



Execution of the Electronic Contract in Algerian Legislation

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Abstract:

The execution of electronic commerce contracts concluded via the Internet differs from the execution of contracts concluded by traditional means due to the difficulties arising from the specific nature that characterizes these contracts. The legislation has regulated the rights and obligations of the contracting parties and did not leave them to the will of the parties. This subject is of great importance at present since electronic commerce is moving towards invading markets, in addition to the ambiguity surrounding electronic payment methods as well as the issue of execution and the penalties resulting from non-performance, especially after the issuance of Electronic Commerce Law 18-05, which organized a set of electronic transactions.

Keywords: *Electronic commerce contracts – Internet – Electronic payment – Contract execution – Electronic transactions.*

Exécution du contrat électronique dans la législation algérienne

Résumé :

L'exécution des contrats de commerce électronique conclus via Internet diffère de celle des contrats conclus par des moyens traditionnels en raison des difficultés liées à la nature spécifique qui caractérise ces contrats. La législation a réglementé les droits et obligations des parties contractantes et ne les a pas laissés à la discrétion des parties. Ce sujet revêt actuellement une grande importance, car le commerce électronique est en

passé d'envahir les marchés, sans compter l'ambiguïté qui entoure les méthodes de paiement électronique ainsi que la question de l'exécution et des sanctions résultant de l'inexécution, en particulier après la promulgation de la loi 18-05 sur le commerce électronique, qui a organisé un ensemble de transactions électroniques.

Mots clés : *Contrats de commerce électronique – Internet – Paiement électronique – Exécution des contrats – Transactions électroniques.*



Introduction:

The electronic contract, like other contracts, imposes obligations on each contracting party vis-à-vis the other party. However, the execution of electronic commerce contracts concluded via the Internet differs from traditional contracts, since electronic contracts raise certain difficulties arising from the specific nature of this type of contract, as they are concluded remotely through the use of modern means of communication, and thus their execution also takes place remotely using the same means.

However, when referring to Law 18/05 related to electronic commerce, as well as the legislative regulations specific to this type of contract, we find that they did not address in detail the aspects related to the execution of electronic contracts, despite the importance of this stage in the construction of the contract. The execution stage is the most affected by the nature of electronic commerce contracts.

As soon as the offer coincides with the acceptance, reciprocal obligations arise on both parties to the electronic contract. Thus, the execution stage of the contract is a fundamental stage, since the contract is concluded only for the purpose of fulfilling these obligations. Electronic contracts are divided, in terms of their execution, into two types: a type that is concluded via the Internet but executed outside it, related to contracts whose subject is tangible material things such as electrical appliances; and a second type concerning contracts that are concluded and executed via the Internet itself, as long as the nature of the service or commodity subject of the contract allows that, such as the

purchase of computer software. The principle is that the contract is executed voluntarily; however, this does not always take place in full or in part, for some reason. In that case, the contracting party has the right to invoke the binding force of the contract to compel the other party to fulfill his obligation. This requires the intervention of public authorities to force the contracting party to perform, as is the case with other contracts in accordance with the legal principles related to compulsory execution. Thus, the execution of the contract obliges both contracting parties to fulfill their obligations. In light of these considerations, we raise the following problematic question: **How can electronic commerce contracts be executed, and what is the role of Electronic Commerce Law 18-05 in filling the gap concerning this issue?**

In this research, we attempt to study these obligations, represented in the obligations of the electronic supplier as well as the obligations of the client or electronic consumer, through two axes:

1. Obligations of the Electronic Supplier

The Algerian legislator stipulated the obligations of the electronic supplier within Chapter Five of Law 18/05 related to electronic commerce, entitled *Duties of the Electronic Supplier*, which were detailed in Articles 18 to 26 of this law, wherein a set of obligations were included. We focus here on the most important of them, namely the supplier's obligation to deliver the goods and his obligation to provide a service.



