliwa, E-Commerce and Scientific Marketing Skills, Dar Al-Amin for Publishing, 2002, pp. 12-13.

Therefore, e-commerce is not limited to purchasing alone. It also encompasses the exchange of information and services between companies and consumers via communication technologies¹⁰.

At the domestic level:

Some countries have enacted legislation to regulate e-commerce in response to technological developments. Others have amended the provisions governing traditional transactions to make them compatible with electronic transactions.

The following section addresses the definitions of e-commerce provided by the domestic legislation of certain countries, before turning to the definition adopted by the Algerian legislature.

Comparative legislation:

This section examines the definitions of e-commerce provided by French, Tunisian and Egyptian legislators, for example.

- French legislation: In Article 14 of Law No. 575 of 2004 on Confidence in the Digital Economy, the French legislator defined e-commerce as “the economic activity whereby a person offers goods and services remotely by electronic means”¹¹.

This definition encompasses electronic exchanges connected with commercial, cultural, industrial and banking activities insofar as they facilitate commercial transactions via electronic payment systems. The definition also considers any offering of goods and services to fall within the scope of e-commerce, regardless of whether the person carrying out such activity is a registered trader, professional, or ordinary individual. This definition also encompasses certain non-contractual transactions, such as the exchange of information over the network, even when such exchanges are carried out without consideration. However, it does not specify what is meant by ‘economic activity’¹².

Tunisian legislation: In Article 2 of Law No. 83 of 2000 relating to Exchanges and Trade, the Tunisian legislator defined e-commerce as “commercial transactions carried out through electronic exchanges”¹³.

In defining e-commerce, the Tunisian legislator focused on two key points. Firstly, e-commerce encompasses all commercial activities, regardless of their subject matter (whether concerning goods, services or work), provided they are carried out through electronic exchanges. Every commercial transaction constitutes an exchange of a good or service in return for consideration, carried out through electronic means. The type of means through which the distance contract is concluded is not specified.

¹⁰- See: Al-Essawi Ibrahim, E-Commerce, 1st ed., Academic Library, Cairo, Egypt, 2003, p. 11.

¹¹- Cyril Rojinsky and Guillaume Tisonnier, “The Regulation of E-Commerce under the French Law of 21 June 2004 on Confidence in the Digital Economy,” *Lex Electronica*, Journal of the Centre for Research in Public Law, Vol. 10, No. 1, Winter 2005, p. 2.

¹²- Bahlelouli Fateh, *The Legal Framework of E-Commerce under Algerian Legislation*, PhD Dissertation in Law, Mouloud Mammeri University, Faculty of Law and Political Science, Tizi Ouzou, 2017, pp. 28–29.

¹³- Tunisian Law No. 83 of 2000, dated 9 August 2000, concerning Electronic Exchanges and E-Commerce, published in the Official Gazette of the Tunisian Republic, No. 64, issued on 11 August 2000.

The second point involves establishing a requirement for exchanges carried out electronically to be recorded in electronic documents. This reflects the Tunisian legislator's intention to protect the contracting parties by formalising the contractual relationship in advance of any dispute arising, through electronic documents prepared in advance¹⁴.

- Egyptian legislation: The Egyptian legislator defined e-commerce in Article 1 of the Draft E-Commerce Law as 'the exchange of goods and services through an electronic intermediary, i.e. any commercial transaction carried out remotely using electronic means'.

This definition does not specify the means through which e-commerce is conducted, nor does it limit it to the Internet. The majority of Egyptian legal scholars consider this approach appropriate as it allows the definition to encompass any technological means that scientific developments may introduce in the future¹⁵.

- Algerian legislation: Law No. 18-05¹⁶ establishes the primary legal framework for e-commerce and was enacted to address the legislative void in this area. Such transactions had been conducted alongside traditional commerce, but lacked specific regulation and legal codification¹⁷.

Law No. 18-05 aims to establish the rules governing e-commerce in goods and services, with a view to creating an environment of trust conducive to the development of electronic exchanges, particularly from an economic perspective, in order to promote the development of the Algerian national economy. It also seeks to build an information society aimed at promoting electronic services for the benefit of consumers by facilitating their access to goods and services remotely through electronic communication. Furthermore, it aims to regulate economic operators that provide their services through electronic communication without being subject to the applicable monitoring and control systems, as well as to adapt legal legislation to international rules and standards in the field of e-commerce¹⁸.

