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# The Protection of the Consumer in the Electronic Commerce Contracts - in the Algerian Legislation -

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## **Dedication:**

Alhamdulillah,

This dissertation is dedicated to those who supported me to get my work done

To my parents who have been so patient with me and did their best to always see me on top, to my siblings (Mohamed, Chaima, Ahmed), my uncle Mr. HEDLI Nabil, my supervisor and everyone who helped me through my university journey.

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## List of Abbreviations

<b>E-Consumer</b>	_____	<b>Electronic Consumer</b>
<b>E-Commerc</b>	_____	<b>Electronic Commerce</b>
<b>JORA</b>	_____	<b>Journal Officiel Republic's Algerian</b>
<b>Ibid</b>	_____	<b>Ibidem which means "In the same place"</b>
<b>Op.Cit</b>	_____	<b>Opere Citato which means "in the work cited"</b>
<b>VOL</b>	_____	<b>Volume</b>
<b>E.g</b>	_____	<b>For Example</b>
<b>EU</b>	_____	<b>European Union</b>
<b>N°</b>	_____	<b>Number</b>
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# Introduction

**Introduction:**

In the light of the whole technology developments that bring a significant changes in many different fields such as political, social, etc... The economy field is getting advanced in such a hectic way, especially in the e-commerce transactions. Where it is no longer just a traditional one, because a person now is able to conduct contract via the internet, and receive the goods or services in a specific period with adding his personal information and paying by an electronic financial means.

Nowadays, since the e-commerce is witnessing a huge development and the online transactions are getting expanded, the risks that expose the electronic consumer are also increasing. Due to this advance, the electronic contracts must be done in a safe and a very well-protected way, whether during the formation or the execution of them.

This study showed up out of realizing **the importance** of the e-commerce, the protection of the e-consumer during the e-contracting, and the rules that regulate both of them, which seek providing safety during all stages of conducting an e-contract, that will lead to a well-protected environment of e-commerce transactions, also achieving the economy development. So this study has two types of importance, a **scientific importance** which is presenting the mechanisms that the e-consumers can rely on, in order to be protected and conduct a contract in a safe way. Also a **practical one** which is considering the e-consumer as a basic element, that contribute in the economy development means that, it is quite important to keep an eye on him, and setting legal rules to provide the right protection in order to make a peaceful world of e-commerce transaction that will lead to a successful economy electronically.

By this study, we **aim** to identify the basic concepts of the e-commerce by mentioning the legal framework definition of each term related to it. In addition to presenting the risks that expose the e-consumer during conducting the e-contract such as a victim of fraud or swindling, stealing his personal data and using it against him... etc., also the mechanisms that the Algerian legislator obtained in order to prevent the e-consumer from being a victim of these risks.

This study has been chosen due to many **reasons**, starting with **the objective ones**, which are the e-commerce is an activity that is getting advanced constantly, so as what is related to it, which means the protection of the e-consumer is a topic, we should keep checking and learning about it constantly as well. Moreover it is obvious that each one of us is also a consumer which means

that we should learn about the right way to get protected as an individual before as a researcher in the legal field, besides that the modernity and the exclusivity of this study made everybody interested in it, as we can see that the Algerian legislations are enacting new regulations that are not completely applied but on their way to be. There are also notes which have not been discussed by researchers yet, and made us seeking to know more about them.

Not to mention, **the personal reasons** are that this study has been chosen out of the curiosity of the student to learn more about the legal right way that the Algerian legislator provided it by enacting a specific regulations that prevent many risks that expose the e-consumer because the student also has been a victim of deception and swindling while conducting an e-contract where she did not know how to get protected and the right way to manage not being in a fraud position, due to the less experience and lack of knowledge in this field. Plus, this study was picked to be in the English language in view of the student`s desire to apply her language skills academically and in a manner that is educative and legal, also to add another Algerian source with an English language that treats this study specifically.

However, making this dissertation was not as easy as it was expected to be, there were some **difficulties** such as the lack of the Algerian sources such as books and laws in English language, also spending a lot of time analyzing laws in a legal academic way.