1.1. The Electronic Supplier's Obligation to Deliver the Goods

The delivery process is of great importance in the contract, including the electronic contract, as it is the obligation upon which many legal effects depend. The buyer cannot fully benefit from the sold item without the completion of the delivery process. The buyer's purpose in purchasing, which is possession of the sold item, is achieved through delivery. Delivery also establishes the stability of ownership of things. Article 367/1 of the Algerian Civil Code stipulates: "Delivery takes place by placing the sold item at the buyer's disposal so that he may possess it and benefit from it without obstacle, even if he did not physically take delivery of it, provided that the seller has informed him that he is ready to deliver it. Delivery shall be carried out in the manner that corresponds to the nature of the sold item."

Through this text, it becomes clear that delivery requires placing the sold item at the buyer's disposal, and delivery does not have to be accompanied by possession, since delivery is linked to enabling the buyer to benefit from the sold item without any hindrance. The seller must notify the buyer of placing the sold item at his disposal, without a specific form required for such notification; for example, it may be by email. The burden of proving this notification lies with the seller.

To detail further the supplier's obligation to deliver the goods, we address the subject matter of the delivery obligation, then the method of delivery, and finally the sanction for breach of the delivery obligation.

1.1.1. The Subject Matter of the Delivery Obligation in Electronic Commerce Contracts

Article 364 of the Algerian Civil Code stipulates that: “The seller is obliged to deliver the sold thing to the buyer in the condition it was in at the time of the sale.” According to this article, the subject matter of the delivery obligation is the sold thing to be delivered. If a licensing contract for the use of computer software is concluded, or the purchase of programs specific to the client such as encryption or decryption software, then the subject of the contract is the program specified during contracting.

The sold item in electronic contracts may be a tangible material commodity such as equipment and electrical appliances, or it may be an intangible item with no physical existence, such as computer software, databases, or musical pieces, etc. Accessories of the sold item are also considered part of the delivery, which are necessary for its permanent use, such as explanatory documents showing how to use the device, equipment, and maintenance methods, which are among the most important accessories in the electronic contract.

1.1.2. The Method of Delivery in Electronic Commerce Contracts

From the text of Article 367 of the Algerian Civil Code mentioned earlier, it appears that delivery may be actual (legal) delivery or constructive delivery.

A/ Actual (Legal) Delivery

This delivery is realized according to the first paragraph of Article 367 of the Algerian Civil Code by placing the sold item at the buyer’s disposal in a manner consistent with its



nature and by informing the buyer that the sold item is at his disposal. The paragraph stipulates: “Delivery takes place by placing the sold item at the buyer’s disposal so that he may possess it and benefit from it without obstacle, even if he did not physically take delivery of it, provided that the seller has informed him that he is ready to deliver it. Delivery shall be carried out in the manner that corresponds to the nature of the sold item.”

This knowledge must be derived from the seller in order to avoid any ambiguity about the buyer’s actual knowledge. The notification does not require a specific form, which has been facilitated by modern means of communication in a way that serves and activates contracting.

B/ Constructive Delivery

This was referred to in the second paragraph of Article 367 of the Algerian Civil Code, which states: “Delivery may also be effected merely by the parties’ agreement to the sale if the sold item was already in the buyer’s possession before the sale, or if the seller continued to possess the sold item after the sale for another reason unrelated to ownership.” This type of delivery takes two forms:

- *First Form:* The sold item is in the buyer’s possession before the sale, such as when the sold item is pledged with him as a possessory pledge, or when the buyer is borrowing or safekeeping the item, and then the sale transaction takes place. Here, actual delivery does not occur, since the item is already in the buyer’s possession, and it suffices for the seller and buyer to agree on keeping the item in the buyer’s possession.

- *Second Form:* The seller retains possession of the sold item for a reason unrelated to ownership. The aim of this is to avoid the lengthy procedures of delivering the item to the buyer and then returning it to the seller, such as in the case where the seller is a lessee, borrower, or depository of the sold item. Here, the seller retains possession for a reason unrelated to ownership.

Delivery may also take place using various means determined by the will of the contracting parties. If the method of delivery is not specified, then the nature of the subject matter and custom shall determine the method of delivery.