Under this Law, the Algerian legislator established a definition of e-commerce in Article 6(1), within the context of defining certain concepts, as follows: "the activity whereby an electronic supplier proposes or ensures the provision of goods or services remotely to an electronic consumer by means of electronic communications."

The Law also specifies the requirements governing commercial transactions.

- Electronic contracts:¹⁹ 'A contract within the meaning of Law No. 04-02, dated 5 Jumada al-Awwal 1425 AH (corresponding to 23 June 2004), which establishes the rules applicable to commercial practices. This contract is concluded remotely, without the actual and simultaneous

¹⁴- Mohammed Obeid Al-Kaabi, *Criminal Protection of E-Commerce*, Dar Al Nahda Al Arabiya, Cairo, 2010, p. 153.

¹⁵- Khaled Mahmoud Ibrahim, *Conclusion of Electronic Contracts: A Comparative Study*, Dar Al-Fikr Al-Jami'i, Alexandria, 2011, p. 54.

¹⁶- Law No. 18-05, dated 24 Sha'ban 1439 AH, corresponding to 10 May 2018, concerning Electronic Commerce, Official Gazette, No. 28, dated 16 May 2018.

¹⁷- Toumi Hadjira, "Applications of E-Administration in the Field of Commercial Transactions in Algeria: A Study within the Framework of Law No. 18-05 on E-Commerce," National Conference, University of M'Sila, 2018, p. 6.

¹⁸- Mechti Amal, "E-Commerce in Algeria," *Journal of Legal Research and Studies*, No. 3, 2017, pp. 254–255.

¹⁹- Article 6, Paragraph 2, of Law No. 18-05.

physical presence of the parties involved, and is formed exclusively through the use of electronic communication technology.'

- **Electronic consumer:**²⁰ 'Any natural or legal person who acquires, either for consideration or free of charge, goods or services through electronic communications from an electronic supplier for final use.'

- **Electronic supplier:**²¹ 'Any natural or legal person who markets or proposes the provision of goods or services through electronic communications.'

The Algerian legislator also established the conditions governing the practice of e-commerce under Articles 8 and 9 of this Law²². It also confirmed that concluding electronic commercial contracts involves collecting personal data. Accordingly, three principles were established:

The mandatory obtaining of consumers' prior consent before collecting their personal data.

The obligation of electronic suppliers to ensure the security of the information systems for which they are responsible.

- Compliance with the applicable legislative and regulatory provisions in this field.

It can therefore be seen that the Algerian legislator has adopted a broad definition of e-commerce.

2. Distinguishing e-commerce from similar concepts

The impact of the information revolution has extended beyond the commercial sector to encompass many other areas. Consequently, new concepts and terms have emerged that overlap with and are associated with e-commerce. The following section presents some of these concepts and seeks to distinguish e-commerce from them.

A. E-business: The terms 'e-commerce' and 'e-business' are often used interchangeably. However, this is a misconception as the two terms do not mean the same thing. E-business is the broader term that encompasses e-commerce, e-marketing, e-government and other electronic fields.

IBM was the first company to introduce the term 'Electronic Business' (EB) in 1997. IBM defines e-business as 'the result obtained by combining the vast domain represented by the internet with the extensive resources of traditional information systems. The result is a dynamic and interactive sector, meaning that e-business establishes an effective link between useful information and the people who need it'²³.

Another definition of e-business is that it is 'the use of electronic media, including the internet, to conduct business activities'²⁴.

From the two preceding definitions, it can be inferred that e-commerce constitutes only a part of e-business. Unlike e-commerce, which encompasses sales and purchase contracts, as well as the ordering and receipt of services through technological means, e-business is not limited to the

²⁰- Article 6, Paragraph 3, of Law No. 18-05.

²¹- Article 6, Paragraph 4, of Law No. 18-05.

²²- See Articles 8 and 9 of Law No. 18-05.

²³- IBM: International Business Machines. See: www.ibm.com.

²⁴- Taha Tariq, Marketing and E-Commerce, Dar Al-Kutub for Publishing and Distribution, Cairo, 2005, p. 320.

relationship between a supplier and a customer. Rather, it extends to the relationship between an enterprise and its agents, employees, customers, and all other parties associated with that enterprise. It also extends to the methods of performing, evaluating, and supervising work. Thus, e-business encompasses all administrative, productive, financial, and service-related activities.

