



# CAPACITY PROBLEMS IN ELECTRONIC CONTRACTS - CHALLENGES AND SOLUTIONS

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## Abstract:

*With the increasing reliance on electronic contracts in daily transactions, legal challenges related to the capacity of contracting parties have emerged. In the digital environment, verifying the identity and capacity of parties is difficult. These challenges require new solutions, including the development of digital legislation and the adoption of advanced verification technologies, such as electronic signatures and digital fingerprints, to ensure the validity of contracts and protect the rights of parties. In addition, raising awareness of e-contracting skills is essential to enhance trust and security in the digital domain.*

**Keywords:** *Electronic contract, competence, electronic signature, digital environment.*

## INTRODUCTION


In the era of digital globalisation and rapid advances in information technology, electronic contracts have become the most common means of formalising agreements in various fields, from online shopping to financial services, legal advice and distance education. With the ease of access to these services through the global network, ensuring the capacity of the contracting parties has become essential to guarantee the validity and security of contracts, especially in the absence of direct communication between the parties.

The concept of capacity refers to an individual's ability to make decisions and enter into legal obligations independently. However, this concept faces additional challenges when transferred to the digital space.

The issue of capacity in electronic contracts arises from the difficulty of verifying the identity, age and mental capacity of the parties involved. Online communication lacks the face-to-face interaction that provides additional information about individuals. While an electronic contract can be entered into with a simple click of a button or by activating an "I agree" option, questions remain as to how to ensure that the party entering into the contract is legally competent to do so, especially in cases involving minors or persons with mental impairments.

Given these challenges, the issue of capacity in electronic contracts requires innovative legal and technical solutions. Technologies such as electronic signatures and multi-factor identity verification are essential tools that can help increase trust and confirm the identity of the parties. However, they remain insufficient without a comprehensive legal framework to regulate these issues.

This context highlights the importance of studying the specificities of capacity in electronic contracts to emphasize the need for legislation that keeps pace with digital advancements while balancing the ease of entering into electronic contracts with the protection of the rights of the contracting parties. This ensures that digital contracts remain a reliable legal means that serves everyone's interests without undermining legal obligations.



Thus, this study aims to provide an in-depth analysis of the issue of contracting capacity in electronic contracts, focusing on the challenges posed by the digital environment and the available methods to ensure the capacity of parties. This includes the role of electronic signatures, advanced authentication methods, and the importance of legislative oversight in securing effective legal protection in this type of contract.

The problem of capacity in electronic contracts lies in how to reliably ascertain the legal capacity of contracting parties in a digital environment that lacks direct interaction, where verifying the identity, age, and mental competency of the contractors is not straightforward. In traditional contracts, the physical presence of the parties allows for direct verification of these criteria. However, electronic contracts are executed remotely, making it challenging to ensure that the other party is legally competent to enter into contractual obligations.

Moreover, while the use of modern technology such as electronic signatures and multi-factor verification offers some solutions, it does not completely guarantee the capacity of contractors in cases involving minors or individuals with disabilities. This leads to the following question: How can the capacity of contracting parties in electronic contracts be reliably verified without personal interaction?

To address this issue, we have divided this research paper into two main sections: the first section discusses the legal capacity to contract online, while the second section is dedicated to the legal challenges to capacity to contract and the proposed solutions.

### **Section One: Capacity to contract online**

In order to understand the capacity of parties to an electronic contract, we must first examine the general rules of capacity, followed by the particularities relating to electronic contracts.

#### **First: General rules on capacity to contract**

**Legal capacity:** is the ability of a person to acquire rights, assume obligations and perform legal acts. It can be divided into two types:

- 1. Legal capacity:** This refers to a person's ability to acquire rights and assume obligations. This capacity is granted to every human being born alive, including a foetus, who has a limited capacity and can acquire rights without incurring obligations.
- 2. Capacity:** This refers to a person's ability to perform legal acts that can confer rights or impose obligations in a legally recognised manner. The distinction between these two capacities is closely related to age and possible impairments.

