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Rules Governing the Formation of Electronic Commerce Contracts under Algerian Law No. 18-05 on Electronic Commerce

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Abstract
Electronic commerce contracts are concluded in a virtual environment by means of remote communications. This distinctive character — which sets them apart from traditional contracts has compelled legislatures to surround them with a comprehensive legal framework. Accordingly, the Algerian legislature, through Law No. 18-05 on Electronic Commerce, has regulated every stage of the electronic commerce contract, from the manner of its formation to its execution, subjecting the conclusion phase in particular to stringent legal controls.
Keywords: Electronic commercial contract; electronic commercial offer; electronic supplier; electronic consumer.

Introduction

The electronic commercial transaction, like other forms of commercial transactions and traditional contractual relationships, is in principle governed by the general theory of contracts under civil law with regard to both its formation and its performance. However, given the virtual and intangible environment in which it operates — a mode of transaction conducted through electronic communications between an electronic merchant and an electronic consumer — and in light of the manifest informational asymmetry between the two parties in this environment, legislatures have endeavoured to establish a legal framework consistent with this new modality of commerce, in order to foster confidence in electronic transactions. The Algerian legislature has pursued this objective through the enactment of Law No. 18/05 on Electronic Commerce, which establishes a legal framework regulating these transactions by identifying the parties, the subject matter of the contract, and all stages of contracting — subjecting the conclusion phase in particular to stringent legal controls and comprehensive regulation.

Part One: Rules and Conditions of the Electronic Commercial Offer in Electronic Commerce Contracts

The electronic commercial offer constitutes the most critical stage of the electronic commerce contract. It is characterized by specific features, types, and forms. By virtue of Article 11 of the E-Commerce Law, the Algerian legislature has established its governing rules and conditions. The offer is counterbalanced by the electronic acceptance, which must equally satisfy a set of conditions, in view of the particularities it presents and the legal issues it raises as a phenomenon occurring in a digital environment

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Section 1.1: The Electronic Commercial Offer (Offer/Ijab)

Most national legislatures have refrained from providing a precise definition of offer and acceptance in the context of electronic contracts, confining themselves to permitting the expression of will through the concept of 'offer' (ijab) in their statutory texts. In the absence of a comprehensive and authoritative legislative definition, legal doctrine has stepped in and offered numerous definitions. The electronic offer has been defined as a definitive expression of will, emanating from one of the contracting parties and addressed to the other through an information network, with the intent to conclude a contract in the domain of electronic transactions.[1] Another strand of doctrine defines the electronic offer as a definitive expression of will conveyed through communication technologies — whether audio, visual, or both — encompassing all the conditions and elements of the contract to be concluded, such that the contract is formed upon the meeting of this offer with a corresponding acceptance.[2]

The Algerian legislature, through the general rules contained in the Civil Code, has authorized the expression of will and the conclusion of contracts by electronic means of communication. Article 59 of the Civil Code provides that a contract is formed by the mere exchange by the parties of their matching expressions of will, without prejudice to the applicable legal provisions. Likewise, Article 60 provides that the expression of will may be by word, writing, or a customarily accepted sign, or by the adoption of a posture that leaves no doubt as to the intent of its author.[3]

It may further be inferred from Article 64 of the Civil Code that the offer may be communicated by telephone or any similar means. The electronic characterization of an offer does not alter its fundamental nature merely by virtue of its transmission over a communications network. The adjective 'electronic' appended to the offer does not change what is intended by it under traditional contract theory. Accordingly, the expression of will through all electronic means is permissible. That said, the legislature, in Article 10 of the E-Commerce Law — a new legislative text whose provisions must be clear, comprehensible, and free from ambiguity or conflation with prevailing legislative terminology, in order to avoid all overlap or confusion and in accordance with the logical sequencing of the content — has notably employed the term 'electronic offer' (al-'ard al-tijari al-iliktruniyi) to denote the electronic offer, because a reading of the French version of Article 10 of Law No. 18/05 reveals that the legislature used the term

« Toute transaction de commerce électronique doit être précédée par une offre commerciale»

and likewise Article 11 of the E-Commerce Law provides:[4]

« Le fournisseur doit présenter l'offre commercial électronique »

which has been rendered as 'electronic offer' (ijab iliktruniyi). 'Offer' (ijab) is the term adopted by the majority of legislatures in their laws and is used in the Algerian Civil Code in

[1]Kazim Karim Ali, 'The Electronic Contract: A Comparative Legal Study,' Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, Faculty of Law, University of Babylon, No. 1, Year 1, 2009, p. 282.

[2]Alaa Muhammad Ali al-Fawa'ir, 'The Applicability of Consent Rules to Electronic Contracts: A Comparative Study,' Doctoral Dissertation, Faculty of Law, Arab Amman University, Jordan, 2012, p. 112.

[3]Bahluli Fateh, op. cit., p. 128.

[4]Article 10 of Law No. 18-05, French-language version.

Article 64. The electronic commercial offer is thus identical to the electronic offer. The legislature further employed the term 'validate' (yusadiq) on the part of the electronic consumer — a similarly imprecise expression denoting electronic acceptance. Whether in the Arabic or French ('validé') formulation, the Algerian legislature — unlike comparative legislatures — has used the term 'acceptance' (qabul) in the Arabic version of Article 64 and 'l'acceptation' in its French version. It follows that the electronic offer and the electronic acceptance are governed by the same general traditional rules applicable to them, while exhibiting certain particularities arising from the electronic nature of the transaction.

1.1.1 Types of Electronic Offer

Since electronic commerce is not confined by national borders, the geographical scope of the offer in an electronic commerce contract — what may be termed the coverage area — is customarily specified, reflecting the practice adopted by many e-commerce websites. The offer may be a general offer directed to all persons without limitation (general offer), or it may be a directed offer addressed to a specific person or persons (special offer).

1. General Offer: It is the established practice on the internet for websites to display their products and services on their dedicated pages, without identifying a specific prospective customer. In this case, the offer is general, and any consumer has the option of accepting it and concluding a contract.[5] The identity of the addressee is of no relevance to the offeror, and any person may come forward to accept, at which point the contract is formed and the offer becomes ineffective as against other persons. The French Court of Cassation has ruled that a total general offer binds the offeror toward the first acceptor under the conditions stated therein, as if it had been directed to a specific person.[6] It should also be noted that the essential elements of the offer must be made clear, and the offer must be definite and precise.