Accordingly, the term 'e-business' is broader and more comprehensive than 'e-commerce', as it encompasses a range of contemporary business activities in addition to e-commerce. These include e-government, e-auctions, electronic stock exchanges, e-banking, e-marketing, electronic insurance companies, e-culture and electronic factories²⁵.

B-E-Marketing: Also known as 'cyber marketing', this term was coined by the American author Len Keeler in a book published in 1995. Keeler defined it as 'the exploitation of open networks (the Internet, Intranet, and Extranet) for marketing purposes using various digital means'.

E-marketing therefore refers to the implementation of all activities related to the marketing function, such as advertising, sales and the electronic delivery of goods and services via the web²⁶. Therefore, e-marketing is a component of e-commerce.

C. Electronic foreign trade: This refers to carrying out traditional export and import activities electronically, such as identifying export opportunities, importing goods, negotiating contracts, opening foreign markets and concluding deals, as well as shipping and delivering goods, all via the web²⁷.

Accordingly, this concept is considered to be the one most closely related to e-commerce. However, the fundamental difference between the two is that electronic foreign trade focuses on foreign markets while disregarding domestic ones. It also prioritises the business sector over individuals²⁸.

D. Internet commerce (e-commerce): The term 'e-commerce' is often used interchangeably with 'internet commerce'. However, there is a distinction between the two. E-commerce encompasses a range of commercial activities that rely on electronic media, computer networks and the internet. In contrast, internet commerce refers specifically to commercial activities carried out via the internet. In other words, e-commerce is commercial activity conducted through electronic coordination, whereas internet commerce is electronic activity conducted through electronic coordination over the internet²⁹.

²⁵- See: Dimech Soumia, E-Commerce: Its Reality and Current Situation in Algeria, Master's Thesis in Economic Sciences, Mentouri University, Faculty of Economic Sciences and Management Sciences, Constantine, 2010–2011, p. 43.

²⁶- See: Bakhti Ibrahim, The Role of the Internet and Its Applications in Marketing: A Case Study of Algeria, PhD Dissertation in Economic Sciences, University of Algiers, 2002, p. 74; and Farid Al-Najjar et al., Integrated E-Commerce and E-Business in the Knowledge Society, University Publishing and Printing House, Alexandria, 2006, p. 92.

²⁷- See: Farid Al-Najjar et al., op. cit., p. 92.

²⁸- See: Dimech Soumia, op. cit., p. 44.

²⁹- See: Tarek Abdel Aal Hammad, E-Commerce: Concepts, Experiences, Challenges, and the Technological, Financial, Marketing, and Legal Dimensions, University Publishing and Printing House, Alexandria, 2003, p. 8.

From a practical perspective, internet commerce constitutes only one aspect of e-commerce because it focuses on one aspect of operations carried out through a single electronic medium — the internet — while disregarding other technological means, communication networks and operations. Furthermore, e-commerce is not merely limited to conducting commercial activities over the Internet; it also encompasses all the supporting functions that enable a company to carry out such activities³⁰.

3. Characteristics of e-commerce

E-commerce has a set of characteristics that distinguish it from other forms of commerce. It is beyond the scope of this study to list all these characteristics, so we will limit our discussion to a few of them.

A. The global nature of e-commerce: E-commerce is conducted via electronic media, particularly the internet, which have no spatial or geographical boundaries. The internet is an open, international network that does not recognise political or geographical borders. This gives e-commerce a global character. Consequently, any company offering goods or services online does not need to target a specific geographical area. Once a company has established a website, it can reach Internet users throughout the world, giving even small companies the ability to penetrate markets³¹.

B. Remote interaction between the parties to the transaction: What distinguishes e-commerce from traditional commerce is the absence of a specific geographical location where the parties to a commercial transaction meet. Instead, interaction takes place via the internet. In other words, the commercial centre has no physical presence; rather, it is an online space in which these transactions are conducted.

C. Efficiency of commercial exchanges through electronic means: Electronic exchanges are highly efficient and effective, and incur the lowest possible costs, as they rely on the electronic exchange of data and documents³².

D. Speed of electronic commercial transactions: This applies to buying, selling and delivery. E-commerce is also characterised by the ability to simultaneously display products, goods and services to consumers, thereby supporting parallel interaction.

