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**Legal Challenges of E-Commerce in Algeria**Aboubakeur sedik Benyahia<sup>\*1</sup>, Rachid Bachar<sup>2</sup><sup>1</sup>Faculty of Law and Political Sciences, University of Djelfa (Algeria), [a.benyahia@univ-djelfa.dz](mailto:a.benyahia@univ-djelfa.dz)  
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<https://orcid.org/0009-0004-2120-2338>**Abstract:**

Modern technology has helped to upgrade the business process, by making it faster and easier. And thanks to Information and Communication technology, the world has become a small village where it became easy to transfer information about products and services. Who activated the e-commerce process, which has become one of the pillars of the economy in the business world? But adopting such type of trade in our country wasn't an easy task, this later has faced several levels administrative, social, political and economic ones. The authority had set some legal obstacles which made him subject to some restricted laws (legal sanctions), which led politicians and decision makers need to review within our legal system, which must keep pace with global developments, by opening the way to the e-commerce in our country, and make it easier for consumers, investors and traders by protecting them legally from the danger of opening up to global markets.

**Keywords:** E-commerce, e-payment, e-contracting.

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## **INTRODUCTION**

The world has witnessed rapid changes in various fields today, as many obstacles between countries have been overcome. Companies in developed countries are characterized by quality, diversity, and mastery of production in a competitive environment. These companies seek to explore foreign markets in various ways, aiming to market their products and increase their profits on one hand, while on the other hand, they import materials and human production requirements from third-world countries at competitive prices to support their economies. This significant development has been accompanied by advancements in various areas, especially in information and communication technology, which has contributed to connecting people in general with institutions and clients from all over the world through advanced media and online communication.

In the past, what is known as e-commerce emerged, which has become a reality today. Many countries are striving to enhance the role of this trade, especially in light of global changes and new challenges. Its role is expected to increase in the near future due to its impact on markets, business performance, and competitiveness, as e-commerce should be the dominant form of trade between institutions and individuals worldwide during this century.

Adopting this type of trade, especially in our country, requires reforms and developments at various levels, particularly since e-commerce originated in an environment different from ours. We have discussed that the set of reforms will be numerous and complex, with the most important being legal reforms, concerning their suitability for the developments imposed on us by current circumstances. We have the following problem:

To what extent has the law contributed to the activation and protection of electronic commerce?

In response to this problem, we suggest that the following should be taken into consideration:

First: The nature of e-commerce

Second: Legal constraints to electronic commerce

Third: The protection of E-commerce in Algeria

fourth: Results and recommendations

### **First: The nature of e-commerce**

The idea of e-commerce began in the early 1970s. During this period, e-commerce meant facilitating business transactions electronically using technologies such as electronic funds transfer. This technology allows companies to send business documents like purchase orders or invoices electronically. The use of information and communication technology has enabled innovations in the business world through e-commerce, It refers to the process of buying, selling, transferring, or exchanging products or services over a computer network.

The second generation of e-commerce was introduced in 1980 with the use of credit cards, ATMs, and telephone banking. E-commerce as we know it today began to take shape around 1998, globally through computers and the internet. Many predicted that e-commerce would become one of the most important applications in the world, but its widespread adoption took a long time.<sup>1</sup>.

#### **1. Definition of Electronic Commerce:**

Several definitions of e-commerce have been given, the most notable ones are defined as follows<sup>2</sup>:

“E-commerce is the practice of commercial activities through one or more websites. This includes searching for products, knowing the product features, issuing a purchase order, assembling goods in an electronic shopping cart, extracting inventory, shipping arrangements, notification, accounting and payment by means of electronic money payment to settle the transaction”.

“E-commerce banking: This practice refers to electronic banking services conducted online, where customers can access the available links on the network. The aim of electronic banking services is to provide traditional or innovative banking services through electronic communication networks, which can only be accessed by the individuals concerned, according to the membership terms set by the banks via the internet portal”.

