

Received: November2023 Accepted: March 2024

DOI: <https://doi.org/10.53555/ks.v12i2.2893>

Peculiarities of Expressing Will in Electronic Contracts (An Analytical Study in Light of the Provisions of Law no. 18-05 Regarding Electronic Commerce)

Bouguerra Mokheir¹

Abstract

The contract is an agreement that brings together two or more parties to create legal effects, whereby each party expresses its intention to contract through an offer and acceptance according to the contract theory adopted within the provisions of civil law, the impact of its application extending to contractual transactions concluded in accordance with the provisions of Law No. 18-05 concerning electronic commerce, but taking into account the manner in which the contracting (remotely) is done, and the use of electronic communication technology, which gives the expression of intention some particularity. This is what we address in this study through explanation and analysis to highlight that specificity.

Keywords: *Electronic Contract, Electronic Offer and Acceptance, Electronic Communication Technology, Electronic Commercial Offer.*

Introduction

The emergence of electronic commerce and the expansion of the range of transactions that can be conducted remotely made it necessary to stay abreast of technological advancements. This led to the enactment of laws governing remote contracting, which the Algerian legislator eventually issued (May 10, 2018, Law No. 18-05 of May 10, 2018, relating to electronic commerce), and it also caused a qualitative shift in the range of contractual transactions. However, without departing from the contract notion embraced within the Civil Code's guidelines.

Keeping pace with technological developments in Algeria finds its source in more than one legal text, including, for example, Law No. 05-10 of June 20, 2005 amending and supplementing Order No. 75-58 of September 26, 1975, which includes the Civil Code.¹⁾, which equated between Proof by writing in electronic form and proof by writing on paper⁽²⁾, And that After he intended to demonstrate the outcomes proof in writing, Without regard to the support it contains or the methods of sending it⁽³⁾.

The electronic contract has various peculiarities regarding the contractor's expression of will because it is concluded remotely through electronic communication technology. The general theory of the contract states that this expression can take various forms. It can be implicit if the law does not specify it or if the two parties agree it should be explicit. It can also be explicit when it takes the form of a word, writing, or signal that is customarily used or by adopting a stance that makes it clear what the owner's intention is.⁽⁴⁾These provisions apply to offer and acceptance either way, however, as an exception, and when it comes to acceptance, silence may be taken in response to the offer, provided that its conditions are met.⁵⁾.

Expressing will in accordance with the specified modalities in civil law undoubtedly leads us to pose the

¹Laboratory of family law, Faculty of law, University of Algiers 1, Algeria. Email: m.bouguerra@univ-alger.dz

following problem: Should the provisions of expressing will stipulated in civil law be taken into account in concluding electronic contracts? Or does Law No. 18-05 on electronic commerce include specific provisions for considering the use of electronic communication technology in remote contracting?

We used the analytical approach to discuss and evaluate the various provisions included in Law No. 18-05 relating to electronic commerce and relevant legal texts, as well as the descriptive approach to present some jurisprudential and legal opinions related to the topic of this study, in order to address the problem.

We decided to divide this study into two axes: In the first, we discuss the concept of the electronic contract, and in the second, the ways of expressing will in its formation.

The Concept of Electronic Contract

Laws are known to be unconcerned with definitions and conceptions because jurisprudence and the judiciary handle these kinds of matters⁽⁶⁾ since many notions are currently regulated by legal texts, this rule has actually become somewhat relative. This is the situation with electronic contracts, which differ from traditional contracts in a few ways as per the definition provided by law No. 18-05 relating to electronic trade.

The Legal Definition of Electronic Contract

A contract is defined as "an agreement whereby one or more other persons undertake to another person or persons to give, do, or not do something" in Article 54 of the Civil Code. Since this electronic contract is also an agreement between two parties in the sense of Law No. 18-05 relating to E-commerce, in the sense of some statutory legislation, it does not deviate from this general meaning of the contract. This agreement cannot be concluded unless each party expresses his will to create it.

The Definition of Electronic Contract According to the Law no. 18-05 Related to E-Commerce

Article 6, paragraph 2, of Law No. 18-05 concerning electronic commerce defines the electronic contract as follows: "For the purposes of this Law, the electronic contract means the contract as defined in Law No. 04/02 dated 23 June 2004, which sets out the rules applicable to commercial practices, concluded remotely, without the actual and simultaneous presence of the parties, exclusively through electronic communication technology." This article clarifies the meaning of the contract referred to in Article 2, paragraph 4, of Law No. 04-02 dated 23 June 2004, which specifies the rules applicable to commercial practices, as amended and supplemented.⁽⁷⁾ It reads: "Every agreement or contract aimed at selling a commodity or providing a service, shall be drawn up in advance by one of the agreement parties with the acceptance of the other party, so that the latter cannot make any real changes to it," from which the explicit reference in defining the electronic contract from Law No. 18-05 on electronic commerce to Law No. 04-02 specifying the rules applied to commercial practices is manifested.

It is also noted that the definition of the electronic contract was based on the manner in which it is concluded (remotely), and therefore there is no legal impediment to contracting remotely, but taking into account the exceptions mentioned in Article 3, Paragraph 2, of Law No. 18-05 regarding electronic commerce, its text is: "However, every transaction via electronic communications related to the following is prohibited:

- Gambling, betting, and lotteries, - Alcoholic beverages and tobacco, - Pharmaceutical products, - Products that infringe upon intellectual, industrial, or commercial property rights, - Every commodity or a service prohibited under applicable legislation - every good or service requires the preparation of an official contract."

The Definition of Electronic Contract According to Some Positive Legislation

Due to the growth of electronic contracting, as we mentioned earlier, many countries around the world have issued laws to regulate this type of contracting, the most important of which is French law.⁽⁸⁾We

mention some Arab laws, especially Jordanian law and Tunisian law.