1.1.3. Sanction for Breach of Delivery in Electronic Commerce Contracts

In case the seller breaches his obligation to deliver the sold item in electronic contracts, this occurs, as in the general rules, either by refusing to deliver it or by delaying delivery beyond the agreed date, or if the item is delivered in a condition different from that at the time of contracting. In such cases, the buyer must give formal notice to the seller. If the seller still fails to perform after the notice, the buyer has the choice between demanding specific performance or termination with damages in both cases if necessary. These two cases are detailed as follows:

A/ Demand for Specific Performance with Damages

The buyer may, in case of the seller's breach of his obligation to deliver the sold item, demand specific performance whenever possible, with the right to claim



damages if necessary. Specific performance shall be carried out in a manner consistent with the nature of the contract.

- If the sold item is individually specified, the buyer may demand compulsory delivery from the seller.
- If the sold item is generic, the buyer may obtain a similar item from the market at the seller's expense, provided he obtains the court's permission before purchase.

B/ Demand for Termination with Damages

If the seller does not fulfill his obligation to deliver the sold item, the buyer may request the court to terminate the contract, and the judge may grant this if it is confirmed that there are circumstances justifying the seller's failure. The buyer may also claim damages from the seller in addition to requesting termination, and the court has discretionary power in this matter.

1.2. The Electronic Supplier's Obligation to Provide a Service

The subject matter of electronic contracts is not limited to goods and merchandise only, but also extends to services, which are intangible items. The service that is the subject of the contract must be defined or capable of being defined, and this determination takes place in the contract or in any additional document. The scope and content of the service is understood from the nature of the contract itself, such as subscription contracts in information banks, and consultations of various types, whether legal or economic. In this case, performance takes place via the Internet, where the other contracting party receives it on his electronic program

on his website on the Internet. Performance in this case is carried out completely through electronic means, such as resorting to a specialist to design a website or computer software. Here, delivery takes place online by enabling the user to download, upload, or copy the information directly from the site.

Such contracts require cooperation between the supplier and the customer in order to exchange information, receive instructions, and obtain the necessary technical advice that enables the customer to get the best services, such as the case of broadcasting training courses through the Internet to technically prepare the customer and ready him to receive this service. The supplier's obligation to provide a service is considered an obligation to achieve a result unless it appears from the nature of the obligation and the terms of the contract that it is an obligation of due diligence. Accordingly, the supplier cannot be released from liability except by proving a foreign cause represented in force majeure or the fault of the injured party.

From the foregoing, it can be said that the execution of the electronic contract via the Internet is possible whenever the nature of the service or the goods allows it. Execution of the contract may be carried out entirely online, as in the case of resorting to one of the two categories to design a website, or it may be carried out partially on the Internet, for example in the case of medical or economic consultations. In this case, performance takes place via the Internet, but sometimes it may require a practical study, as in the case of carrying out an engineering design, which requires visiting the site to conduct some inspections. The electronic contract may also be executed entirely outside the Internet if the subject of the contract is a tangible item.



2. Chapter Two: The Client's Obligation to Pay Electronically and His Right of Withdrawal

The execution of an electronic sales contract creates reciprocal obligations on the contracting parties. The seller is obliged to provide a good or service in exchange for payment of the price, in addition to the delivery of the sold item. In this study, we focus on the obligation to pay the price, or what is called electronic payment, as the most important obligation imposed on the buyer. The issue of payment requires detailed discussion, since the execution of the electronic contract raises the possibility of non-performance given that the contract was concluded remotely, which requires the buyer to exercise his right of withdrawal if he is not satisfied with the performance of the contract, whether related to a good or a service.

In this study, we will address the buyer's obligation to pay the price (electronic payment), then discuss the application of the buyer's right of withdrawal according to the legal texts.

2.1. The Buyer's Obligation of Electronic Payment

This obligation corresponds to the supplier's obligation to deliver a good or provide a service, where the client or customer pays the price in return. It is the buyer's primary obligation, in addition to other obligations such as the obligation of receipt. It is considered one of the most significant obligations imposed on the buyer. The Algerian legislator, under Electronic Commerce Law 18/05, required the electronic supplier to mention the price of the good in the electronic offer.