E. Absence of paper documents in e-commerce transactions: All electronic transaction processes are carried out using electronic platforms, without the need for paper documents. Consequently, an entire transaction can be completed electronically, from negotiating the purchase and concluding the contract to paying for and receiving the goods, without any exchange of paper documents whatsoever. This supports one of the objectives of e-commerce: the creation of a paperless society³³.

³⁰- See: Dimech Soumia, *op. cit.*, p. 45.

³¹- See: aissaoui Ibrahim, *E-Commerce*, Academic Library, Cairo, 2003, p. 31 et seq.

³²- See: Raafat Radwan, *The World of E-Commerce*, Arab Organization for Administrative Development, Cairo, 1999, p. 349.

³³- See: Amal Karam Khalifa, *E-Commerce*, Maktabat Stan Al-Ma'rifa, 1st ed., 2013, p. 33.

Second: evaluation of e-commerce

E-commerce offers a range of advantages. However, it also has certain disadvantages and drawbacks.

1. Advantages of e-commerce³⁴

E-commerce offers numerous advantages and benefits, which can be categorised as follows:

A. Advantages of e-commerce for the state: E-commerce provides the national economy with a range of advantages that contribute to its advancement in one way or another. The most important of these include:

- Expanding the scope of the domestic market to the international level.
- Increasing national exports by providing easier access to major consumption centres and enabling the marketing of goods and services globally at a lower cost. E-commerce also facilitates the quick and easy conclusion and completion of transactions.
- Supporting small and medium-sized enterprises, which form the basis of economic development.
- Creating new opportunities for self-employment.

Increasing and improving the efficiency of government services and those provided by public-sector companies.

B. Advantages of e-commerce for companies: Companies are among the most important participants in electronic commercial transactions. E-commerce has provided them with numerous advantages, the most important of which include:

- Easy access to the global market.
- Transforming companies' structures from large enterprises with numerous branches into smaller companies.
- Reducing the costs of creating, processing, distributing, storing and retrieving paper-based information.
- Improved performance across various fields.

C. Advantages of e-commerce for consumers: The most significant benefits that consumers enjoy include the following:

- Saving time and effort: Since websites and online marketplaces are available at any time, customers are spared the inconvenience of travelling to purchase a particular product. Simply by clicking on a product and entering credit card information, the purchase transaction can be completed.
- Freedom of choice: e-commerce allows customers to compare prices and types of goods and services available online. They can also visit numerous websites to select the most suitable option.

³⁴- See: Mohammed Omar Al-chouwairif, E-Commerce in the Context of the New World Trade System, p. 60 et seq.; Ibrahim Bakhti, E-Commerce: Concepts and Strategies for Implementation in the Enterprise, Office of University Publications, 2nd ed., Algeria, 2008, pp. 67–68; Djaidja Nabila, op. cit., p. 282; and Mohammed Madahi, "E-Commerce and the Reality of Its Use at the International and Arab Levels," paper presented at the Fourth Conference on "Modernization of the Payment System in Algerian Banks and the Problem of Adopting E-Commerce in Algeria," University of Khemis Miliana, 26–27 April 2011, p. 5.

- Lower prices: Online shopping enables consumers to avoid additional costs and reduce their expenses compared with conventional shopping. They can also benefit from the many discount offers launched by companies online.
- Customer satisfaction: Companies operating online commit to responding to their customers' enquiries through direct communication or email. The internet provides the advantage of being able to respond to customers' enquiries, thereby enabling companies to provide a better service.
- More effective marketing: The global nature of e-commerce enables enterprises to access international markets and expand their customer base worldwide, consequently generating additional profits.

2. Disadvantages of E-Commerce³⁵

Despite the numerous advantages and substantial benefits offered by e-commerce, it is nevertheless not without certain disadvantages. The most prominent of these include the following:

- Security: Security is considered the primary problem facing e-commerce, as anyone can establish a website and may consequently use it for fraudulent purposes against virtual customers. This issue is particularly significant in developing countries, where there may be no adequate legal framework protecting the rights of both parties.

Guarantees: There is a lack of guarantees regarding products purchased from online marketplaces, as the goods received may differ from those displayed on the website. At the same time, the seller may often refuse to accept the return of the purchased item. Consequently, the seller loses the customer's trust, while the customer loses their money and becomes more cautious in subsequent transactions or may even stop shopping online entirely.