As for French law, the Consumer Law defines the electronic contract as: "Every contract concluded between a professional and a consumer, within the framework of a system that regulates the sale or provision of a service remotely, without the physical and simultaneous presence of the professional and the consumer, by referring exclusively to one or more remote communication technologies until the contract is concluded." From this, the basic feature of the electronic contract appears, as it is carried out remotely and between two parties, one of them is the professional and the other is a consumer and this last term (consumer) is the most problematic⁽⁹⁾.

As for the Jordanian Electronic Transactions Law No. 15 of 2015¹⁰⁾, the electronic contract was not explicitly defined however, the temporary Electronic Transactions Law No. 85 of 2001 (repealed), provided a special definition of Article 2 of the electronic contract, paragraph 8, stipulates that: "An agreement concluded by electronic means, in whole or in part."¹¹⁾.

Examining Article 2 of the Jordanian Electronic Transactions Law No. 15 of 2015, which defines some words and phrases, including electronic document in paragraph 8, which states: "A document that is created, signed, and circulated electronically," it can be inferred that the definition is general and inclusive of any electronic document without specification, allowing electronic contracts to fall under this definition. The definition of electronic means is also provided in paragraph 3, stating: "The technology of using electrical, magnetic, optical, electromagnetic means or any similar method," clarifying the means through which electronic contracts are created and information and data related to their conclusion are exchanged. ⁽¹²⁾.

As for the Tunisian Electronic Exchanges and Commerce Law No. 83 of August 9, 2000⁽¹³⁾, this is regarded as one of the original statutes governing online shopping. Its second chapter defined electronic exchanges and electronic commerce rather than providing a definition for electronic contracts. It stated: "In the meaning of this law, it means: Electronic exchanges: exchanges carried out using electronic documents." E-commerce refers to business transactions carried out through electronic networks.

The Tunisian legislator therefore gave a definition of electronic exchanges and electronic commerce, but without giving a definition of the electronic contract. However, when he explicitly disclosed the legal provisions applied to electronic exchanges, by referring to the application of the written contract system, he also disclosed some of the features of this electronic contract. In terms of the expression of the will, its legal effect, validity and enforceability. This is clearly stated in Chapter One of the Electronic Exchanges and Commerce Law No. 83 of 2000, which reads: «Electronic contracts shall be governed by the written contract system in terms of expression of will, legal effect, validity and enforceability insofar as they are not inconsistent with the provisions of this Law ».

The sum of the above is that the legislation under study only involved the manner in which the contract is concluded (remotely), and the means adopted in expressing the will (electronic means), without the physical and simultaneous presence of the parties to the contract, and from this we propose a definition of the electronic contract as: «The agreement is concluded remotely using electronic means, without the physical and simultaneous presence of both parties, and with the intention of creating contractual obligations.»

The Characteristics of the Electronic Contract

The electronic contract is characterized by a number of characteristics ⁽¹⁴⁾, which are inferred from the legal documents governing it; we include a few of them here specifically

Completely Concluded Remotely

The parties to the contract - in the absence of electronic communication - have become accustomed to the presence of the contract council, by meeting in one place and time, so the contract is described as having been concluded between two persons present. However, this does not negate the complete conclusion of the contract between absentees, so that the contracting process takes place without the parties to the contract attending the contract council, in accordance with Article 67 of the Civil Law (15), which included special provisions that reflect through their content the place and time of the contract conclusion between absentees.

Given that contracting electronically is becoming the norm in most commercial transactions, as we witness frequently in our present time, the conclusion of the contract in this case is done remotely. This is interpreted according to what is stated in Article 2 of Law No. 18/05 related to electronic commerce, using the phrase "absence of actual and simultaneous presence of the parties", as well as the phrase "without personal and simultaneous presence" in Article 3, paragraph 22, of Executive Decree No. 13-378 dated November 9, 2013, which specifies the conditions and procedures related to informing the consumer.(16), Its text reads: "Any means without personal and simultaneous presence of the intermediary and the consumer can be used to conclude the contract between these two parties".

It is clear from the foregoing that the parties to the electronic contract are contracting remotely (17) with interaction between them taking place virtually, as each party is in a different location from the other party, and at a different time. Thanks to electronic communication technology, the offeror presents their offer to sell a product or provide a service, which the offeree examines with its details and contractual terms, relating specifically to the identity of the offeror, the place of the contract, delivery and payment, and other legally specified conditions.

The Use of Electronic Communication Technology

The use of electronic communication technology in the remote contracting process adds great specificity, as this technology serves as a dividing wall between concluding a contract electronically and concluding it traditionally. Electronic communications in the sense of Article 10, Paragraph 1, of Law No. 18-04 of May 10, 2018, establishes general rules relating to mail and electronic communications(18): «Every transmission, correspondence, or reception of signs, signals, writings, images, sounds, data, or information of whatever nature, via wires, optical fibers, or by an electromagnetic method.»

Given that electronic communications take place via the Internet, the most common network in the field of electronic transactions, its meaning was defined under Article 10, Paragraph 5, of the Law No. 18-04 sets out the general rules related to mail and electronic communications, which read: "A global information network consisting of a group of national, regional and private networks, connected to each other through a communication protocol IP works together to provide a unified interface to its users »Hence, the contract is concluded via the Internet by all means of electronic communication stipulated in Article 10, paragraph 1, mentioned above.

The Electronic Contract Is of A Commercial Nature

Electronic contracts are mostly commercial in nature (19), but that does not prevent it from sometimes being characterized by a mixed nature, being commercial for one of its parties, and civil for the other party. The determining factor is the status of the contracting parties as to whether they are merchants or not, and the purpose of concluding the contract, whether it is for financial gain or other purposes devoid of any financial gain)20).

The saying has been put forward that Article 2 of Law No. 18-05 concerning electronic commerce refers to defining the electronic contract as a contract within the meaning of Law No. 04-02 which specifies

the rules applied to commercial practices. Article 2, paragraph 4, made the subject of this contract the sale of goods or the provision of services. As electronic contracting has become the most widely used in the field of electronic commerce, the Algerian legislator did not overlook giving a definition of the latter as: "The activity by which an electronic supplier proposes or guarantees the provision of goods and services remotely to an electronic consumer, through electronic communications", which serves to give a commercial character to electronic contracts, given their parties (electronic supplier and electronic consumer) and their subject matter (sale of goods or provision of services).