#### **1. Age:**

The basis of capacity is the distinction of age, which affects legal capacity. Every individual passes through four stages of competence from birth to death:

- Fetal stage A foetus has a limited capacity to contract but no capacity to perform.
- Stage of the non-distinguished minor: The age of discernment is 13 years. Anyone who has not reached this age is considered to be lacking in discernment and therefore lacks capacity. All their actions are void, whether beneficial, harmful or a mixture of the two. Article 42 of the Algerian Civil Code states:<sup>1</sup> "A person who lacks capacity by reason of minority, insanity or madness is

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<sup>1</sup>- Decree No. 75-58 of 26 September 1975 amending and supplementing the Algerian Civil Code, Official Journal No. 78.

incapable of exercising civil rights. Anyone who has not reached the age of 13 is considered to be incompetent”.

Article 82 of the Algerian Family Code also states:<sup>1</sup> “Anyone who has not reached the age of majority because of his or her minority, as defined in Article 42 of the Civil Code, is considered null and void in all his or her acts. Legal acts are performed by their legal representative, whether a guardian or a curator, as stated in article 81 of the Algerian Family Code: “Anyone who lacks capacity or whose capacity is limited as a result of minority, insanity or madness shall be legally represented by a guardian or custodian in accordance with the provisions of this law.”

- **Stage of distinguished minor:** This level applies to persons who have completed 13 years of age until they reach the age of majority, which is 19 years (according to Article 40 of the Civil Code). In this stage, the distinguished minor has a limited capacity. The legal acts they can perform must be beneficial, such as accepting gifts and inheritances, which are valid and enforceable. On the other hand, acts that are entirely detrimental, such as gifts that disadvantage them, are absolutely void. Acts of mixed advantage and disadvantage, such as sale and lease contracts, may be annulled in favour of the minor<sup>2</sup>.

The right to invoke annulment shall cease if the guardian or custodian ratifies the acts before the minor reaches the age of majority pursuant to Article 83 of the Civil Code, or if the minor ratifies them after reaching the age of majority pursuant to Article 101 of the Civil Code.

- **Stage of Adulthood:** Upon reaching the age of 19,<sup>3</sup> a person is considered to have full legal capacity and can take any kind of legal action, whether beneficial, harmful or mixed. It is important to note that full legal capacity requires that the person has reached the age of 19 without any impairment affecting or diminishing his/her capacity.

## 2. Impairments of capacity

There are four impediments to capacity: insanity, mental disorder, wastefulness and negligence.:

### Insanity

Insanity is a mental disorder that renders a person unable to distinguish between right and wrong, thereby causing a loss of capacity.

### Mental disorder

Mental impairment refers to a mental condition that impairs a person’s cognitive abilities, causing them to act contrary to rational judgement. Such persons are considered to lack capacity.

### Prodigality

A spendthrift is a person who wastes his or her resources in a way that is not beneficial to himself or herself and is contrary to rational judgement and legal principles. This person is treated as a distinguished minor (with limited capacity).

### Negligence

Negligence involves a deficiency in mental capacity that leads a person to make poor judgements, resulting in actions taken without an awareness of their costs or benefits<sup>4</sup>. Such persons may

<sup>1</sup>- Law No. 84/11 of 9 June 1984 on the Family Code, as amended by Order No. 05/02 of 27 February 2005.

<sup>2</sup>- Tawfiq Hassan Faraj, *General Theory of Obligation: Sources of Obligation*, 1st edition, Halabi Legal Publications, Lebanon, 2008, p. 180.

<sup>3</sup>- See Article 40 of the aforementioned Algerian Civil Code.

<sup>4</sup>- Ali Ali Suleiman, *General Theory of Obligation: Sources of Obligation in the Algerian Civil Code*, 5th edition, Office of University Publications, Algeria, 2003, p. 55.

suffer significant losses in their transactions and are treated as distinguished minors (having limited capacity).

### 3. Barriers to capacity

Even if a person has full capacity, certain circumstances may prevent him or her from taking legal action. These barriers include absence, criminal conviction, bankruptcy and the presence of dual impairment.

#### Absence

An absent person is someone who has left their place of residence without a known address. If a court declares them missing, they are treated as a lost person in accordance with Article 110 of the Algerian Civil Code. Such a decision can only be taken after one year of absence. If no representative is appointed, the court will appoint a guardian to manage their affairs<sup>1</sup>.

#### Criminal sentencing

If a person is sentenced to imprisonment, the court will appoint a guardian to manage their financial affairs during their imprisonment.

#### Bankruptcy

A declaration of bankruptcy due to an entrepreneur's inability to pay his debts leads to the mandatory appointment of a bankruptcy trustee to manage the bankrupt's assets<sup>2</sup>.