Social relationships: E-commerce enables individuals to communicate with numerous people regardless of geographical location. However, it can lead to individuals becoming attached to the virtual world, thereby weakening their real-life social relationships. This can lead to isolation and missed opportunities that might be better than those offered online.

The intangible and non-material nature of e-commerce: The intangible nature of e-commerce means that consumers cannot physically examine goods before purchasing them.

The possibility of sham and fraudulent contracts: There is a risk of entering into fictitious and fraudulent contracts via the internet.

- Inability to Market Certain Goods Electronically: Certain goods cannot be effectively marketed electronically.

- Difficulty in resolving disputes: Disputes arising from e-commerce transactions may be difficult to resolve due to the absence of paper-based documents.

Forms of e-commerce

³⁵- See: Mohammed Omar Al-Shuwairif, op. cit., p. 67 et seq.; and Ahmed Abdullah Al-Awadi, "Factors Influencing Marketing and E-Commerce," *Journal of Economics and Society*, No. 6, 2010, p. 171 et seq.

- Yaser Ahangari Nanehkaran, "An Introduction to Electronic Commerce," *International Journal of Scientific & Technology Research*, Vol. 2, No. 4, 2018.

Due to the broad scope of its concept, e-commerce takes several forms. Based on the criterion of distinction, e-commerce can be classified as follows:

Firstly, according to the parties involved in the commercial transaction.

Secondly, according to the electronic means used to conduct the commercial transaction.

First: Forms of E-Commerce According to the Parties Involved in the Commercial Transaction

According to this criterion, e-commerce takes the following forms:

1. E-commerce between a company and another commercial company: This type of e-commerce is denoted by B2B (Business-to-Business). It is used in e-commerce between commercial companies or business enterprises. Businesses communicate with their suppliers to submit purchase orders using communication networks and information technologies. They may also receive invoices and carry out payment transactions through the network using these technologies. Currently, this form of commerce is the most widespread at both domestic and international levels, accounting for the majority of e-commerce transactions³⁶.
2. E-commerce between one consumer and another consumer: This is referred to as consumer-to-consumer (C2C) e-commerce. This type of e-commerce emerged following the widespread use of the internet and the development of related technologies. Consumers conduct electronic transactions directly with one another, without any intervention from organisations or other entities. Some websites that facilitate this type of commerce also provide significant features that make transactions more convenient for consumers. Transactions take place directly between individuals, with buying and selling occurring through advertisements posted on personal or other electronic websites³⁷.
3. E-commerce between a company or enterprise and the consumer: This is referred to as business-to-consumer (B2C). This type of e-commerce became widespread with the emergence of virtual shopping centres and online marketplaces. These shopping centres consist of two essential elements: information technology and information itself. Information technology facilitates and reduces the cost of collecting and processing information, while network interconnection reduces the cost of accessing information that has already been uploaded by the virtual stores comprising the electronic shopping centres.
4. E-commerce between consumers and the government: This is referred to as consumer-to-government (C2G). This relatively recent form of e-commerce encompasses numerous activities, including electronically paying taxes, applying for jobs advertised on government websites and paying bills via online portals³⁸.

³⁶- See: Bahlelouli Fateh, *The Legal Framework of E-Commerce under Algerian Legislation*, PhD Dissertation in Law, Faculty of Law and Political Science, Tizi Ouzou, 2017, p. 40.

³⁷- See: Said Kawthar Adnan Khaled, *Electronic Consumer Protection*, New University House, Alexandria, 2012, p. 70.

³⁸- See: Mustafa Yusuf Kafi, *E-Commerce*, Dar Raslan, Damascus, 2010, p. 15.

Second: Forms of E-Commerce According to the Electronic Means Used to Conduct the Commercial Transaction

According to this criterion, e-commerce can be categorised as follows:

1. E-commerce via television: In this method, a company displays its products on television and explains their features, how they are used and other relevant information. A person wishing to make a purchase contacts the telephone number indicated in the advertisement. The company then delivers the product to the customer and charges them for the shipping costs.
2. E-commerce via fax: fax provides businesspeople with a rapid means of transmitting documents. The primary advantage of fax is that it replaces traditional postal services by enabling documents to be delivered quickly. It also allows business correspondence to be retained and facilitates numerous exchanges, advertisements, transmission of payment orders and exchange of images relating to transactions³⁹.
3. E-commerce via the internet: This is currently the most widespread form and consists of conducting commercial transactions online.
4. E-commerce via mobile devices: This type of commerce is conducted using mobile devices such as mobile phones, laptops, pagers, tracking devices and handheld computers.
5. Voice-based e-commerce: This type of e-commerce relies on automated telephone call-answering technology. Previously, customers would call the company's telephone number and, once the call was received, they would be directed to a specific extension corresponding to the department they wished to contact. With this method, however, the customer is automatically connected to the requested service once the voice recognition system identifies their voice, which has been previously registered with the company⁴⁰.