The Electronic Contract is a Contract of Adhesion

The electronic contract is a contract of adhesion⁽²¹⁾Explicitly, the text of Article 2, Paragraph 4, of Law No. 04-02 specifies the rules applied to commercial practices, given that it was written in advance. From one of the parties to the agreement (electronic resource)By his own free will while the other party (the electronic consumer) submits to it without any real change occurring in it, including the electronic contract, even if it is not classified under any of the named contracts⁽²²⁾It is considered a contract of adhesion in which the buyer cannot negotiate the good or service.

The adaptation of an electronic contract as an adhesion contract is in fact unrelated to its place, which may be money or service performance, but it relates to the status of its parties and the particular circumstances in which it is concluded, combining a professional with a consumer.⁽²³⁾, where the latter enjoys legal protection ⁽²⁴as well as the fact that, like a traditional contract, it is based on trust, and that it requires a strong legal medium surrounded by numerous risk-averse guarantees, the latter may affect transactions concluded remotely.⁽²⁵⁾.

Methods of Expressing Will in the Electronic Contract

The conclusion of a contract requires the manifestation of offer and acceptance to contract and their complete correspondence, reflecting the presence of consent with the conclusion of the contract. In the absence of that, the contract cannot be concluded, and the same applies to electronic contracts, where the expression of will takes new forms, embodied in many modern electronic means, including email, websites, chat rooms, and others. Thus, people who are remotely located can conclude various contracts, expressing their will with matching offer and acceptance, with the particularity inherent in the means used.

The Electronic offer

We point out first that the electronic offer, as a compound noun, does not exist within texts of the law No. 18-05 about electronic commerce, but it is called the electronic commercial offer Which prompted us to ask the question whether this offer is governed by the same provisions applicable to the offer? Or does it retain its specificity stemming from its use of modern electronic means in expressing it? This is what we will try to answer by clarifying the conceptElectronic offer, And the extent of its binding force.

The Concept of Electronic Offer

The Definition of Electronic Offer

An offer in its traditional sense is an offer that a person makes to express - unequivocally - his will to conclude a specific contract. This contract is concluded as soon as acceptance is issued.⁽²⁶⁾, where It is required that it be specific in its content, and conclusive for the offeror in terms of his intention to enter into the contract if the person to whom the offer is directed accepts. Otherwise, the offer is not qualified as an offer, but rather it is a simple offer to enter into negotiation.⁽²⁷⁾, Thus, the addition of an electronic word for an offer would not undermine its original meaning, which is that it is intended according to traditional theories of obligations and contract law, since the issue is merely a description, as it is done

by electronic means.⁽²⁸⁾ Thus, the electronic offer was defined as: an expression of the will to contract remotely, which is done through an international network of communications by a audio-visual means and contains all the elements necessary for the conclusion of the contract, so that the addressee can accept the contract directly »⁽²⁹⁾.

An electronic offer, such as a traditional one, is of legal value only if it is brought to the attention of the addressee by a particular electronic means and is characterized by different classifications. Given the person to whom it is addressed, a special offer is addressed to certain persons or a general offer is addressed to the public, and the period of its validity is either a fixed-term offer or an indefinite offer.)⁽³⁰⁾.

With reference to law No. 18-05 on electronic commerce, we do not find that it has a specific definition of e-offer. However, by examining its article 10, which reads: " Each electronic trade transaction must be preceded by an electronic trade offer and must be documented under an electronic contract certified by the electronic consumer. " We conclude that a commercial offer constitutes an electronic offer and must be made in accordance with a set of specific conditions set forth in article 11, paragraph 1, and that the electronic supplier must present the electronic commercial offer in a visual, read and understood manner."

Therefore, there is no difference between the concept of offer in an electronic contract and that in a traditional contract, except for the way in which the offer is made⁽³¹⁾We have also provided that the information specified in article 11 above, paragraph 2, which required that the minimum number of information, such as the trade register or professional card number, should include the nature and characteristics of the price of the goods or services proposed by taking into account all the charges, should the goods or services be available, the duration of the offer, if necessary, shall be subject to conditions and time limits when necessary.⁽³²⁾, In fact, this information gives the person entering into electronic contracting a clear picture of the contractual terms, so that he is fully aware of the reality of the electronic presentation, as stated in article 12, paragraph 1, of Act No. 18-05 on electronic commerce, which reads: " A product or service shall be ordered ... to make contractual terms available to the electronic consumer, so that he or she shall be able to contract with full knowledge and awareness. "

The Characteristics of Electronic Offer

The electronic offer, in view of its specificity derived from the means used to express it, and in the light of the above-mentioned texts, has the advantage, in particular, of:

This specificity is relevant to how an electronic contract is concluded (teleconference).

It is done through the Internet, and it can only be effective if it is displayed on the website, thereby ensuring the physical existence of the offer.

It has the name of an electronic commercial offer, which is required to meet the full legal requirements mentioned above.

That it may take the form of electronic advertising with a view to promoting the sale of goods or services, whether directly or indirectly ⁽³³⁾, If the information specified in article 11 of Act No. 18-05 relating to electronic commerce is included, it is considered a commercial offer (electronic offer), otherwise it is merely an electronic advertisement that does not bind its owner.⁽³⁴⁾.

The Electronic Offer Content

The contractor faces many risks through electronic communication, given the electronic nature of the offer (commercial offer), which has given rise to some kind of special protection for the clients in this framework. The guarantee of such protection may be derived from the content of the information provided under article 11 of Act No. 18-05 on electronic commerce, which should include, but not be limited to, a variety of information, some of which are listed below:

-Information related to the electronic supplier's person, such as the phone number, the craftsman's professional card, the commercial registration number, physical and electronic addresses, etc.

-Information related to the good or service, its nature, characteristics, prices, availability, and delivery date....etc.

-Information related to the validity period of the commercial offer, if necessary, and the terms and deadlines for withdrawal, if necessary....etc.