In addition to the commonly used means of payment such as cash and checks, other modern means have emerged for settling financial transactions electronically in line with the requirements of electronic commerce. The most important of these means are credit cards, electronic checks, and electronic money.

We will focus below on the obligation of electronic payment by discussing the definition of electronic payment and its methods, then addressing its characteristics.

2.1.1. Definition of Electronic Payment and Its Methods:

Electronic payment is an innovative means of settling financial transactions electronically by paying the price of the contracted good or service through electronic means over the Internet, where paper documents disappear and are replaced by these modern means that are compatible with the nature of electronic commerce and the requirements of speed. Thus, traditional means have been replaced with electronic means, leading to the flourishing of electronic payment operations in exchange for the gradual decline of money and traditional payment methods.

However, many electronic commercial transactions are still paid for in non-electronic ways, even if the contract was concluded electronically. This is due to the weakness of the electronic payment system in Algeria and the lack of trust by contracting parties in these means. Nevertheless, it is not possible to speak of electronic commerce without these transactions being executed electronically, especially the payment process, since electronic payment is considered one of the most important features of electronic commerce and the primary incentive for parties to use this method of contracting due to the ease and speed it provides.



The Algerian legislator defined the electronic means of payment in Article 6, paragraph 5, of Law 18/05, which states: *“The electronic means of payment is any payment method authorized in accordance with the applicable legislation that enables its holder to make payment in proximity or remotely, via an electronic system.”* It was also defined in Article 69 of Ordinance 03/11 on money and credit as: *“Payment means are all tools that enable any person to transfer funds regardless of the instrument or technical method used.”*

Payment here is carried out through a card with a digital memory belonging to the financial institution or bank that supervises the exchange process.

Furthermore, the amendment of the Algerian Commercial Code under Law No. 05/02 included, in its third chapter, reference to withdrawal and payment cards in Articles 543 bis 23 and 543 bis 24.

The importance of electronic payment appears in the fact that its means, especially credit cards, occupy a very significant place in electronic commercial transactions, being among the most compatible and suitable means for the electronic environment in settling the value of the sold item or in exchange for the service provided by the electronic supplier.

Electronic Commerce Law 18/05 addressed electronic payment methods in Article 27, which covered all remote payment methods, through dedicated cross-border wireless platforms. In this context, electronic payment methods can be divided into:

A- Electronic Payment Methods Similar to Traditional Methods:

These are methods similar to their traditional counterparts but applied electronically, such as the electronic check, credit cards, and electronic bank transfer cards, etc. These means are used through special platforms of banks or specialized financial institutions, connected to local or even international wireless communication networks.

B- Electronic Money Wallets:

These are electronic funds that are automatically withdrawn from the buyer's electronic wallets and transferred to the seller without the need for the traditional bank transfer process carried out by the bank, but directly from electronic wallets. This method is considered the newest means used by developed countries and economies in commercial transactions. However, it requires a strong banking system that can handle the banking risks associated with the execution process.

2.1.2. Characteristics of Electronic Payment:

The widespread use of electronic contracts concluded through modern means of communication contributed to the shift from paper-based transactions to dealing in electronic money through the emergence of electronic payment, which is carried out remotely using one of the information tools associated with remote communication technology.

Electronic payment is characterized by a number of features that have given it an important place in the field of electronic commerce. The most important of these characteristics are the following:



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- Electronic payment is characterized by its international nature, as it takes place over the information network where the physical presence of the contracting parties is not required but rather takes place remotely via the Internet. The payment method here responds to such international transactions since it takes place remotely, making it an acceptable method for all countries used to settle electronic transactions carried out between users from all over the world through an open digital space.
- Electronic money is used in electronic payment, which is money that is transferred and used electronically, unlike ordinary money, and this money may be pre-allocated to perform this function. It represents a monetary value loaded on a card with a digital memory.
- Electronic payment is accompanied by technical security means that identify the debtor making the payment and the creditor benefiting from it, since electronic payment takes place through a wide information space filled with hacking and intrusion, where confidential information and data relating to the electronic consumer may be lost during the payment process. For this reason, the payment process often takes place in a stable manner through the use of a program prepared for this purpose.
- Irrevocability of payment, since most payment methods are not revocable, as is the case with payment by check or cash. Dealing through the virtual world shows that this feature seems more suitable in electronic transactions.