Chapter Two: The Electronic Commerce Contract

E-commerce is conducted through contracts. A contract is an agreement between two or more parties that has legal implications. The Algerian legislator defined the contract as follows in Article 54 of the Civil Code: 'An agreement whereby one or more persons undertake, towards one or more other persons, to give, to do, or not to do something.'⁴¹

The legislator also defined it in Article 6, Paragraph 2, of Law No. 18-05 as follows: 'A contract within the meaning of Law No. 04-02, dated 5 Jumada al-Awwal 1425 AH (corresponding to 23 June 2004), which lays down the rules applicable to commercial practices. This contract is concluded remotely, without the actual and simultaneous presence of the parties involved, and is concluded exclusively through the use of electronic communication technology.'

³⁹- See: Abdel Sabour Abdel Qawi Ali Masri, *The Legal Regulation of E-Commerce*, p. 23.

⁴⁰- See: Issam Abdel Fattah Matar, *E-Commerce in Arab and Foreign Legislation*, New University House, Alexandria, 2015, pp. 26–27.

⁴¹- Ordinance No. 75-58, dated 20 Ramadan 1395 AH, corresponding to 26 September 1975, containing the Civil Code, Official Gazette, No. 78, dated 30 September 1975, p. 990, as amended and supplemented by Law No. 05-10, dated 20 June 2005, Official Gazette, No. 44, dated 26 June 2005, p. 17.

For an electronic commerce contract to be concluded, the parties to the contract must first come into existence, and then the various stages involved in concluding the contract must be completed.

Firstly: Parties to e-commerce

The parties involved in e-commerce are the same as those involved in traditional commerce. They are: the consumer (first), the supplier (second) and the bank (third).

1. The consumer

The Algerian legislator defined the consumer as follows: ‘Any natural or legal person who acquires, for consideration or free of charge, a good or service through electronic communications from an electronic supplier for the purpose of final use’⁴².

The consumer has also been defined as ‘the person who browses the internet and visits various commercial websites in search of goods and services that satisfy their needs’. In other words, the consumer is anyone who enters into an electronic contract with the intention of satisfying their needs⁴³.

Accordingly, the following four characteristics of the consumer may be identified:⁴⁴

A- The consumer is a natural or legal person who enters into contracts relating to goods or services solely for the purpose of using them, without intending to use them for speculative purposes.

B- The nature of the goods or services contracted for by the consumer varies. They may consist of goods intended to meet personal needs, such as food and clothing; financial services, such as insurance; intellectual services, such as education; or legal consultancy services.

C. A consumer is someone who uses an electronic intermediary to conduct commercial transactions.

D. The consumer does not possess the technical ability to assess the goods or services that are the subject of the contract.

2. The supplier:

The Algerian legislator defined the electronic supplier as ‘any natural or legal person who markets or proposes to provide goods or services through electronic communications’⁴⁵.

Thus, the electronic supplier is the person who establishes a website on the Internet and uses it as an interface or window through which to display, introduce, and market his or her products. This website contributes to enhancing interaction between the supplier and the consumer. Through the website, the supplier can provide detailed information about the product, such as its images, price, method of payment, and so forth, and can receive offers concerning the product.

Accordingly, the electronic supplier is the second party to the electronic commercial transaction, that is, the contracting party or service provider in the digital environment. This party may be the

⁴²- Article 6, Paragraph 3, of Law No. 18-05.

⁴³- See: Mohammed Hussein Mansour, *Electronic Liability*, New University House, Alexandria, 2003, p. 236.

⁴⁴- See: Nidal Ismail Barham, *Provisions Governing E-Commerce Contracts*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2005, p. 132.

