



THE LEGAL AUTHORITY OF EVIDENCE IN ELECTRONIC CONTRACTS

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Abstract:

Dealing with electronic contracts leads to saving time and effort, encouraging investment, and driving the economy forward. This is achieved through the use of electronic writing and signatures, as they have become instant forms of documentation, unlike traditional writing and signatures, which are recorded on paper. Thus, are the rules of electronic contract evidence an extension of the rules of evidence in traditional contracts? And are its rules of proof sufficiently complete in Algerian civil law? This is what we will attempt to answer in this research.

Keywords: Electronic contract, electronic writing, evidence.

INTRODUCTION:

Modern contracts have become increasingly tied to advanced electronic means, giving rise to what is known as electronic contracts. Consequently, scholars, researchers, and university students are required to study and discuss these contracts. This has led to several legal issues, including those related to the legal framework of electronic contracts, their methods of proof, and the applicable rules and tools for evidencing them.

A contract concluded remotely via the Internet, without the physical presence of the contracting parties, is referred to as an electronic contract (Contract électronique). This type of contract continues to raise numerous questions in the 21st century among legal scholars and jurists both internationally and locally (Algeria). The foundations of Algerian legislation on electronic contracts began to take shape with the issuance of Executive Decree No. 98-257 dated August 25, 1998, which set forth the conditions and procedures for establishing and operating Internet services, in accordance with Law No. 2000-03 dated August 5, 2000.

This decree defined the general rules governing postal services, telecommunications, and electronic means through Law No. 05-10 dated June 20, 2005, in which Algerian legislation officially recognized electronic writing and electronic signatures. Additionally, Law No. 18-05 on electronic commerce complemented the legal framework for fostering the digital economy in Algeria, including legislative and regulatory texts such as Executive Decree No. 18-112 and the amended Executive Decree No. 19-251 dated September 16, 2019.

For these reasons, I have chosen the topic of this research: The Electronic Contract (Its Legal Framework - Its Authority in Evidence).

The Algerian legislator has not lagged behind in enacting laws on electronic transactions, keeping pace with technological advancements, similar to other international and local legislations. In exploring this subject, I reviewed a selection of legal books concerning electronic contracts and their legal authority under Algerian civil legislation. My findings revealed that legal studies evolve alongside scientific and technological progress, and Algerian regulations and legislations have adapted accordingly.

Thus, this research seeks to answer the following key questions:

- Are the rules governing evidence in electronic contracts an extension of the rules applied to traditional contracts?
- Are the evidentiary rules for electronic contracts sufficiently comprehensive and conclusive under civil law?



I. What is an Electronic Contract and Its Characteristics?

A contract concluded remotely via the Internet, without the physical presence of the contracting parties, is known as an electronic contract (*Contrat électronique*). This type of contract continues to raise numerous questions in the 21st century among legal scholars and jurists both internationally and locally (Algeria).

The use of the Internet in the 21st century, which began in the early 1980s, has expanded into various fields, including electronic commerce, which is based on smart contracts (Smart Contracts) and their evidentiary value, a concept that first appeared in 1994.

1. The Concept of Electronic Contracts (Doctrinal and Legal Perspectives)

Many legal scholars have provided various definitions of electronic contracts, including:

- According to Chaoui (2014), an electronic contract is an agreement that is concluded either entirely or partially through electronic means, meaning that all its elements may be fully executed electronically or only certain aspects are carried out via electronic means..
- Another legal scholar describes it as: A contract that involves the exchange of messages between the seller and the buyer, relying on pre-prepared templates, which are processed electronically and create contractual obligations (Menani, 2009). In other words, the commercial contract is established between two parties (the seller and the buyer) through evidence extracted from an encrypted electronic platform, which facilitates this contractual obligation.

These doctrinal definitions of electronic contracts highlight the essential role of the Internet and smart devices, such as:

- Computers
- Mobile phones
- Communication chips for sending and receiving signals (intelligent equipment)

Although an electronic contract is merely an exchange of messages without the physical presence of the parties—meaning it is concluded remotely—it remains subject to the provisions and laws of general contract theory.

1. Electronic Contracts in Algeria

The foundations of Algerian legislation on electronic contracts began to take shape with the issuance of Executive Decree No. 98-257 dated August 25, 1998, which established the conditions and procedures for setting up and operating Internet services, in accordance with Law No. 2000-03 dated August 5, 2000.

This decree defined the general rules governing postal services, telecommunications, and electronic means through Law No. 05-10 dated June 20, 2005, in which Algerian legislation officially recognized electronic writing and electronic signatures.