#### Dual impairment

A person may suffer from a dual impairment, such as deafness, dumbness or blindness, which may affect their ability to communicate their intentions clearly. In such cases, the court may appoint a legal assistant to assist them in transactions in order to protect their interests, as provided for in Article 80 of the Algerian Civil Code. Any transaction that requires the presence of a legal assistant and is carried out without one may be annulled if the decision to assist was recorded<sup>3</sup>.

### Second: Specificity of Capacity in Electronic Contracts

Legal capacity is defined as the ability of a person to have rights and obligations and to undertake legal acts in a manner recognised by law. The capacity relevant to e-contracting is legal capacity, which refers to a person's ability to engage in legal acts that can confer rights or impose obligations<sup>4</sup>.

The essence of capacity in electronic contracts is related to awareness and discernment. A person who lacks discernment lacks will and therefore lacks capacity, whereas a person with full discernment has full capacity<sup>5</sup>.

The challenge is to verify the capacity of the parties, especially when contracts are concluded between absent parties. Since electronic contracts fall into this category, the importance of verifying the capacity of the parties becomes crucial, especially given the lack of real and direct interaction between them. It is difficult to ascertain the capacity of a contracting party and, according to the

<sup>1</sup> Farida Zwaoui Mohammedi, *Introduction to Legal Sciences: Theory of Law*, National Printing Office, Algeria, 1998, p. 60.

<sup>2</sup> See Article 1/244 of Order 75/59 of 26 September 1975 on the Commercial Code, as amended by Law No. 15/20 of 20 December 2015, *Official Journal* No. 71, published on 30 December 2015.

<sup>3</sup> Ali Ali Suleiman, *op. cit.*, p. 52.

<sup>4</sup> Mohamed Sabri Saadi, *Clear Explanation of the Civil Code: General Theory of Obligations, Sources of Obligations, Contract and Unilateral Will*, 4th edition, Dar Al-Huda, Algeria, 2009, p. 153.

<sup>5</sup> Amanj Rahim Ahmed, *Consent in Electronic Contracts via the Internet*, Dar Wael for Publishing and Distribution, 1st edition, Amman, Jordan, 2006, p. 219.

general rules on capacity, if the contracting party is a minor, the contract is either void or suspended, depending on the circumstances<sup>1</sup>.

Often minors may present themselves as adults and act accordingly online, or they may use their guardians' credit cards without permission to pay for items for which they have contracted. As a result, it is often difficult for the online contracting party to determine the true age of the other party and to contract in good faith. To protect the bona fide contractor, some legal scholars suggest adopting the theory of apparent age, which allows the seller or service provider to claim that the minor appeared to be an adult, thus holding the minor or his or her guardian legally responsible for any resulting damages<sup>2</sup>.

In addition, the seller can pursue the minor under the rules of tort liability. It is therefore in the interest of parents to monitor their minor children's use of communication technologies and to protect their bank cards and PINs<sup>3</sup>.

It is important to note that adopting the theory of apparent situation aligns with traditional legislation, as stated in Article 1307 of the French Civil Code, which specifies that a minor who deceives others to conceal their lack of capacity cannot reclaim what they have paid in fulfillment of their obligations. This ruling applies to all individuals lacking capacity, meaning that their actions remain subject to compensation despite being void, with the best form of compensation being the continued validity of the action<sup>4</sup>.

In addition, European Directive 2000/31 of 8 January 2000 on electronic commerce emphasises the need to establish all elements of identity, including legal capacity<sup>5</sup>. The UNCITRAL Model Law also emphasises the importance of verifying the identity of the parties to a contract when assigning data messages<sup>6</sup>.

French consumer law recognises the need to verify the identity of contracting parties in order to ensure security and trust in electronic transactions, and requires service providers to disclose all information about their identity, including their legal capacity. Conversely, the customer is obliged to inform the trader of his name, his legal capacity and all the elements identifying his physical or electronic identity<sup>7</sup>.

In Egypt, Article 4 of the Consumer Protection Law No. 67 of 2006 stipulates that suppliers must include in all correspondence, documents and records, including electronic documents, in their dealings with consumers, the information necessary to identify them, in particular their registration details in the commercial register and any trademarks<sup>8</sup>.

