

PRIVACY OF CONTRACT FORMATION IN THE DIGITAL ENVIRONMENT (IN ALGERIAN LAW)

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Abstract:

This study aimed at highlighting the aspects of the peculiarity of concluding a contract in the digital environment, as it is mostly written in paperless digital supports stored within information systems. We found that although it agrees with the traditional contract in most of the rules, its peculiarity appears mainly in the way it is concluded, as it is done through electronic media. This study also aimed to shed light on the most important issues raised by the electronic contract, the most important of which is the issue of clicking on the consent icon, the extent to which it is sufficient for the legal expression of acceptance, and the extent to which silence is considered valid as an expression of acceptance in electronic contracting.

Key words: Digital environment; electronic contract; information systems; electronic media.

INTRODUCTION

The use of modern communication tools operating on digital systems has significantly expanded in our time, attributable to the technological revolution, particularly in the fields of information and communications. The electronic contract forms the cornerstone of e-commerce due to its ease of formation, requiring the presence of general contractual elements to be valid.

The contract executed in the digital environment has raised profound legal and doctrinal issues due to its unique practical characteristics, especially the material and virtual nature in which these contracts are formed. Any contract is based on mutual consent, subject matter, and cause. It seems that legal doctrine has not found anything particularly unique about the subject matter and cause since the general rules of contracts contain provisions capable of resolving arising issues. However, the element of mutual consent, encompassing electronic offer and acceptance, has been influenced by the specificity of the electronic contract as it is concluded without the physical presence of the parties in the same location at the time of its formation. Additionally, it is executed using electronic means operating on digital systems, raising numerous questions due to the significant consequences that follow and the effectiveness of the general contract theory rules in addressing this new form of expressing offer and acceptance in their electronic manifestation, which coincide in a virtual or deemed meeting place.

In this research paper, we attempt to shed light on this type of electronic contracts by highlighting the numerous advantages offered by the internet in the field of contract formation, such as ease and simplicity, without the physical meeting of the contracting parties in the same location, relying on digital platforms.

To illustrate this specificity, we have adopted two methodologies: the descriptive method to explain the various concepts related to the issue of contract formation via modern electronic means, and the analytical method in light of presenting different legal texts related to this subject, whether pertaining to general rules or specific e-commerce laws. Additionally, we present some doctrinal opinions to discuss the legal issues under investigation, aiming to reach solutions that align with both legislation and legal doctrine.

The issue raised in this context is: to what extent does the use of modern means affect the formation of the contract? And what are the manifestations of the specificity of contract formation in the digital environment?

To answer this issue, the subject has been divided into two main sections:

1. The first section addresses the expression of will in the digital environment by detailing electronic offer and acceptance.
2. The second section is dedicated to the congruence of wills in the digital environment, where we study the nature of the electronic contract meeting place, as well as the determination of the time and place of contract formation.

1. Expression of Will in the Digital Environment

Like other contracts, electronic contracts are based on fundamental elements, the most crucial of which is the element of consent. This element requires the mutual agreement of both parties to create a legal effect. Such consent can only be achieved through the expression of will, which must be serious, complete, and sound. However, some legal challenges have arisen regarding the alignment of wills through modern communication methods due to the virtual and intangible nature of these contracts. This is because the contracting parties, when making an offer and acceptance, do not share a common physical presence. Despite the fact that the issue of offer and acceptance is one of the most intricate aspects of contract formation, it has not been comprehensively addressed in the laws governing electronic commerce.

In the following, we will shed light on the expression of will in the digital environment by detailing electronic offers (in the first section) and then discussing electronic acceptance (in the second section).

1.1 The Offer in Electronic Contracts:

Due to the unique characteristics of electronic contracts, an offer expressed through electronic means differs from the offer known under general rules. Here, we attempt to define electronic offers accurately, highlighting their distinctive features and the conditions required for them to be considered a valid offer that opens the door to contracting in the digital environment. We will outline the essential rules governing the scope of this offer, specifying the individuality of electronic offers, and then explaining their conditions and forms.

