

The Electronic Contract in Algerian Legislation

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Introduction:

In recent years, the world has witnessed a qualitative and unprecedented leap in the digital field, both at the international and national levels. This includes the modernization of the administrative sector in general, which has witnessed the use of highly advanced technologies such as Artificial Intelligence (AI) and Chat GPT, which have remarkably facilitated administrative processes. Among these methods is the conclusion of electronic contracts, with all their stages carried out remotely, without the inconvenience of travelling or moving to the place where the contract is concluded.

Given the importance of this subject and the positive impact it has had on the functioning of the administration in general, we sought to examine how these electronic contracts are procedurally concluded within the framework of respect for the law, which also constitutes a guarantee and protection for the parties and contributes to creating trust among the parties involved.

Accordingly, based on the foregoing, we sought to raise the following research question: What are the legal frameworks governing the electronic contract in Algerian legislation?

To answer this question, we adopted the analytical and descriptive approaches, within a plan consisting of two sections. In the first section, we addressed the concept of the electronic contract in Algerian legislation, and in the first section.

Section One: The Nature of the Electronic Contract

What can be pointed out in this section is that the electronic contract is subject to the general elements of a contract, that is, to the general theory of contracts; its only essential element is its electronic nature.

A- Definition of the Electronic Contract

There are multiple and varying definitions concerning the electronic contract, among the most important of which is the legal definition.

1- Legal Definition of the Electronic Contract

By referring to Law No. 18-05 of May 10, 2018, on Electronic Commerce, we find that the Algerian legislator defined the electronic contract in Article 6 thereof as follows: “A contract concluded remotely without the simultaneous physical presence of the parties, using exclusively electronic communication technology.”

We also find that the Tunisian legislator defined electronic exchanges in Article 2 of Law No. 83 of August 11, 2000, on Electronic Exchanges and Commerce, as “exchanges carried out

through the use of electronic documents,” and defined electronic commerce as: “commercial operations carried out through electronic exchanges.”

2- Characteristics of the Electronic Contract

The electronic contract is characterized by several features, which we will address as follows:

- Conclusion by Electronic Means

The essential point distinguishing an ordinary contract from an electronic contract is the electronic means or tool relied upon when concluding the contract. The means through which the contract is concluded is what gives it this characteristic. The electronic contract does not differ from the traditional contract in terms of its subject matter or parties, but rather in terms of the method of conclusion and means of proof. The contract may be concluded by anyone who meets the legal conditions related to capacity, for example, since we cannot conceive of a person lacking legal capacity being able to conclude such a contract, whether ordinary, i.e., traditional, or electronic.

- Conclusion Remotely

This means that this type of contract is concluded remotely, without the physical presence of the two parties, i.e., without their personal presence. This implicitly leads us to conclude that the two parties to this contract, through the offer and acceptance, have fulfilled what they agreed upon; in other words, it represents the concurrence of the two wills of the contracting parties.

- Predominantly International in Nature

Some electronic contracts may be domestic, i.e., concluded within the territory of the state. This is a normal matter that does not raise any doubts, unlike mixed contracts in which the contracting parties are foreign parties. For example, the seller may be from one country and the buyer from another. Here, the question arises as to which law should be applicable and which court has jurisdiction in the event of a dispute between the two parties to this contract.

- Predominantly Commercial in Nature

This type of contract refers to the execution of some or all commercial transactions involving goods or services between a commercial enterprise or between a trader and a consumer through the use of modern technologies. E-commerce is the field in which the electronic contract appears in particular, as it constitutes one of the most important means of such commerce. This has led some legal scholars to use the term e-commerce to refer to electronic contracts, expressed through commercial relations and transactions carried out between parties by using electronic devices and means such as the Internet. Accordingly, this contract is characterized by a consumer-oriented nature, as it is generally concluded between a trader (professional) and a consumer.

- Electronic Proof and Performance of the Contract

It is well established that an electronic contract may be proven through an electronic document and an electronic signature. Electronic means of payment may also be used to perform the payment of the price, such as electronic money, bank cards, and electronic commercial papers.