2. Special Offer: This type of offer (special offer) is directed to identified customers. It is made, for example, when websites send electronic mail to those customers providing them with information about a specific product or service, on the assumption that they may be interested in it to the exclusion of the general public,[7] while also specifying their geographical areas. An example is the clause adopted by the INFONIE service centre providing that offers are valid only within French territory, and the terms of the Apple Store commercial centre providing that the centre serves only the continental United States, Alaska, and Hawaii.[8]

1.1.2 Conditions of the Electronic Commercial Offer in Electronic Commerce Contracts

Since the contracting process generally begins with the presentation of an offer or an 'ijab' expressing the contractual intention, the legislature has taken care to specify the elements

[5] Muhammad Ibrahim Abu al-Haija, Electronic Commerce Contracts, 2nd ed., Dar al-Thaqafa for Distribution and Publishing, Amman, Jordan, 2011, pp. 83–84.

[6] Drici Fatima and Hamou Farhat, 'The Specificity of Electronic Offer Data in the Protection of Contractual Consent: A Study in Light of the E-Commerce Law,' Journal of Legal Studies, Yahia Fares University of Medea, Vol. 7, No. 2, June 2021, p. 969.

[7] Muhammad Ibrahim Abu al-Haija, op. cit., p. 84.

[8] Salim Sa'dawi, Electronic Commerce Contracts: A Comparative Study, 1st ed., Dar al-Khalduniyya for Publishing and Distribution, Algeria, 2008, p. 40.

of this offer and the procedure to be followed.[9] Applying the pre-contractual duty to inform, with a view to promoting transparency and protecting the consumer's will vis-à-vis the seller, economic operator, or electronic supplier, and in light of the particularities of the electronic offer in the context of electronic commerce, the legislature has set out in Article 11 of the E-Commerce Law a number of conditions — listed by way of example and not exhaustively — of which the most important essential conditions are as follows:

1. The Offer Must Be Clear

Among the most important principles and conditions governing the electronic commercial offer is the requirement that it be clear, precise, free from ambiguity and interpretation, and that it contain all the essential elements related to the offer. This principle has been enshrined in the majority of legislatures regulating electronic commerce and in European directives. The Algerian legislature, in the E-Commerce Law, has devoted particular attention to this requirement in the first paragraph of Article 11, which requires the electronic supplier to present the electronic commercial offer in a visible and legible manner, using clear and simple language and avoiding complex technical formulations that a non-specialist would be unable to understand or comprehend.[10] The language used must be readily understood by the target consumer audience.

2. Identification of the Electronic Supplier

When concluding an electronic contract, the identity of the contracting parties must be established prior to formation, just as in traditional contracts.[11] Accordingly, the second paragraph of Article 11 requires the electronic supplier, as the offering party, to mandatorily provide sufficient data to identify its identity — including the tax identification number, by means of which commercial transactions and capital movements can be traced through the inclusion of the tax identification number in invoices and various contracts[12] — as well as physical and electronic addresses. Informing the electronic consumer of the website through which the supplier presents its activities to consumers and interacts with them is part of identifying the seller's identity.[13] The supplier's telephone number, commercial register number, or professional card number must also be provided.

3. Description of the Proposed Good or Service

Scientific advancement and technological progress have given rise to a vast array of goods and services, confronting consumers with numerous high-technology products. This has led to a marked and growing asymmetry of knowledge between producers and consumers of such goods, to the point where it has become practically impossible for any contracting party

[9]Abd al-Qadir al-'Armadi, A Concise Study of the General Theory of Nominate Contracts: The Contract of Sale, 2nd ed., Maktabat Dar al-Aman, Rabat, Morocco, 2011, p. 58.

[10]Nawwaf Muhammad Muflih al-Dhayabat, 'The Obligation of Expression in Electronic Contracts,' Master's Dissertation, Faculty of Law, Middle East University, Jordan, 2013, p. 83.

[11]Rida Mutawalli, Objectives of the Legal Regime of the Electronic Contract — Liability for Electronic Infringements: A Comparative Study in National Laws, the UNCITRAL Model Law, and Islamic Jurisprudence, Dar al-Fikr al-Qanuni for Publishing and Distribution, Mansoura, Egypt, 2017, p. 18.

[12]Rabhi Tabbub Fatima, Electronic Transactions Law in accordance with Law No. 18-05, 1st ed., Bayt al-Afkar, Casablanca, Algeria, 2021, p. 59.

[13]Wahi Farouk Luqman, op. cit., p. 363.

to claim full knowledge of all technical details and matters in such contracts. Accordingly, the search for a means of restoring the lost equilibrium between the contracting parties — particularly in the pre-contractual phase[14] — has been a central concern of comparative legislatures, all of which agree that the most important obligation in the electronic commercial offer is the identification of the good or service. The legislature has therefore required that the electronic commercial offer inform the electronic consumer of all descriptive particulars and essential characteristics of the good or service and its key components. To this end, Article 11 requires that the offer specify the nature and characteristics of the prices and the proposed goods or products, inclusive of all taxes, the availability of the good or service, as well as the modalities, costs, and delivery times.

4. Information Relating to the Contract's Terms

This refers to the general rules governing the sale contract with which the parties must be familiar. The rules of sale constitute general rules applicable to all forms of sale, since they address sale regardless of the parties or its subject matter, except where special provisions apply.[15] The offer in an electronic commerce contract must therefore also clarify the general terms, to ensure full and informed consent on the part of the consumer. It is well known that the relevant data or information varies from one contract to another depending on its subject matter, nature, and parties — the disclosures required in a sale contract obviously differing from those applicable to an insurance contract, a consumer credit agreement, or a medical treatment contract.[16] Law No. 18-05 has placed on the electronic supplier the obligation to include in the contract and its conditions a number of statements relating to the contract — obligations applicable at all stages of its formation and performance — including: general conditions of sale (particularly clauses relating to the protection of personal data), commercial warranty terms and after-sales service, the method of price calculation and the procedures for terminating the contract where applicable, the duration of the offer and the method of confirming the order, the delivery date, the conditions and time limits for withdrawal, and the procedure for returning, exchanging, or replacing the product or obtaining compensation. Making this information and these terms available to the electronic consumer ensures that they are fully aware of the essential details of the transaction and reinforces confidence in electronic commerce.

5. Competent Jurisdiction in Disputes pursuant to Article 2 of the E-Commerce Law

The question of jurisdictional conflicts in the domain of electronic commerce is one of considerable importance. It was therefore necessary to establish operational rules for determining the applicable law to resolve disputes relating to the formation, performance, and interpretation of the contract, as well as the identification of the competent court. This raises numerous questions, particularly given the often international character of such disputes, occurring as they do between individuals residing or belonging to different states. Article 2 of

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[14]Hadi Hussein Abdullah al-Ka'bi and Hamad Ja'far Hadi, 'Pre-Contractual Duty to Inform,' Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, No. 2, Year 5, Faculty of Law, University of Babylon, Iraq, 2013, p. 23.
[15]Zakariyya Srayish, A Concise Explanation of the Rules of Sale: A New Vision and Scientific Aspects Relating to Contract Authentication and Promotional Housing, 1st ed., Dar Belqees, Algeria, 2019, p. 10.
[16]Khalid Mamduh, Electronic Consumer Security, University Publishing House, Alexandria, Egypt, 2009, p. 30.

the E-Commerce Law has established conflict-of-laws rules that confine the application of Algerian law to the electronic commercial transaction — without any other law — in the cases referred to, namely where one of the parties to the electronic contract is an Algerian national, a lawful resident in Algeria, a legal person subject to Algerian law, or where the contract is to be concluded or performed in Algeria.[17] The conflict-of-laws rules adopted by the Algerian legislature may be characterized as rigid connecting rules anchored in an imperative legislative provision. Reliance on this approach gives the parties advance knowledge of the applicable law, thereby safeguarding their legitimate expectations and providing them with legal certainty,[18] while affording the electronic consumer protection within the electronic contract itself.