1-1-A Individuality of Electronic Offers:

We detail the individuality of electronic offers by first explaining what is meant by them, and then distinguishing them from similar concepts.

1-1-A.1 Definition of Electronic Offers

An offer is generally defined as: "A proposal made by one person to another or others with the intention of forming a contract, seeking the acceptance of this proposal, and thus establishing a contract" (Al-Saadi, 2007, p. 103).

An electronic offer, however, is defined as: "An expression of the will of a person wishing to contract remotely, conducted through an international communication network via audible and visual means, encompassing all necessary elements for the formation of the contract, enabling the addressed party to accept the contract immediately" (Al-Tamimi, 2013, p. 94).

For the offer to be valid upon issuance, the issuer must post the offer on a website, including all elements related to the goods and services offered for sale. These details are essential in electronic contracts, as the offeree cannot physically inspect the offered goods; thus, the offeror must not omit these details.

1-1-A.2: Distinguishing Electronic Offers from Other Similar Systems

Since an offer can come through electronic offers on the Internet, and because an electronic offer cannot always be considered a productive offer—such as being merely an invitation to negotiate, an advertisement, or other forms of solicitation to contract—it becomes necessary to distinguish between an electronic offer as an offer and other forms of offers, whether traditional or electronic. Below, we differentiate between electronic offers and negotiations, as well as between electronic offers and advertisements directed at the public.

- **Distinguishing Electronic Offers from Negotiations:**

Negotiations, as a general principle, do not create any legal effect. A negotiator has the right to discontinue negotiations at any time without incurring any liability, except if the withdrawal from

negotiations is accompanied by a fault from the one who ceased the negotiations. In this case, the liability is not contractual but tortious. The negotiators may reach either a conditional offer or a final offer; the former is a non-negotiable offer, but the contract does not become binding unless the condition on which it depends is fulfilled. In contrast, once the offer moves beyond the negotiation stage and is no longer conditional, it becomes a final offer (Mohamed, 2013, p. 63).

- **Distinguishing Electronic Offers from Public Advertisements:**

Determining whether an advertisement directed at the public via the Internet constitutes an offer in the legal sense of the term or merely an invitation to contract is highly challenging. If considered an offer, and it meets a matching acceptance, then an electronic contract is formed. However, if considered merely an invitation to contract, then no contract is formed. This has led to differing opinions on the dividing line between an offer and an advertisement. Some deny the nature of an electronic offer from an advertisement, considering it merely an invitation to contract because it lacks a commitment and sufficient specificity regarding the goods or products. On the other hand, another opinion considers an advertisement directed through remote communication techniques an offer to the public as long as it includes the essential elements of the contract. Thus, it can be concluded that an advertisement directed at the public, if it includes the essential elements of the intended contract, constitutes an offer that can lead to a binding contract upon matching acceptance. However, if not defined with sufficient specificity to eliminate uncertainty, it is merely an advertisement (Lazaar *Consent in Electronic Contracts*, 2018, p. 163).

B. Conditions of Electronic Offers

In addition to the general conditions required for an offer, such as being a definite and specific proposal for the subject matter of the contract, and being firm and communicated to the addressee to create its legal effect, there are specific conditions for electronic commercial offers as indicated by Algerian law in Articles 10 and 11 of the Algerian E-Commerce Law 18/05. The electronic supplier is required to include these conditions in their offer. These are not exhaustive, as the law allows for additional information to be provided that is no less important than those specified by law, including: The necessity of specifying the identity of the electronic supplier by mentioning their tax identification number, phone number, and commercial registration number, as well as key information about the subject matter of the electronic contract, whether it is a good or service, by specifying its nature, characteristics, and more. The electronic supplier must also provide all the terms under which the contract is concluded, including specifying the main effects of the contract, such as the delivery date and the method of replacing or returning the product when necessary (Law 18-05).