“These activities include meeting consumer needs in the right place, at the right time, and at the right price. Thus, e-commerce

is considered a type of trade that takes place through an electronic intermediary, whether within or outside the country's borders, regardless of quality, legality, or applicable laws, where electronic means are used to conduct transactions and payments".<sup>3</sup>

"A wide range of online business activities for products and services, as well as any form of business transaction that the parties interact electronically rather than physical exchanges or direct physical contacts".<sup>4</sup>

## **2. Characteristics of e-commerce:**

E-commerce has many characteristics that differ from traditional commerce and are as follows<sup>5</sup>:

- The absence of a specific geographic location where sellers and buyers meet leads to transactions occurring online. In other words, the market or trade center is not a building or a similar place, but rather an online site that includes commercial transactions. Often, the parties involved in the transaction do not know each other, as exchanges take place without the need to see one another.
- Electronic commerce is conducted in the most efficient, effective and cost-effective manner possible by adopting electronic data exchange;
- E-commerce helps to make a large number of transactions easily and conveniently without requiring the seller or buyer to move where such products and services are offered;
- Both e-commerce has the absolute potential to offer its products and services to consumers simultaneously and 24 hours a day, maximizing benefits for both producers and consumers;
- E-commerce is a catalyst for companies continuously developing their services. Competition here takes its highest form, as the firm expands of the sense of competitiveness;

## **3. Advantages and fields of e-commerce:**

**3.1 Fields of e-commerce:** E-commerce has many fields, the most important ones<sup>6</sup>:

**3.1.1 Electronic Banking:** This is one of the most important areas of growing e-commerce, where transactions are electronically conducted;

- 3.1.2 **Specialized Services:** This includes all types of investments, medical, educational Accounting services and others are widely available online, as these services generally rely on information that is available electronically, in addition to the accessibility of the internet for individuals and small businesses. These factors are likely to enhance the ability of small businesses to compete in global markets. Among these services, there are those that can be provided electronically, such as medical and educational services, where payments are requested and made online, but are delivered to the consumer in a tangible form rather than being electronic.
- 3.1.3 **Services not provided electronically:** This type of service is offered online, such as booking flight tickets and hotel reservations. These services are active and covered by the global trade agreement regulated by the World Trade Organization.
- 3.1.4 **Communication Services:** Communication services are one of the world's leading business activities.
- 3.2 **Advantages of e-commerce:** Some of the most important advantages of e-commerce include<sup>7</sup>:
- Speed of communication, especially in international transactions.
  - Improved efficiency as there is no need to re-enter data and therefore no errors in the input process.
  - Low cost, where the electronic data exchange system leads to a reduction in warehouses and significantly reduces buying and selling cycles.
  - Close relationships between customers and suppliers, because e-commerce sites are always up to date on the Internet, which instantly sensitizes customers and suppliers to any change in the market.
  - An easy and quick way to get information about a particular company, its products and websites locally and internationally.
  - The existence of alternative channels for transactions via the website.
  - It can also be said that in two decades, e-commerce between companies through electronic exchange those systems has brought many benefits in many developed industrialized

countries, as well as in some Southeast Asian countries who use these advanced systems.

- A clear reduction in distribution costs, as e-commerce has contributed to the subscription of a large number of members of the traditional distribution channel.
- Reduced storage, inventory management and material handling costs, saving effort and money in this particular area.
- Improvement of the quality of products and services exchanged within the framework of electronic commerce between companies which was positively reflected on the satisfaction of customers.

#### **4. The fundamentals of e-commerce:**

E-commerce is the result of many advanced scientific achievements in various fields. Its spread and sustainability depend on a set of other important elements. Among the fundamental foundations that contribute to this, we find:<sup>8</sup>

- 4.1 **Infrastructure:** For the creation and the development of e-commerce and to achieve its To achieve the goals, there must be support from an effective industrial sector in the field of information technology, in addition to various material inputs in this area. The economy should have some related industries, as this sector does not rely solely on computers, but also on the telephone network, which is a modern communication infrastructure that, in turn, requires many industries to meet the needs of as many subscribers as possible.
- 4.2 **Trust and security:** E-commerce transactions differ significantly from traditional commerce, starting from electronic communication to the delivery of certain products and services and the settlement of payments electronically. Consequently, its growth has relied on mutual trust between the parties involved, especially in the absence of new regulations governing this type of activity. The concerned countries, particularly developed nations, have been working on establishing bilateral or multilateral agreements, in addition to issuing joint statements emphasizing the importance of e-commerce and its protection.
- 4.3 **Legal Regulation:** One of the key elements in developing trust and security among e-commerce traders may be the existence of

appropriate legal regulations that define the rules governing its various aspects at both national and international levels. In fact, this type of new economy requires the reform of commercial and economic legal texts, as well as the introduction of numerous provisions in multiple areas, such as the possibility of digital signatures and electronic payments through various means, the formation of contracts, and the contractual guarantees for these transactions.