6. Determination of the Price of the Good or the Consideration for the Service

Price is an essential element of the contract of sale in general — the buyer's obligation being the price and the seller's obligation being the subject matter of the sale. This is required by the fourth paragraph of Article 11 of the E-Commerce Law. The price of goods and services must be determined inclusive of all taxes — a manifestation of transparency in commercial transactions and one of the most important pieces of information required of the supplier. It is a mandatory requirement imposed by the legislature so that the electronic consumer is fully informed of and able to assess their capacity to acquire the good or service, and can make an informed decision without being surprised by demands for additional sums. The eighth paragraph of Article 11 also requires the method of price calculation to be specified where it cannot be determined in advance — for instance where the price is subject to revision or updating in cases where a significant time gap separates the moment of contracting from the moment of performance, which may affect price stability as a result of economic fluctuations; or where the price of the subject matter of the sale is determined by reference to its yield rather than its market price.[19]

7. Specification of the Validity Period of the Offer

The offer (ijab) is binding on the offeror pursuant to the rules established in Article 63 of the Civil Code, which provides that if a time limit has been fixed, the offeror is bound to maintain the offer until the expiry of that period, which may also be inferred from the circumstances or the nature of the transaction.[20] The offer is in any case linked to specific time limits by virtue of its traditional character. However, the electronic offer is distinguished by a fundamental characteristic — its continuity — since it is directed through electronic means via a commercial website or electronic mail, and the addressee may access and consult it at any hour of the day or night. This characteristic makes it necessary to specify the period during which the offeror is bound by the offer, in order to protect the electronic consumer and to reinforce confidence in electronic transactions. It is frequently observed that electronic suppliers evade their obligations when no validity period has been specified for the offer —

[17]Article 2 of Law No. 18-05, op. cit.

[18]Taklitt Zwina, 'The Applicable Law to International Electronic Commerce Contracts,' Master's Dissertation, Faculty of Law, University of Algiers, 2010–2011, p. 30.

[19]Ali Filali, Special Contracts: Sale, Moufem Publishing — ENAG Editions, Algeria, 2018, pp. 162–163.

[20]Article 63 of the Civil Code, op. cit.

claiming, for example upon the exhaustion of stock, that the offer's validity is undetermined, so as to avoid liability in tort for withdrawal.

8. Requirement to Use the National Language in the Offer

The obligation to observe the consumer's mother tongue in the offer is one of the forms of protection added by contemporary legal principles for the consumer's benefit, so that they may understand the content of the contract they intend to conclude. Modern legal principles require that the offer be in the consumer's language.[21] The clarity of the language of the contract — i.e., that it be in the language of the acceptor — is particularly important in contracts concluded via the internet, where a contracting party may often be unaware of the identity of the other.[22] Comparative legislatures, including the French legislature, have accordingly been attentive to this issue: by virtue of Law No. 94-665[23] on the use of the French language, Article 2 thereof provides that the use of French is mandatory in the designation, offer, and presentation of goods and services, their terms of use, description, warranty conditions, and invoices or receipts. While Article 11 of the E-Commerce Law does not expressly require that the electronic consumer be informed in Arabic — the national language — the first paragraph of Article 2 of the E-Commerce Law provides that electronic commerce must be practised within the framework of the applicable legislation and regulations. Law No. 91-05[24] on the generalization of the use of the Arabic language — in particular Article 22 thereof, which provides that 'all product names, data relating to products, goods, and services, and all items manufactured, imported, or marketed in Algeria shall be written in Arabic' — is accordingly applicable in this domain.

Section 1.2: Rules Governing Acceptance in Electronic Commerce Contracts

Acceptance constitutes the second expression of will, since a contract is not formed without the concurrence of two wills. It is the expression of will by the party to whom the offer is directed, and must therefore, like the offer itself, satisfy the applicable legal conditions[25] and must be congruent with the offer in order to produce its legal effects. The electronic acceptance does not depart from the rules applicable in the traditional environment, but exhibits certain particularities imposed by the digital age. The electronic acceptance also raises numerous legal issues, particularly regarding the manner of its expression. The following sections address, in turn, the definition of electronic acceptance, its modes and conditions, and the legal issues raised by electronic acceptance and its modalities in electronic commerce.

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[21]'Abboub Zahira, 'The Civil Protection of the Consumer within the Framework of Electronic Transactions,' Doctoral Dissertation, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2018, p. 119.

[22]Muhammad Ibrahim Abu al-Haija, op. cit., pp. 86–87.

[23]Loi n° 94-665 du 4 août 1994 relative à l'emploi de la langue française, JORF n° 0180 du 5 août 1994. Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000349929 (accessed 23/02/2020).

[24]Law No. 91-05, dated 16 January 1991, on the generalization of the use of the Arabic language, Official Gazette, No. 9, issued 16/01/1991, Algeria.

[25]Belhadj al-Arabi, The General Theory of Obligations in Algerian Civil Law, Part One, Office of University Publications, Algeria, 2015, p. 192.