Additionally, Law No. 18-05 on electronic commerce was considered a continuation of a legal framework aimed at advancing Algeria's digital economy. This framework includes complementary legislative and regulatory texts such as Executive Decree No. 18-112 and the amended Executive Decree No. 19-251 dated September 16, 2019. This was one of the key reasons that led me to choose the topic of this research: The Electronic Contract (Its Legal System - Its Evidentiary Authority).

Thus, the Algerian legislator did not delay in enacting a law on electronic transactions, keeping pace with technological advancements like other international and local legislations. The Algerian legislator addressed electronic contracts in several legislative and regulatory texts, including Executive Decree No. 18-112 and Law No. 18-05 dated May 10, which pertains to electronic commerce. Article 6 of this law defines an electronic contract as a contract concluded remotely without the physical and simultaneous presence of its parties, relying exclusively on electronic communication technology. It further states that "a contract between absent parties is considered concluded at the time and place where the offeror becomes aware of the acceptance.

According to this definition, an electronic contract under Algerian law is an agreement formed between parties without the need for their physical presence in the same place or at the same time. The conclusion of such contracts occurs through electronic communication means, encompassing any technology used to facilitate interaction via the Internet and electronic networks.

2. Characteristics of the Electronic Contract

The electronic contract is an international contract as it is concluded through a global electronic medium, namely the Internet. Based on this, I have identified the following key characteristics:

A. The Electronic Contract is Concluded Remotely:

The distance in this type of contract refers to its execution via an electronic medium, primarily the Internet, which hosts online stores. It does not matter whether the contracting party is a natural or legal person. This type of contract includes a time interval between the offer and the acceptance, which occurs through electronic messages. The contract is formed upon acceptance, and if rejected, the contract is nullified.

B. The Electronic Contract is Concluded Through an Electronic Medium:

The electronic medium in this contract is automated, distinguishing it from traditional contracts. In electronic contracts, the electronic medium serves as a third party alongside the two contracting parties (e.g., a seller and a buyer). The electronic medium is defined as:

A computer-based program or electronic system used to execute or respond to an action for the purpose of creating, sending, or receiving an information message without human intervention (Chaoui, 2014).

C. The Electronic Contract is an International (Global) Contract:

Chaoui (2014) states that the electronic contract is distinguished by its global nature, as it is not confined by time or place. Its purpose is to accommodate the interests of both parties without territorial limitations. In this regard, the nationality of the contracting parties, their civil or commercial status, and their physical presence in the same location are inconsequential. The only prerequisite is that they are linked through an electronic communication medium.

II. Rules of Evidence in Electronic Contracts

Evidence refers to the process of presenting proof before civil, commercial, or administrative courts through legal means, based on valid facts submitted by disputing parties, which may then be contested by the opposing party.

- Evidence in electronic transactions faces unique challenges, such as defects in consent, including fraud, deception, and exploitation. As a response, new electronic documents have emerged as a solution to address these issues, which are collectively known as electronic evidence, particularly electronic writing and electronic signatures.

A. The Position of Algerian Legislation on Rules of Evidence (Electronic Writing and Signature)

- Article 323 bis of the Algerian Civil Code No. 05-10, dated June 20, 2005, states:

Proof through writing consists of a sequence of letters, descriptions, numbers, or any meaningful symbols or marks, regardless of the medium in which they are contained or the method of their transmission (Algerian Civil Code, Ordinance No. 75-58, 1975).

The term "medium" here refers to any electronic support system, regardless of the method of transmission. Examples include information and data stored on hard disks, floppy disks, or those written via computers and transmitted or published via the Internet.

- The Algerian legislator recognizes any written evidence as legally valid, including electronic evidence, such as CDs, floppy disks, or any encrypted digital medium used for future transactions .

From this, it can be concluded that electronic writing holds legal evidentiary value in Algerian law, as it is grounded in well-established legal principles in an era where communication and business transactions have evolved. Since electronic writing is inherently linked to electronic signatures, comparative legal systems, including Algerian civil law, have affirmed its importance.

- Law No. 05-10, dated June 20, 2005, which amended and supplemented the Civil Code, officially recognized electronic signatures and their evidentiary authority (Algerian Civil Code, Ordinance No. 75-58, 1975).

Thus, electronic writing and its accompanying electronic signature serve as fundamental evidence in legal proceedings and play a crucial role in all legal transactions and contracts, particularly in electronic contracts.

A. Electronic Writing

Comparative legal systems require original written documents (Ali, 2019), as evidence in electronic transactions to validate certain legal acts, such as electronic contracts. These documents must be stored on computer devices or storage disks and must be signed to attribute them to their author, as writing without a signature has no legal value. Therefore, a document that is both written and signed serves as valid evidence for proving factual events and can be used as legal proof under two conditions:

1) Definition of Electronic Writing

Legal and doctrinal definitions of electronic documents vary, including the following:

❖ One definition states:

Qasim (2004) describes it as a set of technical measures that enable the identification of the individual who performed the actions and confirm their acceptance of the content of the transaction in which the signature was made.