It should be noted that if the electronic supplier fails to comply with the provisions of Article 10 of this law, the legislator has stipulated a civil penalty in the form of the consumer's right to demand the annulment of the contract and compensation for any damage incurred according to Article 14 of the same law. Additionally, the legislator has provided for a criminal penalty in the form of a fine ranging from 50,000 DZD to 500,000 DZD for non-compliance with the requirements of Article 11 of this law. The court may also order the suspension of the electronic supplier's access to all electronic payment platforms for up to six months if necessary, as stated in Article 39 of the E-Commerce Law.

C. Forms of Electronic Offers

There are several forms of electronic offers, including offers through email, offers via web pages, and offers through viewing and conversation. These are discussed sequentially below:

C-1. Offers via Email:

Email is akin to regular mail, where messages are exchanged between parties electronically. An offer made in this manner has the advantage of targeting specific individuals whom the supplier believes might be interested in their products, sending the offer via their email addresses in an electronic message.

It should be noted that this type of offer can be directed either to a single individual or to multiple individuals. In the former case, the offer is similar to an offer made through regular mail or fax, with a time gap between the offer and acceptance. Here, the offer remains open and non-binding for the offeror unless it includes an obligation for the offeror to keep it open for a specific period, as per

general rules (Article 63 of the Algerian Civil Code). In the case of an offer via email directed to multiple individuals, it is generally considered merely an invitation to contract when there is doubt (Boushnafa, 2018, p. 133).

C-2. Offers via Web Pages

The web is a global network through which various sites are visited to obtain information. Each site has a unique address that can be accessed by anyone, anywhere, and at any time. In this context, the offeror presents their offer on their website, making the offer public and directed to an unspecified audience. This type of offer is not limited to a specific time frame but is contingent on the availability of the items offered (Bouhamla, 2019, p. 309).

This form of electronic offer is the most widespread, where the offer is displayed on the trader's website, detailing everything related to the subject of the contract. Notably, those offering goods on the Internet can reserve the right to withdraw the offer once the available stock is exhausted. In this way, the advertiser on the Internet ensures that the consumer to whom the offer is directed becomes the offeror, while the person offering the goods becomes the acceptor. Thus, the offer presented on a web page is not directed to a specific person but is generally directed at the public, making it similar to offers made via television or newspapers.

C-3. Offers through Viewing or Chatting

Through this modern means, an Internet user can talk with and see the other party on a computer screen via a webcam on both sides. The conversation takes place by each party opening their specific page on their device simultaneously. For instance, in a contract made through viewing, the computer is connected to audio and visual communication devices, allowing both parties to see and hear each other. In this scenario, if the offer and acceptance match, the contract is formed, constituting an agreement between present parties in a virtual sense (Bouhamla, 2019, p. 310).

1.1 Acceptance in Electronic Contracting

Acceptance is the final expression of the will to contract. It must include a decisive intention directed towards all the elements of the offer and aim to create a legal obligation for the contract to be formed and produce all its legal effects. This is also required in electronic contracting, along with the specific characteristics of this type of contract. We attempt to highlight these by discussing the concept of acceptance in such contracts and outlining its conditions (in the first section), then addressing the issue of clicking or tapping as a form of electronic acceptance (in the second section), and finally (in the third section) detailing the validity of silence as a form of electronic acceptance.

A. The Concept of Electronic Acceptance and Its Conditions

Below, we discuss the concept of electronic acceptance and its conditions.

A1. Definition of Electronic Acceptance

Acceptance is defined as "the definitive expression of the will of the party to whom the offer was directed, indicating their agreement to the offer made by the offeror" (Al-Saadi, 2007, p. 109).

Electronic acceptance, however, is defined as "the expression of will using electronic means in response to the offeror's specific expression of will to create a certain legal effect. If the offeree accepts this expression, acceptance is established" (Lazaar, *Acceptance in Electronic Contracting* 2018, p. 372).

It is noteworthy that some electronic contracts are characterized by acceptance through adherence to the offeror's terms, particularly those conducted via the Internet, where opportunities to negotiate the contract terms are limited. This is because the terms are pre-established by sellers of goods and service providers, leaving no room for the buyer to negotiate or bargain over the contract's conditions. However, contracts concluded through email generally do not possess this characteristic, as both parties can often negotiate and discuss the terms with each other (Al-Zrayqat, 2007, p. 145).