1.2.1 Definition of Acceptance

Acceptance is generally defined as the subsequent expression of will, emanating from the party to whom the offer is directed, bearing a will that matches or conforms to that of the offeror. It is also defined as the agreement by the offeree to the offer directed to them under the conditions it contains — without modification — such that the contract is formed once this agreement reaches the offeror while the offer is still in force.[26] Neither the Algerian Civil Code nor the E-Commerce Law contains a definition of acceptance. The Jordanian legislature, however, defined acceptance in Article 91 as the second locution customarily used in contract formation.[27] The French legislature, in Article 1118 of the Civil Code, defined acceptance as the unilateral act by which the addressee of an offer manifests their willingness to be bound by its terms.[28] The legislatures governing electronic transactions have generally refrained from defining electronic acceptance, contenting themselves with providing that the expression of will may be effected through data messages. Electronic acceptance may accordingly be defined as the expression, through electronic media, of the will of the party to whom an offer is directed — where that party has expressed a certain will in response to the offeror's intent to produce a specific legal effect — such that, once the addressee accepts this expression, acceptance is established.[29]

Most legislatures — and the Algerian legislature, whether in the Civil Code or in the E-Commerce Law — have not required acceptance to take any particular form. Like the offer, it may be expressed through electronic or traditional means; it is established by any means that leaves no doubt that it constitutes the expression of will of the addressee to be bound by the contract. The legislatures governing electronic transactions — like the Civil Code — have not specified the means of expression but have left them in an open form so as to accommodate future developments. The fundamental purpose of this approach is to ensure the formation of the contract by permitting the expression of will through these means. Among the legislatures that have required acceptance to be communicated in the same manner as the offer is the American Uniform Commercial Code (UCC), whose Article 2/206 provides that the expression of will in acceptance is to be made in the same manner as the offer is presented.[30] In contracts concluded at a distance, acceptance must be express; it is never to be inferred from a negative or tacit stance, and the consumer's silence cannot be interpreted as — nor equated with — acceptance.[31] The Algerian legislature, having regard to the nature of the electronic commercial

[26] Ghazali Nassira, 'The Electronic Contract,' in Collective Work: Legal Protection of the Consumer in Electronic Transactions, Alfa for Documents, January 2021, p. 21.
[27] 'Ajali Khaled, 'The Legal Regime of the Electronic Contract in Algerian Legislation: A Comparative Study,' Doctoral Dissertation, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2014, p. 179.
[28] Philippe Malaurie, Laurent Aynès, and Pierre-Yves Gautier, Droit des contrats spéciaux, 8th ed., L.G.D.J., France, 2016, p. 257.
[29] Laz'ar Wasila, 'Acceptance in Electronic Contracting,' Journal of Legal and Social Sciences, Ziane Achour University, Djelfa, No. 9, March 2018, p. 372.
[30] Saidmou Muhammad Amin, 'The Specificity of the Electronic Commercial Contract,' Master's Dissertation, Faculty of Law, University of Algiers 1, Academic Year 2014–2015, p. 39.
[31] Mickael Boutros, Le Droit du commerce électronique: Une approche de la protection du cyber consommateur, Doctoral Dissertation, University of Grenoble, France, 2014, p. 93.

transaction, has resolved this issue in Article 12(4) of the E-Commerce Law by requiring that the choice made by the consumer be expressed explicitly. Article 21 further reinforces this requirement: where an electronic supplier delivers a product or service that was not requested by the electronic consumer, the supplier cannot demand payment of the price or delivery costs — a natural consequence of the absence of a matching acceptance by the electronic consumer to the offer of the electronic supplier, with the result that no contract comes into existence.[32]

1.2.2 Legal Issues Raised by Electronic Acceptance

The practical realities of electronic contracting have given rise to previously unfamiliar modalities for the expression of acceptance — such as sending a password to the merchant or an identifier, confirming an order by electronic mail or in a chat room, completing steps of remote electronic payment, or transmitting electronic acceptance.[33] These modalities have generated controversy as to their sufficiency in expressing acceptance and the risks they pose to the principle of consensualism — particularly since acceptance is typically expressed by clicking on a dedicated approval icon on a computer. The question arises whether the act of touching the acceptance icon by the addressee constitutes a legally valid expression of acceptance, given the possibility that the click on the acceptance icon may have occurred inadvertently or by error. In this regard, the French Council of State has proposed an acceptance-confirmation mechanism by means of an electronic mail message, with a mandatory retention requirement, through two distinct clicks (double click) and not a single touch in different boxes bearing the expressions 'I accept the offer' and 'I confirm my order.'[34] The French model e-commerce contract further provides that acceptance requires confirmation of the purchase order through a series of commands on successive screen pages, expressly indicating the consumer's definitive commitment — i.e., confirmation of the purchase order.[35] Websites typically resort to confirmation formulas to prevent omission or error — requiring the addressee to identify specific images or graphics designated by the offeror from among several options, so as to ensure the addressee's full concentration. The European Directive No. 2000/31 on Electronic Commerce, in Article 11, requires that all information contained in the contract be included through documentary channels by electronic means. The Algerian legislature, in Article 12 of the E-Commerce Law,[36] has required that acceptance forming the contract in electronic commerce pass through three mandatory stages: the first stage consists in informing the electronic consumer of all the contractual conditions in accordance with Article 10, to ensure that they are fully and adequately informed — the electronic supplier being required to clearly and timely present all essential fundamental data in unambiguous terms, providing all data relevant to the nature of the good or service that is the subject of the offer. The second stage requires the electronic consumer (acceptor) to verify the order details

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[32]Article 21 of Law No. 18-05, op. cit.

[33]Taha Kazim Hassan al-Mawla, op. cit., p. 101.

[34]Yousef Shandi, La formation du contrat à distance par voie électronique, Doctoral Dissertation, Faculty of Law, Robert Schuman University, Strasbourg, 2005, p. 147.

[35]Jérôme Canlorbe, Contrat type de commerce électronique, vente de biens ou prestation de services, Report presented on behalf of the Commission on Trade and Exchanges, Paris Chamber of Commerce and Industry, 15/12/2005, p. 11.

[36]Law No. 18-05, op. cit.

— confirming the nature of the products or services requested, their conformity with the order without addition or omission, and the total or unit price — so as to enable them to correct any potential errors or to modify or cancel the order. The third stage consists in the electronic consumer's (acceptor's) confirmation of their choices and order details based on the data they have entered, on condition that the electronic supplier has not used any data that directed the consumer's choices when completing the fields provided for the electronic consumer to fill in. These stages, as established by Article 12, lead to the acceptance forming the contract.

Part Two: Rules Governing the Content and Validity of the Electronic Commercial Contract

Section 2.1: Rules Governing the Content of the Electronic Commerce Contract

The electronic commerce contract is classified as a contract of adhesion. In order to prevent any disruption of contractual balance, the legislature has imposed a number of essential conditions — by way of illustration and not exhaustively — which all consumer contracts, whether between an ordinary or an electronic consumer, must adequately incorporate, as affirmed by Article 13 of the E-Commerce Law. The most important of these are as follows:

1. Detailed Characteristics of the Goods and Services

The electronic supplier must describe the good or service that is the subject of the contract. This description must be sufficiently precise to ensure that the electronic consumer's knowledge of the subject matter is adequate and excludes all uncertainty. A sale is not valid if the subject matter has not been identified — a fundamental and direct principle derived from the general theory of obligations[37] — so that the consumer is fully informed of the subject matter of the contract,[38] namely the good or service. Consumer protection laws have specified the information that the supplier must disclose to the consumer. Article L.111/1 of the French Consumer Code provides that every professional seller of goods or service provider, prior to the conclusion of the contract, must enable the consumer to identify the essential characteristics of the good or service in a clear and comprehensible manner — including in particular the essential characteristics of the good or service, its price, and, in the absence of immediate performance, the date by which the professional undertakes to deliver the good or perform the service, together with information relating to the professional's identity, postal and electronic address, and telephone number.[39] To facilitate contracting over the internet in France, the French model electronic commerce contract has been developed (contrat de commerce électronique commerçants consommateur).[40]