B- Elements of the Electronic Contract and the Manner of Its Conclusion

For the electronic contract to be concluded, the wills of the two parties to the contract, represented by the offer and acceptance, must first correspond. Since the electronic contract, like the ordinary contract, is subject to most legal systems, it must contain essential elements, which are as follows.

- Electronic Offer

A legal offer is the definitive expression of will made by one of the contracting parties and addressed to the other party with the intention of producing a legal effect.

According to the European Directive on consumer protection in distance contracts, it is defined as: “Any means of distance communication containing all the elements necessary to enable the addressee to accept the contract directly,” excluding from this scope a mere advertisement.

Accordingly, the offer must contain the essential elements without which the contract cannot be concluded. The offeror’s obligation to remain bound by his offer also contributes to the stability of transactions and provides confidence in dealings, even if only for a limited period, so that the party to whom the offer is addressed can arrange his affairs in order to respond.

With regard to the nature of the offers received by a person through the Internet, and whether they constitute a definitive offer whereby the contract is concluded upon acceptance, or merely an invitation to contract, two approaches have emerged:

First approach: It considers that an advertisement for sale through modern means of communication is merely an invitation to contract on the part of the advertiser, requiring an offer from the addressee, followed by acceptance by the person to whom the advertisement is directed. The basis for this is the definition of advertising in the European rules concerning transfrontier television, issued in 1997, as: “A set of messages sent by a public or private person within the framework of his commercial, industrial, or professional activities, through which he seeks to promote his products or services.”

Second approach: From its point of view, an advertisement for sale through computer screens constitutes an offer and not merely an invitation to contract. This is based on the characteristics that can be observed in offers on the Internet, including:

- Advertisements for goods and services on the Internet are often accompanied by conditions stating that there is no obligation to conclude the contract in the event that the goods or the required quantity are out of stock. Thus, this advertisement constitutes an offer subject to a non-voluntary condition.
- Advertising over the Internet does not take personal considerations into account, except in certain cases, such as prohibiting the sale of cigarettes to persons under 18 years of age.

Second: Electronic Acceptance

Acceptance is made by the other contracting party as an expression of his willingness to enter into the contract. It must be definitive, specific, and intended to produce legal effects. It is also required that acceptance be made while the offer remains valid and that it correspond to the offer, i.e., without any modification.

The issue that arises is whether merely touching the acceptance button, i.e., pressing it, rather than simply touching it, is sufficient to constitute acceptance.

Some consider that this constitutes acceptance from a legal standpoint. However, courts will not be convinced of the validity of this view unless acceptance is confirmed by pressing the acceptance key, for fear that the button may be touched inadvertently or accidentally after the phrase “Do you confirm acceptance?” appears on the Internet screen.

With regard to determining the time of acceptance in an electronic contract, its determination is of great importance. However, it raises several problems, since the time of acceptance in an electronic contract may be determined through:

- The time at which acceptance is declared, i.e., when an electronic message is drafted or the key designated for acceptance is pressed.
- The time at which the acceptance is sent, i.e., the time when the acceptor presses the key for sending the acceptance to the offeror.
- The time at which the acceptance message enters the offeror's electronic mailbox on his device, even if he is unaware of it.

As for determining the place where the contract is concluded, this is useful in determining the law applicable at the moment the contract is concluded, in addition to determining the competent court in the event of a dispute concerning the terms of conclusion or performance of the contract. The rule followed in the field of concluding electronic contracts is reliance on the principle of receipt of acceptance, which was adopted by the United Nations Convention on Contracts for the International Sale of Goods.

Section Two: The Method of Concluding the Electronic Contract

Consent is considered one of the essential elements in the conclusion of any contract, regardless of its type. Consent is the expression of two matching wills to conclude the contract. It depends on the issuance of an offer to contract by the offeror, which is met by acceptance from the person to whom the offer is addressed, and, on the other hand, on the meeting of this acceptance with the offer.

The emergence of new means of expressing will has recently raised questions regarding their legitimacy in concluding contracts.