In contrast, the Algerian law on electronic commerce does not contain explicit provisions on the issue of capacity in this type of transaction. Although the Consumer Protection and Prevention of Fraud Law has extended its definition to include electronic consumers, it completely overlooks the issue of

<sup>1</sup>- Amanj Rahim Ahmed, *op. cit.*, p. 221.

<sup>2</sup>- Aiser Sabri Ibrahim, *Concluding and Proving Electronic Contracts*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 1st edition, 2015, p. 100.

<sup>3</sup>- Mahmoud Abdul-Maati Al-Khayal, *The Internet and Some Legal Aspects*, Dar Al-Nahda Library, Cairo, Egypt, 2000, p. 123.

<sup>4</sup>- Jamil Al-Sharqawi, *General Theory of Obligation: Book One, Sources of Obligation*, Dar Al-Nahda Al-Arabiya, Cairo, 1976, p. 174.

<sup>5</sup>- Guigou Catherine, *Consumer Contracts: A Tool for the Development of Electronic Commerce*, Aix Marseille University Press, 2002, p. 145.

<sup>6</sup>- See Article 13 of Decision No. 162/51 on the UNCITRAL Model Law on Electronic Commerce.

<sup>7</sup>- Belkacem Hamdi, *Formation of the Electronic Contract*, Doctoral Thesis, Faculty of Law and Political Science, Haj Lakhdar University, Batna, Academic Year 2014-2015, p. 128.

<sup>8</sup>- Law 18-05 of 10 May 2018 on electronic commerce, Official Gazette No. 28, published on 16 May 2018.

the consumer's capacity to contract, relying on the general rules on capacity set out in the Civil Code to address this issue.

An analysis of the above legal texts shows that they focus primarily on the need to disclose the identity of contracting parties on the Internet. However, these laws do not provide clear sanctions for violations of these provisions. In particular, it is extremely difficult for the supplier of goods or services on the electronic platform to verify the capacity of a person contracting online.

## **Section Two: Legal Challenges of Electronic Contracting Capacity and Proposed Solutions**

Electronic contracting faces legal challenges related to the capacity of contracting parties, such as verifying identity and mental capacity. These challenges can be addressed through effective legal solutions, which we will discuss in this section.

### **First: Key Challenges Related to the Capacity of Contracting Parties in Electronic Contracts**

Capacity is one of the fundamental pillars of contract validity. With the evolution of electronic contracts, new challenges have emerged regarding the verification of the parties' capacity. Unlike traditional contracts, the intangible nature of electronic contracts raises complex issues, especially since communication occurs through digital means, making it difficult to verify the identity and legal capacity of the contracting parties.

The challenges arising from capacity in electronic contracts can be classified into two main categories:

#### **1. Legal Challenges**

Despite the numerous challenges posed by online contracting, our focus here is on addressing the legal challenges associated with this domain, which include:

##### **- Lack of Specialized Legislation for Capacity in the Digital Environment:**

Many countries, including Arab nations, still lack clear or comprehensive legislation concerning the legal capacity of contracting parties online. For instance, some laws do not include explicit provisions on how to verify the capacity of contractors or establish clear conditions to protect vulnerable parties, such as minors or those lacking legal capacity.

##### **- Application of traditional rules to electronic contracts:**

General civil law rules on capacity, designed for traditional contracts, do not adequately address the specific challenges posed by electronic contracts. These include dealing with parties who can easily conceal their identity or provide inaccurate information<sup>1</sup>, making it difficult to verify the capacity of both parties due to geographical distance and the nature of the means used in such contracts<sup>2</sup>.

##### **- Jurisdictional challenges:**

Given the global nature of electronic contracts, determining jurisdiction becomes complicated. Contracts may be made between parties in different countries, raising the question of which laws should apply to determine the parties' capacity. Differences in capacity laws can lead to conflicts of law, where one party may be fully competent under their national law, but a minor under the law of the other party. For example, a 19-year-old Algerian (considered fully competent) entering into an

<sup>1</sup> Bashar Mohammed Dudin, *The Legal Framework of Contracts Concluded on the Internet*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2006, p. 153.