The Algerian legislature has placed on every economic operator the obligation to inform the consumer of all information relating to the product — i.e., to describe the product to the consumer — pursuant to Article 17 of the Consumer Protection Law, as well as Article 8 of Law No. 04/02 determining the rules applicable to commercial practices, which requires the seller to inform the consumer by any means available. In implementation of Article 17 of Law

[37]Philippe Malaurie, Laurent Aynès, and Pierre-Yves Gautier, op. cit., p. 133.
[38]Shadi Ramadan Ibrahim Tantawi, op. cit., p. 176.
[39]Khalid Mamduh Ibrahim, Electronic Consumer Security, University Publishing House, Cairo, Egypt, 2009, p. 101.
[40]Jérôme Canlorbe, op. cit.

No. 09-03 on Consumer Protection, Executive Decree No. 13-378[41] was issued, determining the conditions and procedures relating to consumer information. Article 3, paragraph 3 of the chapter entitled 'General Principles' defines 'essential characteristics' as the information necessary to satisfy the consumer in a clear manner — which must at a minimum include the definition of the product, the operator responsible for placing the product on the market for the first time, the nature of the product and its components, information relating to the product's safety, its price, and the duration of service contracts.

The legislature has further required the service provider to furnish the personal characteristics of the service pursuant to Article 55 of the same decree[42] — depending on the nature of the service — including the following information: the name of the service provider and specific information relating to their address; in the case of a legal person, the address of its company, its registered office, and the address of the company responsible for the service if the service provider is a different person; the registration number in the commercial register or the traditional crafts register; the permit number and the name and address of the authority that issued it for regulated activities; and, depending on the nature of the product, all honest and truthful information relating to the characteristics of the product. The Algerian legislature has consistently required professionals to provide consumers with essential and detailed information in all the relevant regulatory provisions, and has confirmed the necessity of including such information in the electronic contract pursuant to the first paragraph of Article 13, treating it as a fundamental safeguard for protection in the context and specificity of electronic contracting.

2. Conditions and Modalities of Delivery

The time, place, costs, and modalities of delivery are important matters in electronic transactions for the protection of the interests of both parties and the reinforcement of mutual confidence, as well as for determining the liability arising from delay. While the determination of the time of delivery is straightforward in some contracts, it may be complex in others where it depends on external circumstances such as shipping and customs procedures, in which case an approximate date is typically set — contingent in turn on the nature of the obligation. The French model electronic commerce contract, in Clause 11, provides for the mandatory specification of the delivery date.[43] Article 13, paragraph 2 of the E-Commerce Law accordingly requires that the contract include this specification.

3. Warranty and After-Sales Services

In performance of the sale contract, and in order to assist the consumer in ensuring the continued proper functioning of the product — through services such as installation, the provision of necessary spare parts, the opening of direct communication channels with consumers for complaints and suggestions, and the answering of inquiries — as well as all activities undertaken by the producer that enable the purchaser to derive the maximum benefit

[41]Executive Decree No. 13-378, dated 9 November 2013, determining the conditions and procedures relating to consumer information, Official Gazette, No. 58, issued 18/11/2013, Algeria.

[42]Article 55 of the same instrument.

[43]Laz'ar Wasila, 'Performance of the Electronic Contract,' Master's Dissertation, Faculty of Law, University of Algiers, Academic Year 2010–2011, p. 185.

from the goods[44] — the legislature has accordingly placed this obligation on the electronic supplier and required that the electronic commerce contract include provisions to that effect, as enshrined in Article 16 of the Consumer Protection Law and in Decree No. 13-327 determining the modalities of goods warranty, which has entered into force.

4. Conditions for Termination of the Contract

Termination is a sanction imposed in respect of valid contracts that satisfy all their requisite elements and conditions, as a consequence of one of the contracting parties' failure to fulfil their contractual obligation. In principle, both the electronic supplier and the electronic consumer are expected to fulfil their respective contractual obligations. In the event that either party fails to do so, the provisions of Articles 119, 120, 121, and 122 of the Civil Code apply, and the contracting parties may agree in advance, at the time of contracting, on a method for termination, with the parties reverting to the position they occupied prior to the contract.

5. Conditions and Modalities of Payment

The electronic consumer's obligation to pay the price for the good or service corresponds to the electronic supplier's obligation to deliver the good or render the service. Payment is the essential element in all sale contracts in general and consumer contracts in particular. In the context of electronic commerce, payment is made by electronic means. The electronic consumer's principal obligation is to pay the agreed price upon conclusion of the electronic contract, though the parties may agree to defer payment to a later date within a specified period, or to make payment in instalments, or through a third party in the framework of a credit agreement — all subject to the conditions agreed upon in the contract. Failure to specify the payment procedure renders the contract unenforceable. Electronic payment instruments take many forms for the execution of payment or financial settlement, the most important being electronic transfers, electronic networks, electronic commercial paper, electronic payment cards, electronic money, and other electronic means of settlement provided for in the state's financial legislation.[45] Perhaps the most important characteristic to which the legislature has sought to afford protection is the confidentiality and privacy of the payment method. Article 13(5) of the E-Commerce Law accordingly requires the electronic contract to contain this information as a mandatory disclosure.

6. Conditions and Modalities for Returning the Product

Where the situations provided for by law arise — whether under Article 23 of the E-Commerce Law and the obligations it places on the electronic supplier, including product replacement, or the warranty provisions under Article 13 of Law No. 09-03 on Consumer Protection, or the provisions of Article 12 of Decree No. 13-327 determining the conditions and modalities for the implementation of goods and services warranty — the conditions and modalities must be specified according to the nature of the good or service that is the subject of the contract, in order to guarantee the rights of the parties to the transaction, particularly given that certain products require appropriate measures for the preservation of their

[44] Qarwash Ridwan, 'Legal Guarantees for the Protection of Consumer Safety and Security,' Doctoral Dissertation, Faculty of Law, University of Algiers (Ben Youcef Ben Khedda), Academic Year 2012–2013, p. 247.

[45] Muhammad Ali Awad al-Harazi, 'An Analytical Reading of the Electronic Tax Payment Process,' Al-Bahith Journal of Legal Sciences, University of Qaliouba, Faculty of Law, Iraq, Vol. 1, No. 1, 2020, p. 327.

characteristics and transport requirements. The legislature has accordingly ensured that the electronic contract includes this condition. Article 19 of the E-Commerce Law[46] places on the electronic supplier the obligation, upon the conclusion of the electronic contract, to send an electronic copy of the contract to the electronic consumer — a copy that determines the extent of the supplier's compliance with delivery deadlines.