A2. Conditions of Electronic Acceptance:

As with the offer, the acceptance must meet general conditions, including the intent to create a legal effect. For electronic acceptance to be effective in forming a contract, several specific conditions must be met: the acceptance must be made while the offer is still valid, it must match the offer, and it must be firm and definitive.

1. The Acceptance Must Be Made While the Offer Is Still Valid The acceptance must be made while the offer is still in effect. If the acceptance is made after the offer has expired, the offeror has withdrawn it, or the period for acceptance has passed, the contract will not be formed.

2. The Acceptance Must Match the Offer

The acceptance must not include any additions, modifications, or conditions not present in the offer. If it does, the acceptance is considered a counteroffer that itself requires acceptance.

3. The Acceptance Must Be Firm and Definitive

The acceptance must reflect the offeree's intention to be bound by the contract. It must be decisive and unconditional, without reservations or conditions, and not contingent on future events.

Additional conditions include that the acceptance must be explicit and clear and that the acceptance must be made freely, without duress or coercion. If these conditions are met, the electronic contract is formed. However, failure to meet these conditions indicates a lack of serious intent, thus preventing the formation of the contract (Lazaar, *Acceptance in Electronic Contracting*, 2018, p. 374).

B. The Issue of Clicking or Tapping as a Form of Electronic Acceptance:

The development of electronic contracting has introduced new methods of expressing acceptance, such as clicking a mouse button, pressing keys on a keyboard, or tapping an acceptance icon. This has raised significant debate about the sufficiency of these actions as legal expressions of acceptance, particularly the issue of whether a single click or tap is sufficient. The question arises whether a single touch on the acceptance box or icon is enough to indicate acceptance or whether double-clicking might be more appropriate, as the offeree might claim that the touch was accidental or a mistake.

To ensure that electronic acceptance is clear, definitive, and unambiguous and to avoid issues related to proof, many scholars argue that simply clicking "Yes" once should not be sufficient. Instead, the customer's information system should require an additional step to confirm that the acceptance is indeed the customer's intent to contract.

To ensure the offeror's certainty about the offeree's intention to contract, the offeree should be required to indicate acceptance by double-clicking in two separate places on the offeror's website. The first click would display the contract terms, and the second click would confirm the final acceptance (Rabhi, 2020, p. 80).

This approach is reflected in the 2005 French Model Law on Electronic Commerce, which states in Article 06 that "the contract is definitively concluded between the parties when the consumer reaffirms acceptance of the contract by double-clicking."

C. The Validity of Silence as a Form of Electronic Acceptance:

Silence is generally a passive state that does not involve any verbal, written, or signaled expression of will. Therefore, as a general rule, silence does not constitute an expression of will, whether as an offer or acceptance, since will is an active expression, while silence is a passive one. However, there are exceptions, as stated in Article 68 of the Civil Code, where silence is considered acceptance in the following cases:

1. When the nature of the transaction, commercial custom, or other circumstances indicate that the offeror did not expect explicit acceptance.
2. When the transaction relates to previous dealings between the contracting parties.
3. When the offer is in favor of the offeree.

In the context of electronic contracts, there is a debate among scholars about whether silence can constitute electronic acceptance. One view (Al-Rashidi, 2014, p. 173) argues that silence can be considered acceptance in line with general principles. For example, if a wholesaler regularly concludes sales contracts with a retailer through a virtual store and the retailer has previously rejected items by explicitly refusing them via email, silence could indicate acceptance based on previous dealings.

However, another view (Mustafa, 2010, p. 283) rejects the notion that silence can constitute acceptance in electronic contracts. It argues that even if an electronic offer indicates that a lack of response within a certain period will be taken as acceptance, this situation does not align with the nature of electronic contracting, which involves a virtual meeting of the parties.