#### **4.4 Development and diversification of the economic structure:**

E-commerce does not exist in a vacuum; rather, it operates within a specific economy, reflecting its reality and leading to mutual interaction. However, this requires the mobilization of various sectors of the physical economy and services, as well as the use of information technology in production, marketing, distribution, and related services, in addition to independent services.

In addition, there are other elements that contribute to the dissemination and development of electronic commerce, such as appropriate economic policies, training, continuing training, and a good legal and regulatory system to ensure the payment process through the network.

#### **Second: Legal constraints to electronic commerce**

##### **1. General constraints:**

**1.1 Social and psychological constraints:** The social and psychological causes that hinder e-commerce are related to the characteristics of the Algerian society, which is still waiting a long time to join the information society.

The most important constraints are<sup>9</sup>:

**1.1.1 Illiteracy:** It is difficult for Algeria, where some 5.7 million people suffer from artisanal illiteracy, to get easily transformed into a knowledge economy and to apply an e-commerce. Because illiteracy contradicts the nature of this type of economy and commerce.

**1.1.2 Language:** One of the challenges of e-commerce is the linguistic factor, which is one of the critical problems using the network for commercial purposes, where most e-commerce

transactions take place in English. While Algerian Internet users suffer from a lack of content available in Arabic on the Internet

- 1.1.3 **Psychological constraints:** Among the obstacles to the transition to e-commerce, which makes it an unrealistic alternative, These include consumer behavior and the Algerian society's vision of openness to the outside world and the conclusion of a modern type of cross-border trade agreement. Algerian consumers were surprised by this new kind of exchange and electronic shopping.

What led to:

- The consumer's lack of trust in anonymous suppliers that he couldn't see directly in front of him.
- The lack of electronic commerce in society's habits
- Consumer fear of the risks that characterize e-commerce,
- Fears of data and information theft, including credit card numbers
- Purchasing habits of consumers who prefer traditional markets as a means of entertainment.

1.2 **The technical challenges of e-commerce are:** the most important ones <sup>10</sup> :

- Lack of reliability and security, standards and protocols.
- Lack of volumetric space for telecommunications.
- The constant and rapid evolution of tools and software.
- Internet connection and speed issues, and complexity of e-commerce software
- Vendors may need special web vendors, other infrastructure, as well as network vendors.
- Some ecommerce software does not adapt programmatically and technically to certain solid components or operating systems.

## **2. Legal constraints**

The adoption of e-commerce has raised a number of constraints and challenges and has encountered a number of legal issues that have necessitated a reform of the legal system in part to take into account the specific nature of this modern type of commerce.

These constraints and challenges are as follows<sup>11</sup>:

**2.1 Electronic contracts:** Electronic commerce faces difficulties in terms of recognition by traditional laws of the legality of concluding contracts by such means, with regard to the offer and acceptance, the criterion conclusion of a contract, the mode of expression of the will and the related issues of time and place of conclusion of a contract.

**2.2 Data:** E-commerce challenges the authenticity, legality and demonstration of evidence in its digital form. where the most important topics are digital signatures and encryption. In addition, the problem of the lack of recognition of the legality of electronic mail is that failure to recognize this type of mail undermines the possibility of adequate recognition and regulation of electronic commerce in an equivalent manner to the law traditional commercial. This problem affects the application of traditional trade laws in the e-commerce environment so as to impede the development of e-commerce.

**2.3 E-Payment, E-Money and E-Banks Systems:** E-commerce poses challenges in the area of payment and service. These challenges concern the concept of electronic money, Electronic transfers, electronic cash payment mechanisms, and issues related to the recognition of these means and the determination of the responsibilities of the parties involved.

**2.4 The legal responsibility of intermediaries in e-commerce activities:** Such as the responsibility of internet service providers, the responsibility of delivery service providers, the responsibility of advertisers, in addition to the responsibility for issuing documents and certificates.

**2.5 Infrastructure:** It concerns the legal regulation of telecommunications services, the provision of internet services, and the monitoring of e-commerce in the country, as well as the standards, legal rules, and legal responsibilities associated with them.

**2.6 Consumer protection and law application:** with regard to legislation on consumer rights and protection, where certain texts may impose constraints to electronic commerce.

**2.7 Intellectual property:** the challenges of protecting intellectual property in an e-commerce environment, in

particular the protection of trademarks, domain names and content of e-commerce sites from written material, Of course, it concerns visual and auditory media, as well as the protection of e-commerce software and the associated technical solutions, especially those that are downloaded digitally from the site.