A- Expression of Will

The general rule established by Article 60 of the Algerian Civil Code concerning how contracting parties express their wills is that this is done through words, customary gestures, or by adopting a position that leaves no doubt as to its indication of the intention of its author. The exception established by Article 68/02 of the same Code to this rule is the possibility that contextual silence may constitute a means of expressing acceptance.

The issue that arises concerns the extent to which modern means of communication and information can be considered forms or methods of contracting, represented in the following forms:

- Contracting via the Internet

1- Expression of Will through E-mail: The electronic mail service is defined as the use of the Internet as a postal office, whereby an Internet user can send messages expressing his will to conclude a contract to any person who has an e-mail address. He can also receive messages expressing the will of any other Internet user. Sending and receiving messages takes only a few seconds, and this service is provided free of charge. The person wishing to contract through this means must have an e-mail program included among the programs installed on his computer and must follow certain necessary steps in order to benefit from this service.

Accordingly, the e-mail system enables communication between two persons separated by thousands of kilometers without them meeting physically or personally.

2- Expression of Will through the Web: The Web service, or what is known as the World Wide Web, is the service through which various websites on the Internet can be visited and their pages browsed in order to access specific information and to conclude a contract with a trader who offers his products on them.

One of the most important terms encountered in this context is website, which refers to any place that can be visited on the Internet and the World Wide Web, which contains millions of such sites. Each of these sites has a specific address indicated by abbreviated letters that serve in place of an ordinary address or telephone number. These addresses are characterized by stability and continuous availability around the clock.

C- Expression of Will through Direct Conversation and Viewing Means

Communication through the Internet may take the form of an exchange of messages displayed on the screen according to the number of participants. It may also involve a direct exchange of speech and may develop, depending on the program and the presence of video cameras, into a conversation involving full visual interaction. It is noted that expression may take place in writing, through direct speech, through gestures, or through transactions by means of credit cards. It may also constitute explicit expression or may be implicit, and it may take place before a virtual contractual meeting, on the basis that the contracting parties can see and hear each other directly.

B- Concordance of the Two Wills and Electronic Negotiation

Electronic negotiation precedes the conclusion of the electronic contract, particularly important contracts involving transactions of a significant technical and economic nature. Thus, if the offer represents a step toward the electronic contract, negotiation represents the step leading to that offer and acceptance.

Accordingly, negotiation may be defined as the exchange of proposals, bargaining, correspondence, reports, technical studies, and legal consultations between the parties to the negotiation, so that each party is fully aware of the rights and obligations that the agreement may entail for both parties.

The negotiation stage generally passes through three stages:

1- Feasibility Study: This study affects the client's future with regard to the performance of the desired information service. The feasibility study, in an agreement with the provider of the service or goods, focuses on the essential points and foundations relating to the performance of the expected service or delivery of the goods. Ensuring the client's success in preparing this study guarantees the success of the contract to be concluded and identifies the basic requirements on the basis of which negotiations are conducted, through the selection of devices, software, and tools appropriate to the client's circumstances and needs.

2- List of Conditions Following the Feasibility Study: Following the feasibility study, the client moves to a stage in which he clearly determines his needs and contracting conditions and expresses them in a simple written document containing the main points, known as the list of conditions. Cooperation between the provider of the service or goods and the person requesting them is necessary in order to avoid all causes of dispute.

C- Selection of the Service Provider: After conducting the feasibility study and preparing the list of conditions, the client then proceeds to select the service provider. He has the right to seek

the assistance of an expert who can advise him in selecting the best provider, one who enjoys a good reputation and prior experience in the field, in order to obtain a good service or product with the best specifications.

Conclusion:

Electronic contracts are considered contracts legally and internationally recognized. Given their rapid development from the technical perspective, which is constantly evolving, and in order to guarantee the privacy of each of the contracting parties, the legislator must introduce laws that keep pace with this remarkable development, particularly to ensure the privacy of concluding electronic contracts, especially in light of the current development of artificial intelligence technologies.