- This means that the information in the written document must clearly indicate who created or received it, specifying the date and time of sending and receiving in a designated electronic format.

❖ Another definition describes electronic writing as:

A set of legally incorporated information within a document that ensures its integrity (Juma'i, 2000).

- This means that the document, record, or data must be accurate and unalterable, meaning that no addition or deletion should prevent the electronic writing from being accepted as evidence in legal proceedings, even when it exists in a non-original format (Chaoui, 2014).

❖ A legal definition states:

"It is the writing that records rights and serves as proof in legal disputes, as it is a clear and legally documented text issued by an identifiable person (Mauane, 2017)

- Thus, electronic writing is considered written evidence, recorded on electronic media and transmitted as electrical signals, which are then converted into a language readable by computers.

- This digital definition, if we may call it so, clarifies certain technological terms found in modern electronic media, such as computer-generated electrical signals.

- The function of electronic writing is to serve as evidence or a written document that validates a legal transaction and contains content that contracting parties can refer to in the event of a civil, commercial, or administrative dispute.

- Article 323 bis 1 of the Civil Code affirms the equivalence between electronic writing and paper-based writing in evidentiary law, meaning that electronic writing carries the same legal weight as traditional writing. However, this is subject to two conditions, given that electronic transactions exist in a virtual rather than a tangible world.

- After establishing the legal evidentiary value and the substantive and procedural rules governing electronic writing in electronic contracts, several key conclusions can be drawn:

1) Electronic writing serves as sufficient and complete proof in customary (non-formal) electronic contracts, provided it includes an electronic signature. Unlike formal written contracts, it does not require authentication by a public official, notary, or designated service officer.

2) Electronic writing is equivalent to paper-based writing and has effectively replaced it today. This is confirmed by Article 1316 of the French Civil Code, which states:

"Written proof, or proof by writing, is valid regardless of its medium or method of transmission."

3. This provision of the French Civil Code establishes parity among all forms of writing, as the word "or" in the legal text indicates an option or alternative.

4. Electronic writing is legally valid and enforceable, just like paper-based writing. Therefore, an electronic transaction produces legal effects if it is stored in a medium that allows future access and retrieval.

5. Electronic writing is a strong evidentiary rule, regardless of whether it is in the form of a document, a message, or any electronic format. It is a legally admissible proof in civil, commercial, and administrative law (Ali, 2019).

- This raises a crucial question regarding electronic writing: To what extent has civil law advanced in regulating electronic contracts, particularly concerning written evidence?

The Algerian legislator holds that contracting via the Internet does not constitute a material impediment to obtaining written proof, meaning that the concept of impossibility does not apply—as creating written evidence remains essential in contracting.

Lhamaoui and Aït Tafati (2021) emphasize that contracting via the Internet is not the sole method available to contracting parties; rather, they opt for it voluntarily due to its efficiency and the speed of communication, which simplifies contract formation. Notably, Article 336, Paragraph 1 of the Algerian Civil Code does not define material or moral impediments, nor does it impose restrictions—instead, it remains broad and general in scope.

2. Electronic (or Digital) Signature

Electronic writing is closely linked to the electronic signature, as it constitutes a fundamental element of written evidence and is essential in both traditional and electronic documents. The European Parliament, through Directive No. 93-99 issued on December 13, 1999 (Ali, 2019), officially recognized the evidentiary value of customary electronic documents through the use of electronic (digital) signatures.

A. The Importance of Electronic Signatures in the Evidentiary Value of Electronic Documents

- The electronic signature is crucial to the legal validity of an electronic document. A document cannot serve as evidence unless it is electronically signed, as the signature guarantees that the electronic document originates from its true author, preventing them from denying its content.

- The electronic signature ensures that electronic documents are protected from forgery, alteration, or unauthorized modifications.

- The electronic signature restricts access to authorized persons only, preventing unauthorized third parties from reading or modifying the document.

- The electronic signature is generated using specialized technologies, ensuring its reliability. A certification authority issues an electronic authentication certificate verifying the validity of the signature.

- Chaoui (2014) explains that although there is a distinction between handwritten and electronic signatures, both hold equal evidentiary value. However, when concluding an electronic contract, it is essential to apply technical authentication measures related to the electronic signature. In this regard, the contract must undergo electronic certification, as demonstrated in France on October 28, 2008, when the first electronically signed contract was executed using a computer system.

A handwritten signature and an electronic signature serve the same function and are legally equivalent, provided that the electronic document is credible in terms of its authenticity (Chaoui, 2014), the accuracy of its content, and the validity of its date. However, certain civil transactions require the physical presence of the parties, such as wills, donations, endowments, real estate transactions, and judicial claims.