A third perspective (Nasif, p. 103) takes a middle ground, recognizing the validity of silence as electronic acceptance but without applying the specific cases outlined in general rules. This view suggests that due to the novelty and specific nature of electronic contracting, silence can only be considered acceptance if there is an explicit agreement between the parties based on prior dealings. From the above, it can be concluded that silence generally cannot be considered acceptance in electronic contracting, even in cases of previous dealings between the parties. Additional circumstances must clearly indicate that the intent behind the silence was acceptance. Similarly, customary practice cannot be applied to electronic contracts due to the relatively recent nature of this type of contract.

2. Concurrence of Wills in the Digital Environment

It is well-known that a contract, whether traditional or electronic, is formed through the exchange of expressions of will between the parties, achieved by the concurrence of offer and acceptance on the essential terms of the contract. However, the exchange of wills can only occur within the context of the contract formation meeting, which is crucial for contract formation in both traditional and electronic contracts, as it provides protection for the contracting parties.

The concept of the contract formation meeting has garnered attention in Arab legal systems, based on the notion that the origin of this concept is rooted in Islamic jurisprudence. The meeting is defined as the temporal and spatial framework in which the contracting parties are present, either actually or constructively, during which they engage in contract formation and exchange expressions of offer and acceptance, whether through traditional or modern means (Hamdi, 2014, p. 89).

The contract formation meeting, especially in the context of electronic contracts, raises several issues, the most significant being the determination of its nature—whether it constitutes a contract between present or absent parties—and the determination of the time and place of its formation. These two points will be discussed in the following sections:

1.2 Nature of the Electronic Contract Formation Meeting

According to general principles, the contract formation meeting consists of two elements: a material element (place) and a non-material element (time). Applying these elements to electronic contracts, it becomes evident that when parties use electronic means for contracting, they meet in a virtual space. The duration of the contract formation process may vary, depending on the method used, such as email, chat, or website (Hussein, 2008, p. 113).

Therefore, legal scholars have differing opinions on the nature of the electronic contract formation meeting, debating whether it constitutes a meeting between present parties, absent parties, or a combination of both. The following are the various views:

A. The Electronic Contract Formation Meeting as a Real Meeting: Proponents of this view argue that the electronic contract formation meeting constitutes a meeting between present parties since the contracting parties are focused on the contract's subject without any distractions. The connection between them occurs via the internet, allowing for immediate communication, with no time lag between the offer and acceptance. The interaction begins and ends simultaneously, reflecting the unified time frame of the contract formation meeting. This view defines the contract between present parties as the concurrence of wills in one meeting, achieved by the immediate issuance of acceptance and the simultaneous formation of the contract (Nasif, p. 118).

Critique:

This view has been criticized for defining the nature of the contract based solely on time, ignoring the importance of place. The meeting consists of both time and place; neglecting the spatial element can lead to issues, such as determining the applicable law for the contract (Al-Dahan, 2007, p. 206).

B. The Electronic Contract Formation Meeting as a Constructive Meeting: This view considers the electronic contract formation meeting as a meeting between absent parties, where a period exists between the issuance of the offer and the offeree's knowledge of it. The offer must be transmitted to the constructive meeting via writing or similar means. Proponents argue that electronic contracts are contracts between absent parties in terms of time, as the offer and acceptance do not occur simultaneously. There is a temporal gap between the offeror's awareness of the acceptance and its issuance. Additionally, it is a contract between absent parties in terms of place, as the parties are

not in a real contract formation meeting. Therefore, the electronic contract formation meeting is considered a constructive meeting, subject to its rules (Ibrahim, 2006, p. 287).

Critique:

This view has been criticized for not keeping pace with advances in communication technologies and methods of expressing will in contracts made remotely. In modern communication, interactions are instantaneous, making it difficult to classify such contracts as between absent parties, as the parties are engaged in the contract's subject matter without distractions, resulting in no temporal gap between the offer and acceptance (Argelous, 2017, p. 106).

C. The Electronic Contract Formation Meeting as a Mixed Meeting:

This view holds that internet contracts are contracts between present parties in terms of time and absent parties in terms of place, as the interaction involves audiovisual means that allow for interaction between two parties in a single, constructive, virtual meeting. Thus, the contract is considered a contract between present parties due to the lack of a time gap between the issuance of acceptance and the offeror's knowledge of it. However, it is also a contract between absent parties due to the parties not being in the same physical location.