7. Complaint Handling Procedure

Customer complaint management is one of the most important newly established procedures for retaining customers, through the regeneration of consumer satisfaction. An analysis of the causes of customer complaints can assist in improving and developing products and services.[47] This model of direct amicable settlement of a dispute between the consumer and the supplier — without the burden and cost of litigation — serves the consumer's interests and ensures that they do not forfeit any opportunity to benefit from the good or service. Legislatures have accordingly required that the electronic commercial contract mandatorily include complaint-handling procedures. The United Nations Guidelines for Consumer Protection devote a section to consumer complaints and disputes, providing that business enterprises should offer complaint and dispute resolution mechanisms that permit quick, fair, transparent, affordable, accessible, speedy, and effective settlement of disputes without imposing unnecessary burdens on consumers, and should consider adopting domestic and international standards for internal complaint handling and alternative dispute resolution services in accordance with consumer protection laws.[48] Article 13, paragraph 8 of the E-Commerce Law accordingly requires the electronic contract to include complaint-handling procedures. However, a reading of the provisions relating to consumer protection reveals the absence of any regulatory legal framework for this purpose — even at the level of an administrative instruction — which may complicate the implementation of this requirement in practice.

8. Conditions and Modalities of Advance Orders Where Applicable

The advance order is defined in Article 6(7) of the E-Commerce Law as a commitment to sell that the electronic supplier may propose to the electronic consumer in the event that the product is unavailable in stock.[49] In such cases, the electronic consumer may request the electronic supplier to provide a specific good or service, and the supplier undertakes to do so, specifying the delivery times and modalities on the basis of an agreement between the parties. The legislature has required that, where such an arrangement is made, it be stipulated in the contract.

9. Conditions and Modalities of Trial Sale Where Applicable

A sale on approval is a sale in which the buyer reserves the right to accept or reject the subject matter of the sale upon trial — typically made when the buyer wishes to determine its

[46]Article 19 of Law No. 18-05, op. cit.

[47]Hafiza Bouabdallah and Manal Kabbab, 'An Analytical Study of the Reality of Complaints Management for Automobile Consumers in Algeria,' Journal of Marketing Studies and Business Administration, Tahri Muhammad University, Bechar, Vol. 3, No. 2, 2019, p. 79.

[48]United Nations Conference on Trade and Development, UN Guidelines for Consumer Protection, UNCTAD/DITC/CPCP/MISC/2016/1, United Nations, 2016, p. 9.

[49]Article 6(7) of Law No. 18-05, op. cit.

suitability for the intended purpose or to verify that it is the item sought, when mere visual inspection would not suffice to establish this.[50] The Algerian legislature has regulated this in the general rules of the Civil Code, specifically in Article 355(1), which provides that in a sale on trial, the buyer may accept or reject the subject matter of the sale, and the seller must enable them to conduct the trial. The intangible nature of the electronic commercial transaction — arising from the absence of a direct relationship between the contracting parties, the virtual presentation of goods and services, the prevalence of exaggerated advertising, and the impossibility for the electronic consumer to verify the goods until receipt — together with the nature of certain goods and services that are inherently subject to trial, means that specific modalities for trial sales are routinely agreed upon in electronic commerce contracts whenever the circumstances require it.

10. Duration of the Contract as Applicable

The specification of duration is of paramount importance — particularly in contracts for the supply of goods or services, given its legal implications and the issues it raises in determining the parties' obligations and rights where the contract is a successive or continuous or periodic service contract. Duration is subject to agreement depending on the circumstances. The continuous contract is characterized by the fact that its subject matter consists in a benefit or an act, and time plays a decisive role — not only in its formation but in the arrangement of its effects, the scope of the obligations varying according to the length or brevity of the period for which the contract is concluded.[51] The specification of duration has four consequences: first, from the date of final conclusion of the contract, neither party may exercise the right of withdrawal; second, from that date, the contract produces all its effects; third, from the date of conclusion, the judge may determine the applicable law; fourth, the date of conclusion constitutes the starting point for time limits for pursuing an action to annul the contract.[52] The legislature, in the final paragraph of Article 13 of the E-Commerce Law, has required that the contract expressly provide for its duration as applicable.

11. Obligation to Archive the Electronic Commercial Contract

An archive is a collection of documents received or created by a natural or legal person, or by a public or private body, organized for that body's purposes and preserved for subsequent use. Electronic archives are defined as archival documents produced and preserved in any institution in the course of its activities, in the form of electronic recordings in a format that permits direct exploitation by means of information technology tools.[53] In view of the particularities of this type of contract, comparative legislatures have required the archiving of the electronic commercial contract and the provision of information on the archiving of the contract and access thereto — particularly in the event of a dispute arising from the performance of the contract. The French legislature, by virtue of the Law of 21 June 2004,

[50]Abd al-Razzaq Ahmad al-Sanhuri, Al-Wasit fi Sharh al-Qanun al-Madani al-Jadid: Contracts Relating to Ownership — Sale and Exchange, Part 4, 3rd ed., Nahdat Misr, Cairo, 2011, p. 930.

[51]Noura Ghazlan al-Shanawi, Al-Wasit fi al-'Uqud al-Khassa: Civil, Commercial, and Banking Contracts, Part 1, 1st ed., Al-Amniyya Press, Rabat, Morocco, 2017, p. 57.

[52]Corinne Renault-Brahinsky, Droit des obligations, Gualino — Mémentos, 2019–2020, p. 64.

[53]Khatir Fawzia Fatima, 'E-Governance and the Future of Digital Archives in Algeria,' Maghrebi Journal of Historical and Social Studies, Jilali Liabes University, Sidi Bel-Abbès, Vol. 13, No. 2, December 2021, p. 275.

which amended Article 1369-1 of the Civil Code, has, among the obligations imposed on the professional, provided in the fourth paragraph thereof that 'in the event of archiving of the contract, the modalities of such archiving by the author of the offer and the conditions of access to the archived contract' must be specified.[54] It should be noted in this regard that while the Algerian legislature, in Article 19 of the E-Commerce Law, has required the electronic supplier to send a copy of the contract to the electronic consumer upon the conclusion of the contract, it has not required the supplier to archive the contract or to specify the modalities of and conditions for access to it — an essential obligation of considerable importance. The Algerian legislature should therefore follow the example set by the French legislature and move expeditiously to add this obligation to the essential conditions set out in Article 13 of the E-Commerce Law.