**2.8 information security:** related to trends in hacking of websites and e-commerce systems, security requirements of networks of various types of computer and Internet crimes.

**2.9 Privacy issues:** It concerns the right to personal data protection.

There is another classification of legal constraints according to the stages of e-commerce, where we find<sup>12</sup>:

**Phase 1:** Electronic commerce in its general form, requests for products or services in which the applicant is located elsewhere than where it is required to use or receive products. The answer regarding the availability of the service or products is given online, and the situation can be - As in virtual stores - the products or services are displayed online followed by the service request or purchase request of the customer browsing the site, and therefore the website is the specific means of presentation of the contractual place or place of transaction and price. This phase (already prior to the transaction) raises many issues and challenges:

- confirm the validity of the website, products and services offered.
- the legality of what is provided on the website in terms of ownership (intellectual property issues).
- challenges in protecting consumers from online fraud activities and any fake sites or illegal content.
- taxes on the products of e-commerce online, and the criteria for calculating and measuring these taxes, which may be considered a constraint to the prosperity and development of e-commerce.

**The second step:** the conclusion of the contract, so that the offer and acceptance online is done in several ways according to the type of business and the means of subcontracting stated on the website, and among the most famous electronic contracts on the

web, the electronic contract by e-mail, and in general, the will of the supplier, producer or seller responds to the will of the customer, by concluding the agreement online, here two main problems arise:

- The first is to confirm the validity of the information provided on the website. One way to solve this challenge is to find neutral bodies that mediate between The parties (intermediate certificate authorities) on the other side to ensure the verification of the existence of the other party and that the exchange of information is conducted reliably, and they work online by sending confirmation letters or certificates to each party confirming each other's status.

- The second point concerns the validity of the electronic contract or its binding legal force. In traditional commerce, this is ensured through the signing of a written contract or a purchase order, or through testimonies in the case of unwritten contracts from witnesses who observed the material facts related to the contract during its formation or execution. So, how is this contract signed, how valid is it when using electronic means, and to what extent is it accepted as evidence?

And depending on the nature of e-commerce There are new ways compatible with this type of e-commerce as the digital signature method.

### **Third: Protection of E-commerce in Algeria**

After a long period, Algeria has decided to enter the new world by embracing e-commerce. Despite the aspirations of the trading and consumer community, especially those who engage significantly with foreign transactions, we are still lagging behind in the realm of electronic contracts.

Electronic transactions are almost similar to traditional commercial transactions, but they are conducted through electronic means. As for electronic contracts, they do not deviate from the concept of traditional contracts and are subject to the same principles and forms, but they are executed over the electronic network. However, they have not yet been regulated by legal texts in Algeria, We are awaiting the approval of the e-commerce law that was approved by the Council of Ministers on

October 4, 2017, which is still under discussion at the parliamentary level. Below is an explanation of the reality of e-commerce in Algeria and the most important proposed reforms.<sup>13</sup>

### **1/ Today's e-commerce in Algeria:**

E-commerce spread around the world in the 1990s, with the beginning of Internet integration. However, Algeria is still very late in this area. To this day, we are still waiting for the Algerian legislator to regulate the rules of this trade and because of this legislative delay, the jurists are in a legal vacuum which obliges them to refer to the provisions of the general regulation of the contract.

Thus, the only reference for lawyers remains civil and commercial law. This delay hinders Algeria's trade and prevents Algeria from making huge profits. The current use of the Internet is unavoidable to market the products on the websites in order to meet the market needs using techniques and tools of strategic analysis.

In this context, the Minister of Communication Houda Imane PHERAOUNE announced that the bill on electronic commerce approved by the Council of Ministers on October 4, 2017 will enter into force immediately after its ratification by Parliament. It also stresses that the legislative framework must ensure the protection of traders and consumers by regulating the rights and duties of each. What is the legal protection of electronic commerce?

Civil liability for electronic commerce is based on an individual's breach of obligations to third parties arising from a contract or law. The first is contractual liability and the second is tort liability. In electronic contracts, and what interests us is contractual liability.

Contractual liability requires that one of the contracting parties fails to fulfil its contractual obligations towards the other. One of the obligations is to conform products or services to specifications. Anyone who offers his products or services must know the needs of his client and inform him of the specifics of

the advantages and disadvantages of the sale and his ability to meet his needs.

It is difficult to determine all customer needs through e-commerce, as there is no direct contact between the seller and the buyer. The seller must facilitate the customer's purchase process and be able to return the sale in case it does not comply with the appropriate specifications. This must be dealt with more precisely than the cases provided for in the general regulation.