Critique:

This view has also faced criticism, as it is argued that a contract cannot possess two different characteristics, being both between present parties in terms of time and absent parties in terms of place. According to critics, a meeting must be either real or constructive. The concept of a mixed contract leads to the segmentation of the contract's elements, applying the rules and provisions of a real contract to the time of the meeting and the rules of a constructive contract to the place of the meeting (Moumni, 2004, p. 82).

After reviewing these perspectives on the nature of the electronic contract formation meeting, it can be concluded that the appropriate description of this type of contract depends on the method used for contracting. There is a fundamental difference between acceptance issued via email and acceptance issued via the web. In both cases, the interaction between the offeror and the offeree is instantaneous. However, exceptions may arise where instantaneous interaction does not occur, such as when using email, due to issues like the offeror's computer being turned off or a network failure (Al-Roumi, 2004, p. 103).

2.2 Time and Place of Concurrence of Wills in Electronic Contracts

Electronic contracts are concluded via remote communication, eliminating the need for the physical presence of the parties. This process is facilitated through electronic offers and acceptances. In this context, we inquire about the significance of determining the time of contract formation, specifically the moment at which the electronic contract is concluded. This moment is critical as it marks the point when the offeror can no longer retract the offer, and the offeree cannot withdraw acceptance. It is also the moment when the contract begins to produce legal effects. Additionally, there is a need to determine the place of contract formation, which is essential for establishing judicial jurisdiction over contract disputes and determining the applicable law. The following section will discuss both the time and place of electronic contract formation.

A. Time of Electronic Contract Formation

Traditionally, a contract is concluded at the moment the wills of the parties converge. However, since the parties in an electronic contract are not physically present in one location, determining the time of contract formation can be challenging. The difficulty lies in pinpointing the moment the offer or acceptance reaches the other party. In electronic contracting, the expression of will occurs through actions like clicking a button to agree, where the will is transmitted via electrical signals, encoded into electronic pulses, and delivered to the recipient's device. The challenge is determining when these signals reach the other party (Argelous, 2004, p. 109).

Jurisprudential studies have proposed several theories to determine the time of electronic contract formation in a digital environment, attempting to define the precise moment of concurrence between offer and acceptance. These theories are discussed below, followed by the positions of Algerian legislators and other electronic transaction regulations.

- **Theory of Acceptance Declaration:**

According to proponents of this theory, a contract is concluded as soon as the offeree declares acceptance of the offer, regardless of the offeror's awareness of the acceptance. This theory is particularly applicable in electronic contracting via email, where the contract is considered concluded upon composing the acceptance message on the computer, even without sending it to the offeror (Al-Ubaidi, 2009, p. 366).

Critique: This theory is criticized for contradicting the principle of concurrence of wills as the basis of a contract, as the offeror may not be aware of the acceptance and could withdraw the offer before knowing of the acceptance. Additionally, this theory allows the offeree to control the contract formation by declaring acceptance but then retracting it without anyone being able to prove otherwise, especially in a digital environment. Therefore, this theory is unsuitable for determining the time of electronic contract formation.

- **Theory of Acceptance Dispatch:**

According to this theory, a contract is concluded when the acceptance is dispatched, not merely declared. The acceptance must leave the control of the offeree, rendering it irrevocable. In electronic contracts, this would mean the contract is formed at the moment the offeree sends the acceptance email or clicks the send button, thereby entering the message into the electronic intermediary. From that moment, the offeree cannot retract the acceptance, even if the message has not yet reached the offeror's mailbox (Ibrahim, 2006, p. 377).

Critique: This theory is also criticized because, according to it, the electronic contract is concluded even if the offeror is unaware of the acceptance, which could lead to the offeror unknowingly selling the contracted goods to another party.

- **Theory of Acceptance Receipt:**

This theory holds that a contract is concluded upon the receipt of the acceptance by the offeror, regardless of whether the offeror is aware of it, as receipt is presumed to indicate knowledge. Thus, the electronic contract is deemed concluded when the acceptance email reaches the offeror's inbox, even if the offeror has not read it.