-Information regarding payment methods and procedures, etc.

It is worth noting that this information is of great legal value, such that its failure will result in the responsibility of the electronic supplier, as he may be subject to being punished with a fine of 50,000 DZD to 500,000 DZD, and the matter may reach the point of suspending the effectiveness of the electronic commercial offer, so the matter will be directed to all payment platforms. Electronically for a period not exceeding six months, and this is done by order of the judicial authority before which the lawsuit was filed.³⁵).

The Identity and Capacity of the Offeror

It is difficult to establish the identity and eligibility of the contractor in electronic contracts compared to traditional contracts, where the contract board is a genuine board. Electronic contracts require that the contract be contracted remotely, without the actual and simultaneous presence of the contractors. It is noted that Act No. 18/05 on electronic commerce does not address the identification and eligibility of the offeree, despite their importance and their significant impact on the validity of legal acts.³⁶).

However, with reference to the relevant laws of Act No. 18-05 on electronic commerce, we refer in particular to Act No. 15-04 of 1 February 2015 on electronic signature and ratification.⁽³⁷⁾We find that he has introduced mechanisms to enhance confidence in electronic transactions, and these mechanisms are represented in electronic authentication certificates⁽³⁸⁾Which, given its importance, performs many functions, including identifying the parties to the transaction, whether they are natural or legal persons, and verifying their eligibility and authority to carry out legal actions, which would avoid the risks of dealing with a person who does not have the authority due to his lack of capacity or otherwise, Especially since the parties to the electronic transaction often do not know each other⁽³⁹⁾.

Accordingly, the electronic certification service provider, before granting the applicant an electronic certification certificate, is required to verify his/her identity and, where appropriate, his/her specific characteristics.⁴⁰ Such a procedure would in fact provide the necessary protection to remote operators, as well as ensure the integrity of electronic transactions, thereby enhancing confidence and confidence in them.

The Binding Force of the Electronic Offer

An electronic offer, like an offer in a traditional contract, is subject to the same provisions in terms of its binding force⁽⁴¹⁾,If it is accompanied by a term, the offeror is obligated to maintain his offer throughout the period of the term, but if it is not accompanied by a term, the offeror may withdraw from his offer as long as it is not accompanied by acceptance. The withdrawal shall be in the same manner as the offer unless the two parties agree otherwise, such as by means of an information letter or any other means. Another means, such as a fax or a regular letter. It is important that the withdrawal from the offer be proven before it is coupled with acceptance ⁽⁴²⁾.

The electronic offer shall be valid by displaying it on the website via the Internet to the public or sending it by e-mail or other means of electronic expression of will, including the essential elements necessary for the contract, and the person to whom it is directed has the right to accept it.However, this right

arises only from the time when the offeree knows the offer. (43).

It should be noted that the offer falls due to the expiration of the deadline if it is appointed and because of other circumstances, which makes it impossible for the other party to express its will to accept the. Another disadvantage is that it was rejected by the person to whom the offer was directed, so that it would be rejected by the latter if he voluntarily shut down the computer and chose or moved to a new location other than the offeror site or refused to send a message of rejection in the event of an e-mail contract.(44).

Examining the provisions of Law No. 18-05 relating to electronic commerce, we do not find it addressing the issue of the binding force of electronic offer (electronic commercial offer) expressly. However, Article 11 required that the electronic commercial offer include a set of information, such as the issue under discussion (the validity period of the offer, if necessary, and the conditions and deadlines for withdrawal, if necessary), from which we deduce two things:

Firstly: If a specific duration is set for an electronic commercial offer, the offeror cannot withdraw from their commitment to keep the offer valid for the entire duration, nor can they revoke the deadlines for acceptance and any conditions, if applicable. They also cannot retract their acceptance from their online offer during its validity period.

Secondly: The phrase "when necessary" indicates an exception, and the basic principle in electronic commercial offers without a specified validity period does not have any binding force. However, if there is an exception with a specified validity period, it will have binding force. The same rule applies to the terms and deadlines for withdrawing from an electronic commercial offer.

The Electronic Acceptance

Acceptance is an essential element in the formation of an electronic contract, to be issued in conformity with the electronic offer, and with the necessary use of electronic communication technology, which has also been given some specificity, detailing it through its concept statement and the extent of abandoning it.

The Concept of Electronic Acceptance

The Definition of Electronic Acceptance

Acceptance in its general sense: "It is the pure and simple acceptance of the offer. Specifically, it is an expression of the final intention, on the part of the recipient of the offer, to conclude the contract according to the conditions specified by the offeror»(45)It is also: «the offeree response to an offer on the part of the offeror »(46)Acceptance, then, is an expression of the will of the person to whom the offer is made to conclude the contract. Electronic acceptance does not deviate from acceptance in its general sense, except that it is done using electronic communication technology. It is «Acceptance takes place remotely".This electronic nature highlights its specificity, although it remains subject to the provisions applied to traditional acceptance.

The Conditions of Electronic Acceptance

If it is necessary to refer this matter to the texts of the Civil Code, recourse to the texts of Act No. 18-05 on electronic commerce is also necessary, whether it is explicit in its content or implicit, and from it the conditions for electronic acceptance can be summarized as follows:

First Condition: the Acceptance While the Offer Is Issued

Because the issuance of acceptance and approval is required, Article 64 of the Civil Law stipulated immediacy in the issuance of acceptance, taking into account the issue of time limit, stating: "If the approval is issued in the contract meeting to a present person without specifying the acceptance deadline, the offeror

is released from his approval if the acceptance is not issued immediately...". It also provided an exception to this, stating: "However, the contract is concluded, even if the acceptance is not issued immediately, if there is no indication that the offeror has withdrawn his approval between the approval and acceptance, and the acceptance was issued before the contract meeting is adjourned." Therefore, the approval remains valid until the contract meeting is adjourned, and the party to whom the offer is directed may accept the electronic commercial offer as long as the meeting is ongoing and the offeror has not withdrawn his approval or issued anything indicating his withdrawal between the approval and acceptance.