⁴⁵- Article 6, Paragraph 4, of Law No. 18-05.

producer itself or the supplier, and may also be a natural or legal person having a website officially authorized by the competent authorities and offering services through the Internet⁴⁶.

The use of the Internet to display and sell products constitutes a modern form of advertising. It helps attract the largest possible number of consumers by enabling the website to reach an unlimited number of customers⁴⁷.

3. The bank

Like other sectors, the banking sector has recently undergone a number of transformations through the adoption of modern technologies and the use of global networks. This has led to the emergence of electronic banks. These banks are referred to by several terms, including virtual banks, internet banks, home banking, web banking and online banking.

Electronic banks can be defined as ‘electronic outlets that provide various banking services continuously and without human personnel’⁴⁸.

In other words, electronic banks are banks that have established websites on the internet not merely for advertising purposes, but with the aim of providing banking services to customers without requiring them to travel to the bank in person to complete transactions. Electronic banks therefore enable customers to carry out all banking operations at any time, from any location and in the shortest possible time.

They play an essential role in facilitating e-commerce transactions by providing the means to settle payments between parties. For any electronic transaction to be completed, both the supplier and the consumer must hold an account with a bank, as payment and receipt take place between the consumer’s bank and the supplier’s bank⁴⁹.

Second: Stages of Concluding E-Commerce Contracts

The growth of e-commerce as an alternative to traditional commerce has made it necessary to use new tools to regulate and manage digital transactions. One of the most important of these tools is the electronic contract, which is any contract relating to goods and services that is concluded remotely between two parties without their physical presence. In other words, the contract is formed and performed through electronic communications. For these contracts to be concluded, a number of essential steps or stages must be followed: the offer (first), the order (second) and delivery (third).

First: The Electronic Offer

The Algerian legislator requires every electronic commercial transaction to be preceded by an electronic commercial offer and documented by an approved electronic contract⁵⁰.

In electronic contracts, the offer is made via a website and is defined as ‘a firm and complete proposal to enter into a contract in accordance with specific conditions, addressed by a qualified

⁴⁶- See: Toumi Hadjira, op. cit., p. 7.

⁴⁷- See: Dimech Soumia, op. cit., p. 65.

⁴⁸- See: Brich Abdelkader and Zidan Mohammed, op. cit., p. 50.

⁴⁹- See: Dimech Soumia, op. cit., p. 66.

⁵⁰- See: Dimech Soumia, previously cited work, p. 65.

person to a specific person, to persons not individually identified, or to the public at large; that is, a remote communication containing all the necessary elements, such that the addressee is able to accept the contract directly⁵¹.

At this stage, the electronic supplier creates a website to display the goods or services that they are able to produce and market according to consumers' requests. This enables consumers to properly identify the desired product through the information provided by the website owner. The offer must therefore be formulated in such a way as to reach the largest possible number of consumers, including individuals, companies and both domestic and foreign consumers.

The offer must also be precise and comprehensive, meaning it should specify the following:

1. The identity of the supplier or producer, including the company name, address and telephone number.
2. The internal and external specifications of the product, including photographs and illustrations showing the goods from all angles, as well as their weight and dimensions. The product's intended purpose and how to use it must also be indicated.
3. The price of the goods or services must be specified.
4. The period of validity of the offer or price must also be specified.
5. The approved means of payment, delivery and performance.
6. The expenses associated with the goods, such as customs duties, transportation, shipping and insurance costs.

The Algerian legislator provided in Article 11 of Law No. 18-05 as follows: "The electronic supplier must present the electronic commercial offer in a visible, readable, and comprehensible manner. It must contain, at a minimum, but without limitation, the following information:

- The tax identification number, the physical and electronic addresses, and the telephone number of the electronic supplier;
- The commercial registration number or the professional card number of the artisan;
- The nature, characteristics, and prices of the goods or services offered, inclusive of all taxes;
- The availability status of the goods or services;
- The terms, costs, and delivery periods;
- The general conditions of sale, particularly provisions relating to the protection of personal data;
- The terms of the commercial warranty and after-sales service;
- The method of calculating the price where it cannot be determined in advance;
- The terms and procedures of payment;
- The conditions for termination of the contract, where applicable;
- A complete description of the various stages involved in carrying out the electronic transaction;
- The period of validity of the offer, where applicable;
- The conditions and time limits for exercising the right of withdrawal, where applicable;
- The method of confirming the order;

⁵¹- See Article 10 of Law No. 18-05.