Critique: This theory faces criticism for being similar to the dispatch theory, as the offeror's receipt of the acceptance does not necessarily mean they are aware of it. The message may not contain acceptance but rather a counteroffer or rejection. Additionally, the offeror could commit fraud by claiming to have received the message but not knowing its contents (Ajjali, 2014, p. 201).

- **Theory of Knowledge of Acceptance:**

Advocates of this theory argue that a contract is concluded at the moment the offeror becomes aware of the acceptance, as acceptance has no legal effect without such knowledge. This view adds that the receipt of acceptance is presumed to indicate knowledge unless proven otherwise by the party concerned. Thus, an electronic contract is considered concluded when the offeror becomes genuinely aware of the acceptance by accessing their email and reading the electronic message sent by the offeree, acknowledging that the latter has accepted the offer presented.

Critique: The main criticism of this theory is the difficulty of proving the offeror's knowledge of the acceptance, as knowledge is a subjective matter related to the offeror, making it hard for the offeree to prove (Al-Tamimi, 2009, p. 334).

The Position of Algerian Law on the Time of Contract Formation

The Algerian legislator did not specify the time of contract formation in the Algerian E-Commerce Law 18/05. Therefore, it is necessary to refer to the general rules in the Civil Code. The legislator has characterized electronic contracting as a contract between absent parties, where the relevant time is when the offeror becomes aware of the acceptance. The assumption is that awareness of the acceptance occurs at the place and time of the acceptance's receipt (Algerian Civil Code, Article 67). From this, it is clear that the Algerian legislator adopts the theory of knowledge of acceptance as a supplementary rule rather than a mandatory one, allowing the parties the flexibility to agree otherwise according to their circumstances.

The Position of Electronic Transaction Regulations on the Time of Contract Formation

UNCITRAL Model Law on Electronic Commerce: The Model Law adopts the theory of receipt of acceptance. Article 15-2 stipulates the time of receipt of the data message, stating: "Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows:

- The time when the data message enters the information system designated.
- The time when the addressee retrieves any data message if the data message is sent to the information system of the addressee but not the designated system.
- If the addressee has not designated an information system, the receipt occurs when the data message enters the information system of the addressee" (UN General Assembly, Resolution No. 51/162).

EU Directive 31/2000: According to Article 5, the moment of concluding an electronic contract is when the confirmation of acceptance is received by the party to whom the offer was made, after being enabled to review and correct any potential errors, ensuring legal security through electronic means (Ibrahim, 2006, p. 384).

A. Place of Electronic Contract Formation

The issue of determining the place of electronic contract formation arises because such contracts exist in a virtual environment, where the parties are not physically present in one place. This has led to significant disagreements among legal scholars researching electronic contracts, particularly in determining the specific location where the contract is formed. This problem extends to various legislations governing electronic contracting, including determining the applicable law and the competent jurisdiction for disputes.

The following sections will address the determination of the place of electronic contract formation and the applicable law for such contracts. Notably, the Algerian legislator has remained silent on the matter of the place of electronic contract formation under the Algerian E-Commerce Law 18/05. Therefore, this issue will be explored based on general rules in the Civil Code, specifically through the conflict of laws rules in cases of contracts with foreign elements.

B1. Determining the Place of Electronic Contract Formation

Determining the place of contract formation in the digital environment poses challenges, whether contracting is done via email, chat, websites, or other means. This difficulty arises due to the challenges in pinpointing the place of sending and receiving data messages, as both occur in an open space, making it challenging to identify a specific location. Two main theories have emerged to determine the place of electronic contract formation: the theory of the offeror's place of residence, based on the argument that the offeror should not be compelled to litigate away from their residence; and the theory of the offeree's place of residence, arguing that the place of electronic contract formation is where the offer is received (Ben Khadra, 2015, p. 49).

Referring to the position of the Algerian legislator, Article 67 of the previously mentioned Civil Code stipulates a general rule that the place of contract formation between absent parties is the place where the offeror becomes aware of the acceptance unless the parties agree otherwise or the law provides differently.