Second Condition: Matching the Acceptance to the Offer

Matching acceptance to the offer is a condition inspired by the concept of violating Article 66 of the Civil Law, which states: "An acceptance that alters the offer is not considered but a new offer." Therefore, the acceptance must be issued without making any changes or modifications to the information contained in the commercial offer, in order for the contract to be valid and to have legal effects.

It is noted that in the characterization of electronic contract as an adhesion contract, Article 2, paragraph 4 of Law No. 04-02 stipulates the rules applicable to commercial practices as follows: "Any agreement or contract aimed at selling a product or providing a service, previously released by one party to the agreement with the consent of the other party, so that the latter cannot make any real changes to it." This article came in its part (so that the latter cannot make any real changes to it) by virtue of and in accordance with Article 66 above, albeit in a different form, but the meaning is the same, which is the matching of acceptance with the offer, in addition to Article 70 of the civil law which stated the manner in which acceptance is made in contracts of consent, by stating: "Acceptance in a contract of consent occurs upon delivery of specified conditions set by the offeror and is not subject to discussion." (47).

Since what is meant by conformity is complete conformity in the subject matter⁽⁴⁸⁾ acceptance must be issued by agreeing on all essential issues included in the offer, as stated in Article 65 of the Civil Law, which reads: "If the parties agree on all essential issues in the contract and reserve detailed issues to be agreed upon later and do not stipulate that the contract will have no effect if they do not agree on them, the contract is considered concluded. If there is a dispute over issues that have not been agreed upon, the court shall decide on them in accordance with the nature of the transaction and the provisions of the law, custom, and justice. Therefore, agreeing on essential issues without the detailed ones does not prevent the contract from being concluded, and the court shall decide in case of a dispute.

Forms of Electronic Acceptance Expressions

In contracts concluded between two attendees, the expression of the contracting parties differs from that in electronic contracts, as it can be made explicitly or implicitly. However, in electronic contracts, acceptance is only made explicitly, and is never inferred from a negative or implicit position, at least in consumption contracts. The consumer's silence can never be interpreted as acceptance according to the principle "silence does not equal acceptance."⁽⁴⁹⁾, especially if information technology has its own way of expressing acceptance, where the explicit will dominates the inner will, and it affected the traditional concepts of acceptance in the general theory of obligations and contracts, which resulted in the difficulty of applying the traditional general rules to electronic acceptance, which is characterized by its specificity. stems from how it is expressed⁵⁰⁾, Among the forms of the expression of electronic acceptance, we cite, but are not limited to, the admission of simple clicks on the computer, the most common way of the electronic acceptance announcement.

And accordingly acceptance can be done with just a simple click, so that no problem arises, but for this behavior to be considered acceptance, it must be desirable, meaning that it expresses an inner will to commit, and it must also reflect a conscious will for the consequences associated with this

commitment.⁽⁵¹⁾In this case, the contracting process takes place according to a single click for acceptance, by clicking once on the previously prepared icon from the keyboard or mouse, or by touching to accept, which reflects reading the contents of the offer and accepting it, including the conclusion of the contract.⁽⁵²⁾.

Conditioning a simple click as acceptance can create a risk, especially for the consumer, who may claim that he clicked by mistake without expressing his will to comply. In this case, he can ignore the value of this click simply because it does not mean anything to him, so it will be difficult for him to argue against the error or fraud, because it is not the subject of the contract that is in doubt, but rather its existence ⁽⁵³⁾.

In order to avoid the risks raised by clicking by clicking once on the icon, some information programs used in the contractual process require that acceptance be confirmed by repeatedly clicking on the acceptance icon. The double click is done, meaning by clicking twice, and the first click is considered acceptance and the second is confirmation. Two separate clicks equal approval. The first click is not considered acceptance, so the phrase (Do you confirm your acceptance?) or (Are you sure of your choice?) is added to it. By clicking with two distinct clicks on two different buttons, acceptance occurs ⁽⁵⁴⁾.

The law No. 18-05 relating to electronic commerce, and pursuant to Article 12 thereof, paragraph 1⁽⁵⁵⁾it requires confirmation of acceptance, within the context of specifying the stages that an order of a product or service goes through, considering that order confirmation leads to the formation of the contract. In our view, order confirmation is confirmation of acceptance. As for paragraph 2, it requires acceptance to be explicit, stating that "the choice made by the electronic consumer must be clearly expressed." Paragraph 3 requires the electronic consumer to have full freedom in their choice, stating that "the fields prepared for completion by the electronic consumer must not contain any data aimed at guiding their choice."."

The Extent of Withdrawal from Electronic Acceptance

The commercial electronic offer includes various information, including (the duration of the offer, if necessary, and the terms and deadlines for withdrawal, if necessary) in accordance with Article 11 of Law No. 18-05 relating to electronic commerce. Therefore, it was necessary for the electronic supplier, considering that they are the one initiating the commercial electronic offer, to include in this offer the information regarding the terms and deadlines for withdrawal, raising questions about the extent of the electronic consumer's right to withdraw from electronic acceptance.

It is noted that Article 11 of the law No. 18-05 regarding electronic commerce, it was generally formulated, which indicates that it does not distinguish between the two parties to the contract. The electronic supplier can withdraw from the electronic commercial offer, and the electronic consumer can withdraw from his acceptance of this offer, provided that both are taken into account conditions and deadlines for withdrawal.

It is also noted that article 19, with its three paragraphs, of Law No. 18-09 of June 10, 2018 amending and supplementing Law No. 09-03 of February 25, 2009 relating to consumer protection⁽⁵⁶⁾, And It reads: «Opt-out is the consumer's right to withdraw from purchasing a product without justification. The consumer has the right to refrain from purchasing a product while respecting the terms of the contract and without paying additional expenses. The conditions and methods for exercising the right of withdrawal, as well as the deadlines and list of the products concerned, are determined by regulation»⁽⁵⁷⁾It has granted the consumer, whether traditionally or electronically (due to the generality of the consumer name), the right to withdraw (i.e. withdraw according to the phrase contained in this article) from purchasing a product without any reason, but in light of respecting the terms of the contract and without paying any additional expenses.