- The delivery date and the price of the product subject to the pre-order, as well as the procedures for cancelling the pre-order, where applicable;
- The method for returning, replacing, or reimbursing the product;
- The cost of using electronic communication means when such cost is calculated on a basis other than the applicable tariffs.”

The way in which offers are presented varies from seller to seller.

If the supplier wishes to target specific individuals, they use email to send the offer directly to those interested in the product. The supplier sends electronic messages to the recipients’ inboxes, and when they open their email, they find the offer addressed to them.

However, if the supplier uses commercial websites to display products and services to a large number of potential buyers, the offer is general in nature and is addressed to an unlimited and unspecified global audience⁵².

Second: the order stage.

The order stage involves the following steps:

Making the contractual terms available to the consumer.

Verification of the order details by the consumer.

- Confirmation of the order⁵³ through acceptance.

Acceptance is the expression of a person’s will to conclude a contract⁵⁴. In other words, it is one party’s agreement to accept the offer with all its stated terms in exchange for something of value, such as money, property or services. Once the two parties — the supplier and the consumer — reach an agreement, the offer and acceptance correspond completely, resulting in the conclusion of the contract.

Electronic acceptance may be expressed in several ways, including:

- Completing an electronic form on the website and clicking the appropriate button in the specified location on the computer screen.
- Sending a fax.
- Composing an electronic message and sending it by email.

Following confirmation of the order and declaration of electronic acceptance, the electronic contract is concluded. It must contain a number of particulars, the most important of which include:⁵⁵

- The characteristics of the goods or services in sufficient detail.
- The terms and procedures of delivery.
- The terms and procedures of payment.

Third: the performance or delivery stage⁵⁶

⁵²- See: Soumia Dimech, op. cit., pp. 67–68.

⁵³- See Article 12 of Law No. 18-05.

⁵⁴- See: Faisal Saad Al-Gharib, op. cit., p. 179.

⁵⁵- For further details concerning these particulars, see Article 13 of Law No. 18-05.

⁵⁶- See: Soumia Dimech, op. cit., p. 69.

This is where the agreed goods and services are delivered. The delivery method varies according to the type of goods.

The traditional method for tangible goods involves making the purchase order and payment electronically while the goods are delivered by post. Alternatively, the enterprise can use sales representatives to deliver the goods to the consumer.

The second method involves delivering digital goods electronically, meaning the purchase, payment and delivery are all carried out online.

It is clear from the foregoing that e-commerce transactions are based on a general mechanism consisting of the following steps:

The consumer identifies goods that meet their needs, such as books, clothing or computer programs.

The consumer then accesses the internet to search for a suitable supplier.

The customer accesses the website of the appropriate supplier.

The customer selects the online catalogue and identifies the goods to be purchased.

The supplier and consumer then negotiate the transaction, particularly with regard to the delivery date and price.

Once the consumer is satisfied with the terms, he or she sends the purchase order by email or another means.

The supplier receives the order and enters it into the order database, verifying the product's availability.

- The supplier confirms the order on the website or by email and issues the invoice.

Electronic payment is made between the consumer's bank and the supplier's bank.

- The product is sent to the consumer's address, regardless of whether payment was made electronically or by traditional means.

Conclusion:

From the foregoing, it can be concluded that e-commerce has come to play an important role worldwide, particularly in Algeria. This form of commerce experienced remarkable growth as a result of the lockdown measures imposed by states to protect the safety of their citizens during the emergence of the COVID-19 pandemic. Following the study and analysis, several key findings emerged, the most important of which are as follows:

Under Law No. 18-05, e-commerce is defined as the activity whereby an electronic supplier proposes or ensures the provision of goods and services remotely to an electronic consumer via electronic communication technology.

- E-commerce is conducted through an electronic contract concluded remotely, without the actual and simultaneous presence of the parties involved, and is carried out exclusively through electronic communication technology.

Based on the above findings, we make the following recommendations:

The need to organise awareness campaigns to highlight the importance of e-commerce, particularly by emphasising the establishment of trust among those involved in electronic transactions.

- The need to implement electronic payment mechanisms fully, since e-commerce cannot be effectively discussed while traditional cash payment remains prevalent, particularly given that Algeria has adopted the National Digital Transformation Strategy for 2030.

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