As for the consumer, his obligation is to pay the price required. In e-commerce, payment is made by electronic payment, i.e. by credit card or electronic money

In this respect, the legislator must draw up provisions protecting contractors in electronic commerce by means of sanctions to combat the phenomenon of piracy, on the one hand, and set up bodies to monitor compliance with these provisions, on the other hand.

One of the problems that Parliament needs to address is the identification of those who deal with e-commerce. In order to protect customers, the person we deal with must be identified in order to avoid fraud that is difficult to prove in the event of harm. This leads us to the criminal protection of e-commerce.

The use of email has become very common, and the difficulty in identifying users online has contributed to an increase in crimes committed on websites, such as mutilation and destruction of sites by hackers, the use of a fictitious or hidden identity in commercial transactions and other fraudulent means to which the consumer is exposed.

In view of all these dangerous phenomena for the consumer, the legislator must determine the electronic offenses and their sanctions, especially since the minister Huda Imane PHERAOUNE announced that the internet space would be open for all sales, purchases and services, other than alcohol and all that may be affected by the maintenance of public order and morality. There must therefore be a precise and detailed legal arsenal that It provides protection for both the merchant and the consumer.

## **Procedures to Support the Promotion and Development of E-Commerce:**

The necessity to develop sectors to meet the needs of electronic commerce, due to the delay of electronic commerce in Algeria. is not only due to the legal vacuum, but also lagging behind in the various sectors that need to be developed and digitized in parallel with e-commerce.

**Administration:** The first sector that requires development is management, as it is considered the biggest obstacle to the Algerian economy. The bureaucracy must be lightened and the administrative apparatus must be digitized with modern computing, because the administration is linked to the public service, so it must be fast in order to reduce costs on the one hand and open space to economic operators on the other.

Ensure the protection of the electronic system through the implementation and development of monitoring structures. The electronic development of the world requires constant monitoring to keep pace. At the same time, the phenomenon of piracy was getting worse, and care must be taken to develop the protection mechanisms of the electronic system.

**The evolution of communication technologies:** The events of the baccalaureate that led to the suspension of internet coverage at the national level are the most prominent evidence of our delay in this area. We must understand that the evolution of the economy is closely linked to Internet coverage, because almost all business transactions are made by electronic payment.

**Development of the banking system:** The banking system should be developed and the use of electronic payment should be expanded. Today, banks in Algeria remain mere reserves of funds representing billions that must be invested in paving the way for banks to innovate services according to the demands and needs of customers.

Regarding electronic payment, customer concerns about its use should not be overlooked. It is necessary to enhance the protection of the electronic system and the banking system, in addition to promoting its use across all sectors of the country.

When the citizen sees the ease and speed that this gives him, he will adopt it in a natural and very fast way.

**The development of the tax system:** in harmony with this modern trade on the other hand, why not think about reducing taxes to electronic commercial transactions. This can encourage e-commerce. If, for example, a lower value added tax (VAT) was imposed by electronic payment, there is no doubt that the consumer will resort to this type of trade..

All these reforms and actions must involve all parties, the authorities, economic operators and civil society in general. And the best way to achieve this is the involvement of all the skills of technicians, lawyers and associations, including the Association of the Algerian National Organization for the Protection and Guidance of Consumers and its Environment.

## **CONCLUSION**

Finally, by following these best practices, We can enhance the quality of e-commerce websites and smart applications, as well as improve the user experience in this type of commerce, leading to increased revenue, and for this all the necessary measures must be taken in order to ensure data protection and guarantee a high level of security when connecting to electronic means of payment in electronic commerce.

### **Recommendations:**

**1. Make sure you only give personal information to trusted entities,** and know why they need it. Personal information primarily includes mailing address, telephone numbers and email.

**2. Use of secure Internet access software.** Every computer is known to have a special internet access software or search engine. These programs often contain certain mechanisms that store in the device's memory all the information circulating on the network. Often, hackers can access the memory of internet access software or search engines and obtain all the user's information without noticing it; It is therefore recommended to purchase a special protection program or software with high protection to protect personal gifts.

**3. Verifying the reliability of the merchant's website**, you must ensure that the merchant's website matches the intended location by consulting the merchant's policies, that include the primary website through which the merchant's website was created. The location of the merchant can also be found via the Uniform Resource Locator (URL) navigation mechanism, as this mechanism tracks the site and the basis of its creation, and if it cannot be traced, the site is often a questionable location.

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