Section 2.2: Rules Governing the Validity of Consent in Electronic Commerce Contracts

Where a contract satisfies its three essential elements — consent, subject matter, and cause — it is legally formed. A contract is a legal act founded upon will. Where the will is absent or non-existent, the contract is void. Where the will is present but vitiated by a defect, the contract subsists but is voidable. It is therefore necessary, for the stability of the contract, that consent be valid — proceeding from a party with the requisite capacity and free from the defects vitiating the will, namely mistake, misrepresentation, duress, and exploitation.[55] While the Civil Code addresses these matters in Articles 81 to 91 (defects vitiating consent) and Article 78 (capacity to contract), the E-Commerce Law contains no specific provisions on these issues. The electronic contract — characterized by the absence of physical co-presence of the parties at the moment of exchange of consent — heightens the risk of vices of consent. The question therefore arises whether the general rules are adequate in the specific domain of electronic commerce contracts.

2.2.1 Capacity to Contract in Electronic Commerce Contracts

The validity of a contract requires the existence of the legal capacity necessary for its conclusion. Capacity refers to a person's fitness to acquire rights and assume obligations and to perform legal acts. Legal doctrine distinguishes between capacity to perform acts (ahliyyat al-ada') and capacity to hold rights (ahliyyat al-wujub) — the latter being the person's fitness to enjoy rights and bear the duties established by law. The Civil Code, in Article 40, fixes the age of legal majority at nineteen full years, subject to the absence of supervening causes affecting a person's capacity and acts — such as insanity, mental deficiency, prodigality, and inattention — which entirely eliminate the will and render the contract absolutely void for lack of capacity. If capacity is merely deficient, the contract becomes voidable. In traditional contracts, the parties are generally physically present at the time of contracting, making it possible to ascertain and verify their capacity. In electronic commercial contracts, however, it is exceedingly difficult to verify the capacity and identity of the parties, since the contract is concluded without their physical presence in a global, decentralized virtual environment. This

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[54] Article 1369-1 of the French Civil Code (as amended by the Law of 21 June 2004): 'In the event of archiving of the contract, the modalities of such archiving by the author of the offer and the conditions of access to the archived contract.'

[55] Belhadj al-Arabi, op. cit., p. 297.

is among the most prominent issues raised by the electronic commerce contract with regard to verifying that the will proceeds from the contracting parties and ascertaining their capacity and status.

European Directive No. 97/7 of 6 May 1997 on distance selling, in Article 4(1), required that, upon the conclusion of a distance contract through modern communication technologies, the identity of the contracting parties be mandatorily established, including a statement of legal capacity. European Directive No. 31/2000 on Electronic Commerce also required the identification of all elements of identity, including legal capacity.[56] The UNCITRAL draft law, in Chapter One, Section One, required the identification of the offeror and obliged them to enter their full details — including the company name and address, commercial and professional register number, telephone and fax number, and electronic mail and website addresses — while Chapter Two of the same law required the acceptor to enter the same details to identify themselves.[57] The verification of the capacity of the electronic supplier in an electronic commerce contract in Algeria does not raise any particular difficulty, since one of the conditions for engaging in electronic commerce pursuant to Article 8 of the E-Commerce Law is mandatory registration in the commercial register and, as the case may be, in the traditional crafts register. Article 11 further requires, in paragraphs one and two, the provision of the tax identification number, physical addresses, commercial register number, and professional or craftsman's card — all data used to establish the identity and capacity of the electronic supplier.

The verification of a contracting party's capacity in electronic contracts is a precise technical and legal matter. This issue has prompted both technology specialists and legal scholars working in the field of electronic contracting to seek technical and legal solutions to this problem.[58] These solutions have been divided into technical means — the most important of which is electronic identity technology and smart cards, which are defined as electronic chips manufactured from plastics processed with concentrated silicon, consisting of high-capacity units and microchips enabling the storage of the holder's personal data such as name, surname, age, civil status, place of residence, personal identification number, and other information[59] — and legal means for verifying capacity, primarily through electronic signature and certification. The Algerian legislature has emphasized the latter in Article 10 of the E-Commerce Law, by requiring that every electronic commercial transaction be authenticated by a contract validated by the electronic consumer.

2.2.2 Defects Vitiating Consent in Electronic Commerce Contracts

1. Mistake in Electronic Commerce Contracts

Mistake is understood as a false belief operating in the mind of a contracting party that induces them to contract — for example, a person purchasing a vessel believing it to be made

[56] Ibid., p. 96.

[57] Rawan Abd al-Mu'ti Mahmud Radi, 'Legal Capacity in Electronic Contracts,' Journal of Legal Studies and Research, Palestine, No. 19, February 2013, p. 19.

[58] Muhammad Hadi Faraj al-Fahdawi, 'Legal Capacity to Contract in the Electronic Environment: A Comparative Study,' Master's Dissertation, Faculty of Law, Middle East University, Amman, Jordan, 2020, p. 44.

[59] Muniya Nashnash, 'The Impact of Digital Technology on the Attribution of Will and Verification of Capacity in Electronic Contracts,' Journal of Legal and Political Research, University of Jijel, No. 6, June 2018, p. 256.

of gold when it is in fact made of a different metal.[60] The Algerian legislature has regulated mistake in Articles 81 to 85 of the Civil Code. Under Articles 81 and 82, two essential conditions must be satisfied for a contract to be challenged for annulment on grounds of mistake in Algerian law: first, the mistake must be substantial — i.e., it must be the principal inducement to contract (mistake as to a substantial quality of the subject matter, mistake as to the person of the contracting party, their identity, or their characteristics). Mistake is particularly prevalent in the domain of electronic commerce contracts, arising in large part from the electronic supplier's failure to comply with the disclosure requirements relating to the offer — whether for goods or services — through the omission of precise descriptions, thereby causing the electronic consumer to fall into error. European Directive No. 2000/31 on Electronic Commerce, in Article 11, has required service providers to present the service to the customer in precise detail and to inform them thereof through appropriate, effective, and accessible means, enabling them to understand the electronic data in a manner that prevents the customer from falling into error.[61] The Algerian legislature has pursued the same objective: by virtue of Articles 10 and 11 of the E-Commerce Law, the electronic supplier is required to provide all essential and fundamental data and information relating to the contract, to prevent the electronic consumer from falling into error. Article 10 requires that every transaction be preceded by a commercial offer, while Article 11 requires that this offer include all the essential matters of the contract to be concluded — with the mandatory data specified therein. The failure to disclose these elements facilitates the establishment of mistake and, consequently, the annulment of the contract, more readily than in traditional commercial contracts.