It is worth noting that by implementing the principle of binding force of the contract, it is not permissible

for the two parties to the contract to renounce it, and that by coupling the offer with acceptance, its implementation becomes binding on both parties, and is irrevocable.⁽⁵⁸⁾ Given that the consumer in electronic contracts cannot inspect the commodity and become familiar with the characteristics of the service before concluding the contract, he has the right to renounce it, and this means granting him the right to veto the contract after concluding it of his own volition, in violation of the rule “pacta sent servanda.”⁽⁵⁹⁾ This is what was stated in the aforementioned Article 19, referring to what relates to determining the conditions and methods for exercising the right of withdrawal, as well as the deadlines and list of the products concerned, to the regulation, which in turn was delayed in issuance, which resulted in a stark legal vacuum.

Among the legal texts that enshrined the right to withdraw, we mention in particular, Executive Decree No. 15-114 of May 12, 2015 relating to the conditions and modalities of offers in the field of consumer loans⁽⁶⁰⁾, Article 11, paragraph 2, which reads: «However, the buyer has a withdrawal period of eight (8) working days, calculated from the date of signing the contract, in accordance with the applicable legislation and regulation.», And as an exception, when it comes to selling the product at the home level, the withdrawal period is reduced to seven (7) days in accordance with Article 14 of the same Executive Decree No. 15-114, which reads: «When the product is sold at home, the turnaround period is seven (7) working days, regardless of the date of delivery or presentation of the item.», provided that the effect of the sale shall not take effect unless the requirements of Article 12, Paragraph 1 are met, From the same Executive Decree No. 15-114, which reads: «The effects of the sales contract do not apply if: - The borrower exercises his right to withdraw within the deadlines specified for him».

Conclusion

This study concluded that Law No. 18-05 related to electronic commerce represents a qualitative leap in the field of contractual transactions, as it adopts electronic communication technology for contracting in a way that embodies the absence of personal and simultaneous presence of the contracting parties, where each party is in a different location, exchanging offers and acceptances remotely. This generally takes into account the provisions of expressing will as stipulated in civil law, especially the provisions of Law No. 18-05 related to electronic commerce.

The electronic contract is nothing but a digital version of the traditional contract, yet it retains some specific characteristics derived from electronic communication technology as a modern technological tool used by the parties to express their will in remote contracting. This study resulted in a set of highly important findings and suggestions.

Results

1) Regarding Electronic Acceptance

1. Electronic acceptance is a remote acceptance, taking the name of electronic commercial offer, which requires considering its specificity arising from the means used to express it.
2. Electronic acceptance does not change the essence of acceptance just by describing it as electronic, as it is required to be specific in its content, and binding for the offeror in terms of intention to contract if accepted by the offeree.
3. The failure of electronic acceptance to meet the conditions set forth under the law No. 18-05 related to e-commerce may expose the electronic supplier to liability.
4. Electronic acceptance may take the form of electronic advertisement for the purpose of promoting the sale of goods or services, whether directly or indirectly, and in accordance with the conditions

prescribed by law.

5. Electronic acceptance has binding force when its duration is explicitly included in the offer submitted by the offeror.
6. Electronic acceptance is subject to revocation if the offeror reserves the right to revoke it, by clearly including its terms and deadlines in.
7. -The issue of determining the conditions and methods for exercising the right of withdrawal has been referred to the regulation that has not yet been issued, which has created a legal vacuum.

2) Regarding Electronic Acceptance

8. Electronic acceptance is acceptance done remotely, where it is required to conform to the electronic offer in all substantive matters, while detailed issues are decided by the judiciary in case of dispute.
9. The electronic nature of acceptance does not prevent it from being subject to the provisions applicable to traditional acceptance, but considering its specificity arising from the means used to express it.
10. Acceptance by a simple click on the computer is the most common form of electronic acceptance announcement.
11. Electronic acceptance is only done in an explicit form, and should never be inferred from a negative or implicit stance, and the consumer's silence cannot be interpreted as acceptance according to the principle "silence does not equal acceptance".
12. Confirmation of electronic acceptance is necessary for the formation of the contract.
13. Withdrawing from electronic acceptance (canceling the purchase of a good or service) is a right for the electronic consumer, who can exercise it even without a reason, but while respecting the contract terms and without paying additional fees.
14. The issue of determining the conditions and procedures for exercising the right to withdraw, as well as deadlines and the list of products concerned, for regulation without timely issuance, leads to a legal vacuum.
15. Granting the electronic consumer the right to withdraw from electronic acceptance benefits them by granting the right to cancel the contract after its conclusion with their sole will, contrary to the legal principle "pacta sent servanda".

Suggestions

16. In light of the results we have reached, we propose the following:
17. Explicitly specifying the provisions governing electronic expression of acceptance and approval under Law No. 18-05 on electronic commerce or clearly referring to the application of provisions of civil law, while taking into account the specificity of electronic expression of will, both in acceptance and approval.
18. Accelerating the implementation of the referral content specifying the conditions and procedures for exercising the right of withdrawal, whether used by the offeror or the offeree, as well as deadlines and the list of regulated products, by issuing regulatory text to fill the legal gap.
19. Training and forming specialized judges to handle disputes arising from distance contracts of electronic nature, and addressing them by finding solutions capable of protecting the electronic consumer, as electronic expression of may lead to disputes in various aspects, especially due to the multiple means of electronic expression.

¹¹⁾ Law No. 18/05 dated May 10, 2018 concerning electronic commerce, Official Bulletin of the People's Democratic Republic of Algeria, Issue No. 28, dated May 16, 2018.