2.2. The buyer's right of withdrawal (revocation) in electronic contracting

The right of withdrawal in contracts was established to protect the weaker party in the contract, namely the buyer, i.e., the consumer, despite the fact that this right conflicts with the principle of the binding force of the contract. The right of withdrawal was not created by Electronic Commerce Law 18/05, but was provided for in Consumer Protection Law. There is no difference whether the consumer is ordinary or electronic, as the buyer is granted the right of withdrawal in all contracts concluded by means of modern communication.

We will discuss below the definition of the right of withdrawal, then explain its characteristics.

2.2.1. Definition of the right of withdrawal:

The right of withdrawal is considered one of the most important legal tools at the stage of contract performance. Several definitions of it have been given, as it was defined as a legal privilege granted by the legislator to the consumer to withdraw from contracting after concluding the contract validly, or before its conclusion, without the consumer being liable for compensating the other party for any damage resulting from the withdrawal. It was also defined as the consumer's ability to withdraw from contracting by his unilateral will within the specified period, either by law or agreement, even if the professional did not breach any of his obligations, and withdrawal takes place without compensation.

As for legislation, Electronic Commerce Law 18/05 provided for the possibility of including conditions and periods of withdrawal when necessary, which must be



documented by an electronic contract and confirmed by the consumer. Article 22 of this law stipulated that in case the electronic supplier fails to respect delivery deadlines, the product may be returned in its condition within a maximum of 4 days from the actual delivery of the product, which confirmed the possibility of withdrawing from the contract.

2.2.2. *Characteristics of the right of withdrawal in electronic contracting:*

- The buyer may not waive the right of withdrawal when executing the electronic contract, as it is related to public order, and thus any agreement contained in the electronic contract that deprives the buyer of exercising his right of withdrawal is void.
- The right of withdrawal is discretionary, left to the buyer's discretionary power, who has the right to exercise it without being obliged to state reasons for withdrawal. Nor does liability arise, even though this right constitutes a breach of the principle of the binding force of the contract.
- The right of withdrawal is associated with electronic contracts as they are concluded remotely between parties who are actually absent, since the buyer does not have the ability to verify and inspect. Therefore, the law enables him to terminate the contract within 15 days following the date of contracting or receipt of the goods.
- The exercise of the right of withdrawal is temporary, i.e., limited to a specific period, determined by law or agreement. It expires upon its exercise or upon the lapse of the specified period, in order to preserve the

stability of transactions and the interests of the other party, i.e., the professional.

- The right to withdraw from the contract does not prevent the immediate conclusion of the contract, nor does the contract become effective between the parties, nor does it have binding force towards the consumer throughout the withdrawal period, unless the period passes without withdrawal. Moreover, failure to exercise the right of withdrawal does not prevent bringing an action for rescission against the seller under the provisions of the action for latent defects, failure of description, or unfitness of the sold item for use for a specific period.

Conclusion:

The subject of the performance of electronic commerce contracts is considered one of the most important topics in electronic commerce due to its peculiarity in being concluded in an electronic space. We noticed through this study, regarding the performance of the electronic supplier of his obligations, the scarcity of provisions contained in the legislations specific to this matter, which required recourse to the general rules relating to the performance of contracts. On the part of the client's payment of the price, which is his essential obligation, attention was focused on the problems raised by remote performance through electronic payment methods, whether on the part of the electronic supplier or on the part of the client, which in reality constitutes a major obstacle to the development of electronic commerce, being



one of the most prominent contemporary forms of remote contracting.

Given the special nature of this type of electronic contract, it is necessary to issue integrated legal provisions to regulate matters related to these contracts and the consequences resulting from the different electronic environment, as well as detailing the issue of the conditions and method of applying the right of withdrawal, so that it does not affect the binding force of the contract.

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