<sup>2</sup> Mohamed Hassan Rifai Al-Attar, *Selling on the Internet: A Comparative Study*, Dar Al-Jami'a Al-Jadida, 1st edition, Alexandria, Egypt, 2007, p. 100.

electronic contract with an Egyptian who may be considered a minor under Egyptian law, which sets the age of majority at 21<sup>1</sup>. **Proposed solutions**

**Several solutions can be proposed to address these challenges:**

**1. Enact comprehensive legislation:**

Countries should develop clear and comprehensive legislation that specifically addresses the issue of capacity in electronic contracts. This includes defining the rights and obligations of all parties involved and establishing guidelines to protect vulnerable groups<sup>2</sup>.

**2. Implement verification technologies:**

The use of advanced technologies such as digital signatures, biometric verification and secure online identity verification methods can improve the ability to verify the identity and capacity of contracting parties.

**3. Cross-border legal frameworks:**

The development of international or regional agreements to harmonise e-contracting laws can help mitigate jurisdictional issues. This would facilitate a clearer understanding of legal capacity in different jurisdictions.

**4. Public awareness and education:**

Raising awareness among consumers and businesses of the importance of verifying the capacity of contracting parties can help to mitigate risks. Education programmes can inform users of their rights and obligations in electronic transactions.

**5. Judicial guidance and precedents:**

Encouraging courts to establish precedents in cases involving electronic contracts can help clarify legal interpretations and provide guidance on capacity issues, contributing to a more robust legal framework.

By implementing these solutions, the legal framework for electronic contracts can be strengthened, ensuring that the rights of all parties are protected while facilitating the growth of this dynamic area of commerce.

**2. Technical challenges**

In the digital environment, e-contracting relies on intangible means such as email or contracting platforms. This makes it difficult for the supplier of goods or services to verify the identity and legal capacity of the other party, especially if that party uses false data or technology to conceal its identity. Key technical challenges include

**A. Lack of effective capacity verification tools**

Many electronic verification platforms do not provide accurate tools to confirm the legal capacity of parties contracting through them. Most platforms rely solely on data entered by the user, such as name, date of birth and address. This information can be inaccurate or misleading, particularly if users deliberately provide false information to circumvent capacity restrictions. In addition,

<sup>1</sup>- Monia Neshnash, The Impact of Digital Technology on the Attribution of Will and Verification of Capacity in Electronic Contracts, Journal of Legal and Political Research, Faculty of Law and Political Science, Mohamed Sidik Ben Yahia University, Jijel, No. 6, 2016, p. 252.

<sup>2</sup>- Mohamed Al-Aish Salihin, Digital Writing as a Means of Expressing Will and Proof, A Study of Electronic Transaction Laws in Light of General Rules, 1st edition, Mena Publishing, Alexandria, Egypt, 2006, p. 74.





advanced technologies such as facial recognition, biometric signatures or accredited digital identities are often lacking.

### **B. Electronic Signature and Its Impact on Capacity**

The electronic signature presents a challenge related to the capacity of contracting parties in electronic contracts. While it can help verify the identities of the parties, it does not ensure adequate verification of their legal capacity. An electronic signature does not provide information about age, mental status, or legal impediments such as guardianship or bankruptcy. This allows individuals lacking capacity to enter into electronic contracts. Moreover, electronic signatures can be forged or misused, leading to contracts being executed without the knowledge or consent of the real party. The absence of a connection between electronic signature systems and official databases for verifying capacity further complicates this issue, necessitating the development of advanced digital identities linked to official verification systems, along with strengthened regulations to ensure party capacity when using electronic signatures.

### **C. Varying Levels of Security Among Platforms**

There are significant differences in security and documentation levels across platforms, making some more susceptible to hacking and forgery. These discrepancies affect the level of trust that contracting parties can place in online contracts.

## **Second: Innovative Solutions to Address Capacity Challenges in Electronic Contracts**

As reliance on technology in transactions increases, it becomes essential to implement innovative solutions to address the challenges associated with verifying the identity and legal capacity of contracting parties. This section discusses both legal and technical solutions:

### **1. Legal Solutions to Ensure Party Capacity and Attribution of Electronic Will**

Legal solutions related to verifying the capacity of parties and attributing electronic will can be drawn from reviewing texts adopted by some comparative legislations, especially in light of the lack of direct and clear regulation of this issue in Algerian legislation. However, several relevant legal texts can contribute to addressing this issue, albeit inadequately:

- Article 123 bis 1 of the Algerian Civil Code states: “Electronic writing is considered as proof on par with written proof on paper, provided that the identity of the person who issued it can be verified, and that it is prepared and stored in conditions ensuring its integrity.” This article indicates that the Algerian legislator attempts to equate electronic writing with traditional writing as a means of proof, requiring it to allow verification of the issuer’s identity. However, the legislator did not specify the mechanisms or procedures necessary to verify the identity or capacity of the writer.
- Law No. 15-04, which sets the general rules regarding electronic signatures and certifications, is a key technical tool used to identify the person expressing their will and to attribute that expression to them. This will be highlighted later when discussing the technical tools involved in verifying the identity of the will-holder and ensuring its validity.
- Law No. 18-05 concerning electronic commerce mandates that the electronic supplier must provide certain data to identify themselves, including their tax identification number, physical and electronic addresses, phone number, and, if applicable, their commercial registry number or professional card number, along with any other information that contributes to identifying them and clarifying their status.

Despite these legal texts, current laws do not provide sufficient guarantees to increase trust and security in the expression of will and the conclusion of electronic contracts. They lack crucial



tools that would allow the parties to accurately verify the capacity of the other party and the sincerity and seriousness of the contract. There is therefore an urgent need for clearer and more comprehensive legal texts, which could be incorporated either into the provisions of the Civil Code on general contract theory, or into the Electronic Commerce Law, which suffers from several shortcomings that require urgent legislative action to ensure a secure and effective digital contractual environment.

Pending the establishment of a clear legal framework by the Algerian legislator, it may be beneficial to draw on the experience of comparative legislation in this area. These laws have proven effective through their advanced provisions addressing issues related to the effectiveness of electronic contracting and the verification of identity and capacity. Examples include the Jordanian Electronic Transactions Law No. 15 of 2015<sup>1</sup>, in particular Articles 11, 12 and 13, and the UAE Federal Law No. 1 of 2006 on Electronic Transactions and Commerce<sup>2</sup>, in particular Articles 13 and 14. In addition, the Tunisian legislator has required sellers in electronic commerce transactions to provide consumers with information<sup>3</sup>, including the identity, address and telephone number of the seller or service provider, in a clear and understandable manner prior to the conclusion of the contract.

## **2. Technical means of verifying capacity in electronic contracts**

Verifying the capacity of parties to electronic contracts is a complex technical issue. This has led technical experts and legal scholars interested in electronic contracting to seek solutions that combine technical and legal approaches to address this challenge. While definitive technical means are still lacking, there are precautionary and advisory methods that can be used to verify the identity of contractors and to try to prevent individuals lacking capacity from entering into contracts. These methods can be categorised as follows:

### **A. Electronic cards**

Electronic cards are smart cards equipped with silicon chips that can store all data relating to the cardholder, such as name, age, place of residence and bank details, as well as all transactions associated with the card. These cards act as portable personal computers, containing a complete record of personal information and a security PIN. They are designed with a number of safeguards against fraud and misuse in the event of theft or attempted counterfeiting<sup>4</sup>.

Despite the precautions taken to secure the information on electronic cards, they are not immune to cybercriminals who are developing illegal methods to breach the technology used in these cards and developing new forms of cyber-attacks<sup>5</sup>.

### **B. Electronic signature**

The Algerian legislator defines the electronic signature in Law No. 04-15<sup>6</sup> on electronic signatures and certification. According to article 2, paragraph 1, it refers to data in electronic form attached to other electronic data and used as a means of authentication.

<sup>1</sup>- Amal Bouhental, Bessma Fougali, The Validity of Electronic Signatures in Electronic Commerce Contracts, *Journal of Research in Contracts and Business Law*, Faculty of Law, Mentouri University, Constantine, No. 2, 2019, p. 75.

<sup>2</sup>- Decree No. 16-142 of 5 May 2016, establishing the methods for preserving electronically signed documents, *Official Journal* No. 28 of 8 May 2016.

<sup>3</sup>- Law No. 15-04 of 1 February 2015, establishing the general rules on electronic signatures and certification, *Official Journal* No. 06 of 2015.

<sup>4</sup>- <https://portal.jordan.gov.jo>

<sup>5</sup>- Published on the website [<https://www.wipo.int>](<https://www.wipo.int>).

<sup>6</sup>- Published on the website [<https://www.ntc.gov.tn>](<https://www.ntc.gov.tn>) of 9 August 2000.