- 2) Law No. 05-10 dated June 20, 2005 amends and completes Order No. 75-58 concerning the Civil Code, the Official Bulletin of the People's Democratic Republic of Algeria, issue number 44, issued on June 26, 2005.
- 3) See Article 323 bis of Law No. 05-10. It reads: «Proof in writing results from a sequence of letters, descriptions, numbers, or any signs or symbols with an understandable meaning, whatever the means they contain, as well as the methods of sending them.»
- 4) See Article 60 of Order No. 75-58 dated September 26, 1975, which includes the amended and supplemented Civil Code, the Official Bulletin of the People's Democratic Republic of Algeria, No. 78, issued on September 30, 1975..
- 5) See Article 68, paragraph 2, of the same Order No. 75-58, which reads: «Silence in response is considered acceptance if the offer is related to previous dealings between the contracting parties or if the offer is for the benefit of the person to whom it was addressed.»
- 6) Some have defined it as: "The contract in which offer and acceptance is exchanged through an international communication network using electronic data interchange, with the intention of creating contractual obligations." See: Khaled Mamdouh Ibrahim, Conclusion of the Electronic Contract (Comparative Study), 2nd edition, Dar Al-Fikr Al-Jamei, Alexandria, Egypt, 2011, p. 74.
- 7) Law No. 04-02 of June 23, 2004 determines the rules applicable to commercial practices, amended and supplemented, Official Bulletin of the Algerian Republic, number 41, dated in June 27, 2004.
- 8) The distance contract is defined as: "Any contract concluded between a professional and a consumer, within the framework of an organized system of distance selling or provision of services, without the simultaneous physical presence of the professional and the consumer, by the exclusive use of one or more distance communication techniques until the conclusion of the contract." Article L221-1 of the Consumer Code Amended by Ordinance No. 2021-1734 of December 22, 2021 - art.6. See: legifrance.gouv.fr. Accessed: 08-08-2023 at 23.00.
- 9) The notion of the consumer is more problematic than that of the professional and French law does not provide any definition of it, whereas Directive No. 97/7/EC of 20 May 1997 concerning the protection of consumers in distance contracts defines it as a natural person who acts for purposes that do not fall within his professional activity. See: Yousef SHANDI, The formation of the distance contract by electronic means, Doctorate in private law, University Robert Schuman, Strasbourg III, Faculty of Law, Political Science and Management, 28 June 2005, p10..
- 10) Law No. 15 of the year 2015 concerning electronic transactions, Official Bulletin of the Hashemite Kingdom of Jordan, No. 2650, issued on 19 May 2015.
- 11) Law No. 85 of 2001 concerning temporary electronic transactions, Official Bulletin of the Hashemite Kingdom of Jordan, No. 4524, issued on December 3, 2001, repealed by Article 28 of the Jordanian Electronic Transactions Law No. 15 of 2015..
- 12) Ahmed Abdel Salam, Proof of the Electronic Contract, Hamat Al-Haq Law Firm Publications. See the website:
<https://jordan-lawyer.com> Date of visit: August 25, 2023 hour: the visit: 6.30.
- 13) Law No. 83 of the year 2000 dated August 9, 2000, concerning exchanges and electronic commerce, published in the Official Gazette of the Tunisian Republic, issue 64, issued on August 11, 2000.
- 14) For more details about the characteristics of the electronic contract, see: Muhammad Dhaar Al-Otaibi, The legal system of electronic contracts (a comparative study between Kuwait and Jordanian

- legislation), Master's thesis in private law, Middle East University, Faculty of Law, Department of Private Law, 2012-2013, pp. 49-50.
- 15) It reads as follows:«A contract between two absent persons is considered to have been concluded at the place and time in which the offeror knows of the acceptance, unless there is an agreement or legal text stipulating otherwise. It is assumed that the offeror knew of the acceptance at the place and time in which the acceptance reached him».
- 16) Executive Decree No. 13-378 of November 9, 2013 sets the conditions and modalities related to consumer information Official Bulletin of the Algerian Republic, No04, dated in November 18, 2013.
- 17) That they are absent in terms of place, and present in terms of time, thanks to the property of interaction between the contracting parties. For more details, see: Muhammad Dhaar Al-Otaibi, *opcit*, p. 49.
- 18) Law No. 18-04 of May 10, 2018 sets out the general rules related to mail and electronic communications Official Bulletin of the Algerian Republic, No27, dated 13 May 2018.
- 19) So it's called electronic commercial contracts, where sales contracts take over most of all of these contracts, with the result that they are also of a consumer nature, because the parties are mostly traders, professionals and consumers. See: Khaled Mamdouh Ibrahim, *opcit*, p. 76.
- 20) Ahmed Abdel Salam, *op. cit.*
- 21) The adhesion contract is «A contract in which one party dictates its terms to the second party, who has no choice but to reject or accept the contract. This type of contract is characterized by the control of one of the contracting parties over the other, imposing its conditions on him and not accepting them to be discussed. This control is usually due to an actual or legal monopoly of goods or services by the powerful contractor». See: Ali Filali, *Obligations (General Theory of Contract)*, second edition, Movem Publishing and Distribution, Algeria, 2005, p. 60..
- 22) Some consider the electronic contract as a consensual contract among the named contracts. It is consensual because it is concluded by the exchange of offer and acceptance, and named because it has been given a specific designation and independent legal texts that regulate it. For more details, see. For more details see: Ahmed Abdel Salam, *op. cit.*
- 23) Voir: Yousef SHANDI, *op.cit*, p.9.
- 24) Law No. 18-05 concerning electronic commerce did not explicitly provide guarantees for the protection of the electronic consumer. However, in the context of its provisions on crimes and penalties, it subjected the electronic supplier, under Article 35, to the legislation and regulation applicable to commercial activities and consumer protection, reflecting the electronic consumer's benefit from the protection guarantees provided for in this referral.
- 25) Malika Ibtiswan Ould Taleb, The specificity of the electronic contract in the technology and communication system and the extent of its protection for the electronic consumer, *Journal of Legal Studies*, Volume 09, Issue 02, June 2023, p. 597.
- 26) Ali Filali, *opcit*, p. 88.
- 27) Voir: Yousef SHANDI, *op.cit*, pp26-27.
- 28) Khaled Mamdouh Ibrahim, *op. cit*, p. 317.
- 29) *Ibid.*, p. 318.