While this provision is easily applicable to traditional contracts between absent parties involving the exchange of documents and written correspondence according to general rules, applying this rule to electronic contracts raises several questions. Focusing this contract in a specific country is challenging due to the international nature of the Internet, connecting all countries simultaneously, and the immaterial nature of this contracting medium, characterized by many virtual sites.

B2. Applicable Law to Electronic Contracts

Given that electronic contracts often have an international dimension, the presence of a foreign element in this contractual relationship requires the application of conflict of laws rules concerning contractual obligations. These are governed by Article 18 of the Algerian Civil Code, which determines the applicable law based on three criteria: the primary criterion is the law chosen by the parties (party autonomy), with secondary criteria being the law of the common domicile or nationality of the parties, which is rarely applicable in electronic contracts due to the different nationalities and domiciles of the parties. The third and final criterion is the law of the place of contract formation. According to the Algerian legislator, who adopts the theory of knowledge of acceptance, the

applicable law in this transaction is that of the offeror's place at the moment they become aware of the acceptance, thereby determining the place of contract formation (Algerian Civil Code, Article 18).

Thus, the primary rule, party autonomy, predominates in private international relations, including electronic contracts. This principle allows parties to choose the governing law for their contractual relations, enabling them to bypass the laws of a particular country in favor of another jurisdiction's laws. One consequence of electronic contracts being governed by party autonomy is that the parties may choose more than one law to govern different aspects of the contract. However, in all cases, there must be a connection between the chosen law and the contract, and this freedom must not contravene the concept of public order (Lazaar, *Consent in Electronic Contracts*, 2018, p. 307).

CONCLUSION

The examination of the unique aspects of electronic contracts regarding their formation is one of the most relevant topics today, given that it is a global development imposed by the technological revolution. Electronic contracts have become a cornerstone of the global economy. Although these contracts play a crucial role in facilitating transactions between individuals across nations, they are not without legal challenges, particularly concerning various aspects of contract transactions conducted in a virtual environment.

Based on our study of this topic, we have reached several conclusions, with the most significant being:

- Offers and acceptances in the digital environment are quite similar to those in traditional contracts in terms of the general conditions that must be met, with the exception of some mandatory data and information required for remote contracts. The primary distinguishing feature of remote contracts is that they are conducted through modern communication methods without a physical meeting of the parties, instead involving a virtual forum.
- We also found that for electronic acceptance, the acceptor should confirm their acceptance by clicking the acceptance icon twice or sending a document indicating acceptance to the offeror's email to avoid ambiguity in expression or errors. Regarding the validity of considering silence as acceptance in these contracts, it is crucial to handle this matter with caution, as acceptance cannot be inferred from mere silence unless it is accompanied by another circumstance that indicates the customer's acceptance.
- In terms of determining the place of electronic contract formation, there is difficulty in identifying it due to the intangible and global nature of the medium, making it challenging to determine the applicable law and the competent judicial authority.
- The nature of the contract forum in electronic contracting depends on whether it is a real or virtual forum based on the media used for its formation. If email is used with immediate message exchange, it constitutes a contract between parties present in time but absent in place.

Following the review of the results obtained, we offer the following recommendations:

- The legislator should amend the conflict of laws rules by adding legal texts that precisely define the applicable law to contracts formed in the digital environment.
- Establish a specialized court division for resolving electronic contract disputes, which should include an expert in electronics and define the legal frameworks for such transactions.
- Greater encouragement for consumers to engage with this new mode of transactions, such as ordering products and services online, due to its advantages, while ensuring adequate protection for consumers' personal data by implementing stringent oversight mechanisms to build trust and security.

In conclusion, the electronic contract, given the legal issues addressed in this research paper, has revealed the shortcomings of traditional contract rules in resolving these issues. Despite the enactment of Algerian E-Commerce Law 18/05, it remains insufficient. Therefore, the legislator should reconsider the provisions of this law by incorporating various issues related to electronic contract formation, particularly concerning the rules on offers and acceptances.

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