The functions of an electronic signature include identifying the contracting party and providing evidence of the party's intention to be bound by the terms of the contract. It also indicates the signatory's approval of the contents of the document. Documentation of the signature by accredited certification authorities provides parties with confidence in the identity of the contracting party, thereby enhancing the security of electronic commerce<sup>1</sup>.

### C. Electronic Certification

Electronic certification involves a neutral third party, whether public or private, regulating the relationship between the parties to a contract. This entity is responsible for verifying the identity of the parties involved and plays an important legal role by issuing certificates that confirm facts related to online contracts.

This third party acts as a bridge between the sender and receiver, with each party needing a trusted intermediary to confirm the identity of the other party, the validity of their electronic signature, and to ensure the legality and integrity of the transaction, free from fraud and deception<sup>2</sup>.

The operation of electronic certification entities in Algeria is organised by Law No. 04-15 of 1 November 2015, which establishes the general rules on electronic signatures and certifications. According to article 2, paragraph 7, an electronic certification document is an electronic document that establishes a link between the verification data and the electronic signature of the signatory<sup>3</sup>.

### D. Advisory measures

Advisory measures include the placement of warnings on websites that restrict access to individuals who have legal capacity. Such individuals are required to disclose their identity and age by completing an online information form. If a person has legal capacity, they can access the site and enter into contracts; otherwise, they cannot access the site if they fail to provide the required information or if their information indicates a lack of capacity.

These advisory measures are among the most commonly used today, but they are not without risk. Users may provide false information about their capacity, which requires further solutions to address this issue.

### Conclusion

In conclusion, the issue of capacity in electronic contracts is a pressing legal issue in light of the expansion of digital transactions. Despite the many challenges associated with verifying the capacity of online contractors, such as difficulties in verifying identity and the lack of a specific legal framework, the proposed solutions represent important steps towards improving the legal security of these contracts.

The development of legislation and the implementation of advanced verification technologies can address many issues and ensure the protection of the rights of contracting parties. It remains essential

<sup>1</sup>- Khaled Ajali. The legal system of the electronic contract in Algerian legislation, Doctoral thesis, Specialisation in Private Law, Mouloud Mammeri University, Tizi Ouzou, Algeria, Faculty of Law and Political Science, 2014, p. 213.

<sup>2</sup>- Alaa Mohammed Al-Fawair, *Electronic Contracts: Consent and Expression of Will, A Comparative Study*, Dar Al-Thaqafa for Publishing and Distribution, 1st edition, Amman, Jordan, 2014, p. 175. Mohamed Abdul Rahim Al-Sharifaat, *Consent in Concluding Contracts via the Internet: A Comparative Study*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2009, p. 68.

<sup>3</sup>- Alaa Mohammed Al-Fawair, *supra*, p. 175.  
Law 04-15, as mentioned above.

to commit to updating these solutions to keep pace with ongoing technological advances and to achieve a reliable and secure e-contracting environment.

#### **Findings:**

1. Significant challenges: E-contracting poses significant challenges in terms of contractor capacity, such as verifying identity and ensuring legal capacity.
2. Urgent need: There is an urgent need to develop legislation specifically for digital contracts to ensure the validity of agreements and protect the rights of the parties involved.
3. Effective tools: Legal awareness, advanced technologies and electronic signatures are effective tools to address capacity challenges in e-contracting.

#### **Recommendations:**

1. Update laws: Revise laws to include capacity criteria in electronic contracts.
2. Advanced verification technologies: Use advanced verification technologies, such as digital fingerprinting or facial recognition, to confirm the identity of contractors and increase trust in online transactions.
3. Awareness campaigns: Educate stakeholders through campaigns on the rights and obligations of individuals in electronic contracts, promoting understanding of the capacity and importance of identity verification.
4. Trusted platforms: Establishing secure electronic platforms with high security standards to promote trust between contracting parties.
5. Dispute resolution mechanisms: Establish dispute resolution mechanisms, such as electronic arbitration or mediation, to resolve conflicts arising from electronic contracts more quickly and efficiently.
6. International cooperation: Work with other countries to harmonise laws and standards relating to electronic contracts to facilitate cross-border transactions.
7. Investing in new technologies: Invest in new technologies, such as blockchain, to ensure the security and transparency of contracts and help verify the identity of contractors.

These solutions can enhance the security of electronic contracts and effectively address capacity issues.

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