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- ³⁰⁾for more details see:Mustafa Malik, *Concluding a Contract Electronically (A Comparative Study)*, pp. 12-13. website:<http://www.sajplus.com>Access date: 08-17-2023, time: 5.00.
- ³¹⁾ Law No. 15 of 2015 pertains to Jordanian electronic transactions. According to Article 9, it recognizes data messages as a legally acceptable means for expressing consent and acceptance, with detailed provisions in Articles 10 to 14. On the other hand, Law No. 83 of 2000 concerning electronic exchanges and trade in Tunisia refers to the application of written contract system in terms of expressing will, legal effect, validity, and enforceability.
- ³²⁾See Article 11 of Law No. 18-05 regarding electronic commerce.
- ³³⁾ Electronic advertising according to Article 6, paragraph 6, of Law No. 18-05 About E-Commerce: «Every advertisement that aims, directly or indirectly, to promote the sale of goods or services through electronic communications».
- ³⁴⁾Some have drawn a distinction between electronic offer (commercial offer) and electronic advertising, relying on two criteria: the technical criterion and the objective criterion. For more details see:Mustafa Malik, *opcit*, pp. 12-13.
- ³⁵⁾See Article 39 of Law No. 18-05 related to electronic commerce.
- ³⁶⁾Mustafa Malik, *opcit*, p. 22.
- ³⁷⁾ Law No. 15-04 of February 1, 2015 relating to electronic signature and authentication, Official Bulletin of the Algerian Republic, the number 06, issued in February 10, 2015.
- ³⁸⁾ It is in two types: the electronic attestation certificate provided for in Article 2, paragraph 7, of Law No. 15-04 concerning electronic signature and attestation, which is: (an electronic document proving the link between the data verifying the electronic signature and the signatory), and the described electronic attestation certificate provided for in Article 15 of the same law, which is not defined but stated as (an electronic attestation certificate that meets the following requirements).
- ³⁹⁾Al-Zahra Barra, Jamila Hamida, *Electronic Authentication Certificate as a Mechanism for Enhancing Trust in Electronic Transactions*, *Journal of Legal and Political Sciences*, Volume 10, Issue 01, April 2019, p. 896.
- ⁴⁰⁾See Article 44, paragraph 2 of Law No. 15-04 relates to electronic signature and authentication.
- ⁴¹⁾See Articles 63 and 64 of Order No. 75-58 including civil law.
- ⁴²⁾Lama Abdullah Sadiq Salhab, *Electronic Contract Council*, Master of Laws, An-Najah National University, College of Graduate Studies, Nablus, Palestine, 2008, p. 82.
- ⁴³⁾Khaled Mamdouh Ibrahim, *opcit*, p. 317.
- ⁴⁴⁾*Ibid.*, p. 318.
- ⁴⁵⁾«Acceptance is the pure and simple approval of the offer. It is, more precisely, the expression of the recipient's definitive intention to conclude the contract on the terms determined by the offeror. see: Yousef SHANDI, *op.cit*, p142.
- ⁴⁶⁾Ali Filali, *opcit*, p. 96.
- ⁴⁷⁾What happens on the web network, where the displayed offer cannot be edited either by increase or decrease, because the positive only needs to press the approval or rejection icon without pressing it and exiting the site. See: For Abdullah Sadiq Salhab, *opcit*, p. 99.
- ⁴⁸⁾What is meant by conformity is not complete conformity in formulas and words, but rather conformity in subject matter. see :Lama Abdullah Sadiq Salhab, *opcit*, p. 98.
- ⁴⁹⁾Yousef SHANDI, *op.cit*, p144.

- ⁵⁰⁾MalikaIbtivanOuldTaleb, op. cit., p. 601.
- ⁵¹⁾Yousef SHANDI, op.cit, p146.
- ⁵²⁾Salman Kamel Salman Al-Jubouri, Ahmed Abdel-Amir Kazem Jibreen, Asmaa Mohsen Abdel-Ali Al-Kalabi, The Theory of Confirming Acceptance in the Electronic Contract, Proceedings of the First International Scientific Conference, The Information Revolution and its Repercussions on Academic Studies and Social Reality, Republic of Iraq, Imam Al-Kadhim (peace be upon him) University College, March 18-19, 2019,p. 261.
- ⁵³⁾Yousef SHANDI, op.cit, p147.
- ⁵⁴⁾Salman Kamel Salman Al-Jubouri, Ahmed Abdel-Amir Kazem Jibreen, Asma Mohsen Abdel Ali Al-Kalabi, opcit,Pp. 262-263.
- ⁵⁵⁾ And its result is that an order for a product or service goes through three stages: the first: placing contractual terms within reach of the electronic consumer, enabling him to contract with full knowledge and awareness, and the second: verifying the details of the order by the electronic consumer, especially regarding the nature of the products or services required, the total and unit price, and the quantities required in order to enable him to modify the order, cancel it, or correct possible errors, and the third: confirming the order, which leads to the formation of the contract.
- ⁵⁶⁾Law No. 18-09 of June 10, 2018 amends and supplements Law No. 09-03 of February 25, 2009 relating to consumer protection Official Bulletin of the Algerian Republic, the number35, issued inJune 13, 2018.
- ⁵⁷⁾ The right to withdraw provided for under Article 19 mentioned above differs from the right to return the product to the electronic supplier provided for under Articles 22 and 23 of Law No. 18-05 on electronic commerce. For more details, see: Malika Jamea, the right of withdrawal from the contract as a mechanism to protect the electronic consumer, Alwihat Journal of Research and Studies, Volume 13, Issue 01, 2020, p. 456.
- ⁵⁸⁾See article 106, paragraph 1, of the Civil Code.
- ⁵⁹⁾Khaled Mamdouh Ibrahim, opcit,p. 346.
- ⁶⁰⁾Executive Decree No. 15-114, dated May 12, 2015, relating to the conditions and modalities of offers in the field of consumer loans Official Bulletin of the Algerian Republic, the number24, issued inMay 13, 2015.