2. Misrepresentation in Electronic Commerce Contracts

Misrepresentation consists in the use of fraudulent means capable of deceiving the other party and inducing them to contract. It presupposes two elements: a material element — the use of deceptive devices — and a subjective element — that these devices are of sufficient gravity that, but for them, the deceived party would not have concluded the contract. Misrepresentation may take many forms.[62] The moral element consists in the fraudulent intent to deceive and mislead in pursuit of an unlawful purpose. Two forms of misrepresentation may be distinguished: the first is active misrepresentation, consisting in the use of fraudulent devices or tactics intended to induce the other party into a mistake that drives them to conclude the transaction; the second is the deliberate silence of one of the contracting parties regarding certain data or information, where knowledge thereof would have prevented the other party from concluding the contract. The Algerian legislature has treated deliberate silence as constituting misrepresentation: Article 86, paragraph 2 of the Civil Code provides that deliberate concealment of a fact or circumstance constitutes misrepresentation where it is established that the deceived party would not have concluded the contract had they known of

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[60] Muhammad Sabri al-Sa'di, Al-Wadih fi Sharh al-Qanun al-Madani: The General Theory of Obligations — Sources of Obligation: Contract and Unilateral Will, A Comparative Study in Arab Laws, 4th ed., Dar al-Huda, Ain Melila, Algeria, 1985, p. 162.

[61] Jihad Mahmoud Abd al-Mabdi, op. cit., p. 191.

[62] Ali Suleiman, The General Theory of Obligation: Sources of Obligation in Algerian Civil Law, 3rd ed., Office of University Publications, Algeria, 2003, pp. 60–61.

that fact or circumstance. These are the conditions established by the Algerian legislature for pursuing an action for annulment on grounds of misrepresentation.[63] Fraudulent practices in electronic commerce contracts are numerous and varied — including the use by a commercial professional of a well-known trade mark belonging to another person, with the intent of misleading the consumer into contracting with them in the belief that they are the true owner of the mark, the deliberate publication of false data and information on a website about products and services with a view to promoting them, or the use of a domain name not belonging to the operator.[64] The Algerian legislature has established a legal framework aimed at comprehensively regulating the electronic commercial offer and the electronic advertising message — requiring the electronic supplier to ensure that the commercial offer satisfies all the mandatory essential data required by law under Article 11 of the E-Commerce Law, at minimum enabling the consumer to familiarize themselves with the characteristics of the good or service that is the subject of the contract. This is intended to prevent the electronic consumer from falling victim to fraud and deception resulting from false offers. The legislature has also regulated electronic advertising — a fundamental tool of electronic commercial activity aimed at promoting goods and services and influencing consumer behaviour — through Article 30 of the E-Commerce Law, which requires that the electronic advertising message be clear, identify its sponsor, comply with public morals and public order, and be free from all ambiguity, obscurity, or deception, which constitutes a misrepresentation vitiating consent and entitles the electronic consumer to seek the annulment of the contract. The legislature has further criminalized misleading electronic advertising in Article 40 of the same Law.

2.2.3 Duress and Lesion in Electronic Commerce Contracts

1. Duress: Duress is a pressure to which a contracting party is subjected, creating in them a state of fear or apprehension that compels them to contract in an unlawful manner. Duress in this sense is a vice of will — it vitiates rather than eliminates consent. The will of the person acting under duress exists but is defective by reason of the loss of one of its legal elements, namely freedom and choice.[65] Article 88(1) of the Civil Code provides that a contract may be annulled for duress if a person contracts under the influence of evident intimidation unlawfully induced by the other contracting party. Some scholars take the view that physical duress is excluded from or inconceivable in the context of electronic contracting, since the contract is concluded between parties separated by spatial distance in a notional contract session.[66] However, duress may arise through what is known as economic duress — which compels the contracting party to return to the seller of the same product when maintenance or after-sales services are needed, with the professional or merchant thereby imposing their conditions by virtue of this dependency.

[63] Article 86 of the Civil Code, op. cit.

[64] Khalid Abd al-Mun'im Ibrahim Mustafa, 'Consumer Protection in Electronic Contracting: A Comparative Study,' Doctoral Dissertation, Faculty of Law, Ain Shams University, 2011, p. 407.

[65] Belhadj al-Arabi, op. cit., p. 355.

[66] Al-'Arabi Shahat Amina, 'Contractual Consent in the Electronic Contract in Light of Recent Developments,' Journal of Law and Humanities, University of Djelfa, Vol. 14, No. 3, September 2021, p. 168.

2. Lesion: Lesion consists in a disproportion between the reciprocal obligations of the contracting parties, such that there is an imbalance between what a person gives and what they receive, thereby disrupting the economic equilibrium of the contract. With regard to the electronic commercial contract, the general rules applicable to lesion in traditional contracts apply equally, and the electronic commerce contract exhibits no particular specificity in this respect. The theory of vices of consent in electronic contracts affords the electronic consumer the ability to seek the annulment of the contract for vices that may affect the electronic consumer — as they are conventional examples falling within the scope of the general rules[67] — as well as claims for material or physical damages resulting from the use of the goods or services and the losses and lost profits sustained.

2.2.4 The Electronic Commercial Transaction and the Formality of Writing

All legislatures, regardless of their legal systems, have enshrined the principle of freedom of proof in commercial matters. The Algerian legislature has adopted this principle through Article 30[68] of Commercial Law No. 75-25, as amended and supplemented, which provides that every commercial contract may be proved by official instruments, private instruments, accepted invoices, correspondence, books of either party, testimonial evidence, or any other means that the court deems appropriate to accept. The legislature, by requiring the formality of writing, has sought to protect the electronic consumer by ensuring that they understand all the content and details of the contract — as a precautionary means of avoiding disputes. However, given the speed with which the electronic commercial contract is concluded and the need to verify the conformity of the offer and acceptance, the legislature has required that every electronic commercial transaction be authenticated by an electronic contract validated by the electronic consumer. The electronic supplier is further required to send a copy of the contract to the electronic consumer — as a mandatory obligation pursuant to Article 19 of the E-Commerce Law — upon the conclusion of the contract. The supplier is equally required, pursuant to Article 25, to maintain a register of electronic commercial transactions and to submit it to the National Centre of the Commercial Register.

Conclusion

The Algerian legislature has surrounded the formation phase of the electronic commercial contract — through Law No. 18-05 on Electronic Commerce — with regulatory controls consonant with the nature of electronic commercial activity, in view of the particularities of this type of contract and in complement to the general rules and related legislation, in order to establish a secure and trusted environment for this activity in conformity with international standards. The protection of the electronic consumer has required the imposition of public order obligations on the electronic supplier at this critical stage of contracting. The Algerian legislature has thereby taken a significant step in enacting specific legal provisions for the regulation of electronic commerce.

[67]Omar Khalid Zriqat, Electronic Commerce Contracts — Sale Contract via the Internet: An Analytical Study, Dar Hamed for Publishing and Distribution, Amman, Jordan, 2008, p. 182.
[68]Article 30 of the Commercial Code, op. cit.

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