On the other hand, legal transactions valued at less than 100,000 DZD may be proven through an electronic signature, which carries greater evidentiary weight than witness testimony.

- While commercial transactions are based on the principle of freedom of evidence, this does not exclude the use of electronic signatures as a valid method of proof.

B. The Legal Position on Electronic Signatures

The Algerian legislator defines a signed document (or authenticated record) as an electronic document that is either attached to or logically linked with an electronic signature ("Executive Decree No. 16-142," 2016). The legislator also acknowledges its evidentiary value under Article 327-2 of the Algerian Civil Code (as amended), which states:

"A signature made in accordance with the conditions outlined in Article 323 bis of the legislation is legally valid. Both laws recognize the new form of signature, which is intrinsically linked to electronic writing. As a result, contracting parties in an electronic contract may use the electronic signature as a second layer of evidentiary proof in conjunction with written documents (Houhou, 2016).

From this, it can be inferred that the electronic signature carries greater evidentiary weight than a customary written document, as its credibility resolves disputes by verifying the true obligations of the signatory in an electronic transaction.

C. How is an Electronic Signature Created?

According to Algerian Law No. 15-04, the electronic signature is defined as:

Data in electronic form that is attached to or logically associated with other electronic data and serves as a means of authentication.

Based on this definition, electronic signatures are generated using biometric data, including:

- Voice recognition signatures
- Retinal scan signatures
- Fingerprint-based signatures
- Digital signatures (asymmetric cryptographic keys based on mathematical algorithms) (Menani, 2009).

Since electronic transactions occur over the Internet, an open network, there is always a risk of contract manipulation or forgery by third parties. To secure electronic transactions against fraud, misrepresentation, or manipulation, and to protect electronic documents, contracts, and methods of proof, an additional security requirement has been introduced alongside electronic signatures—this is known as electronic certification or authentication, referred to in Algerian Civil Law as the "service provider".

D. The Service Provider as a Requirement for Electronic Signatures

Electronic Authentication (E-Authentication) refers to automated techniques and mechanisms used to verify the authenticity and validity of both parties in a transaction by generating an electronic signature.

- To successfully create an electronic signature and ensure its security, the signature must be uniquely associated with its owner and generated using methods accessible only to the signatory. Any subsequent modification of the document can be detected due to the inherent strength of the signature.
- Electronic certification verifies the legal validity of an electronic signature by issuing an electronic authentication certificate (Houhou, 2016). As stipulated in the Algerian Civil Code, this certification serves

as an authentication tool in electronic transactions, assisting judges in recognizing electronic certification as proof for identifying the signatory's identity and confirming their association with the signed data.

- Given that electronic signatures require authentication—which is ensured through certification services or service providers—it becomes evident that signatures play a critical role in evidence law, alongside electronic writing.
- An electronic document constitutes complete and absolute proof, confirming both the identity of the signatory and the accuracy of its content.
- Electronic writing and electronic signatures form the foundation and essence of every electronic contract.

CONCLUSION

The nature of electronic contracts and their evidentiary authority are among the most significant emerging legal topics. Through this research, we have reached the following conclusions:

FINDINGS

- ✓ Engaging in electronic contracts helps save time and effort, encourages investment, and drives economic growth forward.
- ✓ Electronic writing and signatures have a broad scope, as they originate from instant documents such as fax, telex, and the Internet. In contrast, traditional writing and signatures have a narrower concept, as they are limited to paper-based documents.
- ✓ The Algerian legislator has continued to issue laws on electronic transactions, keeping pace with technological advancements. In this context, Laws No. 18-05 and 18-07 were enacted to protect individuals in electronic commerce.
- ✓ The Algerian legislator amended evidentiary laws in civil matters, recognizing digital electronic signatures and electronic messages as valid evidence.
- ✓ Article 327 of the Civil Code introduced the concept of "functional equivalence between traditional and electronic signatures." Both signatures hold equal legal weight, provided that the electronic signature includes the identity of its owner and their acknowledgment of the transaction associated with the signature.
- ✓ This is further reinforced by Article 323 bis 1 of Law No. 05-10, dated June 5, 2020, which recognizes electronic signatures through an intermediary entity (the issuing authority) that validates and authenticates the signature.
- ✓ Legal scholars have debated whether an electronic document can be considered a form of partial written proof similar to traditional writing. However, the dominant legal opinion—which we support—suggests that electronic records serve as incomplete evidence and require additional proof to be fully valid.
- ✓ Therefore, electronic contracting does not prevent the establishment of complete written proof, as the concept of impossibility in obtaining written evidence does not apply.
- ✓ Scholars studying electronic contracts refer to the contractual setting as a "constructive session" rather than a real one, due to the absence of physical presence between the contracting parties.

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