Based on what have been mentioned before, we present the following problematic:

**How did the Algerian legislator provide the protection to the consumer in the electronic commerce contracts?**

To give an answer to this problematic, we used the obvious known **methods** in the legal sciences. First the descriptive method that focuses on the legal topic in such a specific way, by presenting the definition of the e-commerce and the commercial relationships of it, also the concepts of both the e-consumer and the e-contract, and the mechanisms to achieve the protection of the e-consumer.

On top of that, we used the analytic method where we mentioned the legal rules and analyzed them to know reasons and find solutions that suit the Articles from laws with what is happening in the actual moment. Additionally, we used the comparative method as a secondary method, which is used to compare between different legal systems, just in some points where we found some similarities between the Algerian legislation and others.

Furthermore, to reach and achieve the objective of this study, we divided our study into two chapters, chapter one under the title: "the conceptual framework of the e-commerce, the e-consumer and the e-contract", we divided it into two sections as well, we talked in section one about the concept of the e-commerce and in section two about the concept of the e-commerce and the e-contract. Then chapter two under the title: "protection of the e-consumer", where we divided it into two sections, the first section which is during the formation of the e-contract and the second section during the execution of the e-contract. After that we addressed in the conclusion the main points that were studied in this topic and we gave an explanation to the results that we reached through this study and also we proposed some suggestion related to the results that will help to achieve providing the right protection to the e-consumer.

# **Chapter one**

**The conceptual framework of the e-commerce, the e-consumer and the e-contract**

Despite Algeria's delay in adopting the e-commerce, it is still making a remarkable progress in developing it and creating a safe electronic space for the e-consumer to do their online contracts in the very protective way possible, by enacting laws that set the general rules and define the basic important terms in a suitable framework.

Furthermore, the numbers of using the e-commerce are getting bigger, by the increase of the platforms that serve many different products that attract the internet users and have their full attention and interest. Which also leads to the risks that face the e-consumers and make them victims of fraud and swindling, it is quite important and very necessary to reinforce and strengthen the legal framework of the basic concepts.

Because relying on the e-commerce and developing it specially by protecting the e-consumer and set specific rules for the e-contract will contribute in creating investment opportunities and an advanced technology therefore support the economy growth.

Therefore, the Algerian legislator has promulgated several regulations and multiple laws to regulate, insure and protect the businesses, merchants and the consumers, in order to ensure the evolution of the electronic commerce transactions in Algeria and to keep it progressing within the developments that are happening in other countries and continue to be one of those who obtained the e-commerce and worked on providing the safeguard to each element of it.

That's why the first section will be titled: "the concept of the e-commerce" where we will address its concept, and also the commercial relationships of it, then in the second chapter we will talk about the definition of both e-consumer and e-contract in both traditional context and electronic one, under the title: "the concept of e-consumer and e-contract".

## Section one: The concept of the e-commerce

In view of the technology development that is progressing forward, the electronic commerce is considered as the main engine of the modern business transactions.

It is no longer just a traditional one, it is getting advanced and also expanding in such a hectic way, it is witnessing a wide spread which has a lot of benefits that contribute in the economy growth, however it may also cause many threats and risks that will face the electronic consumers while conducting an electronic contract.

For this reason, it is quite important to frame the definition of the electronic commerce and stipulate it, also set specific types of it in order to clear the details and show the right way of conducting an e-commerce transaction.

So, we will divide this section into two parts, where we will talk about the definition of the e-commerce in the first part, and then in the second part we will give an explanation to the commercial relationships of e-commerce.

### First - Definition of the e-commerce :

In fact, the term "e-commerce" does not have a specific uniform definition. However it has diverse meanings, depending on where it is used or the way of using or the perspectives. Thus, from trading perspective, e-commerce refers to the exchange of products and services via electronic networks. <sup>1</sup>

The World Trade Organization<sup>2</sup> (WTO) defines the electronic commerce as:

**“The production, distribution, marketing, sale or delivery of goods and services by electronic means,”<sup>3</sup>**

The Organization for Economic Co-operation and Development<sup>1</sup> (OECD) defines the electronic commerce as:

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<sup>1</sup>- CHAABNA Samira & WANG Hu, Analysis of the State of E-commerce in Algeria, International Journal of Marketing Studies, Canadian Center of Science and Education, N<sup>o</sup>: 02, Vol:7, 2015,P44.

<sup>2</sup>- WTO: The World Trade Organization is an intergovernmental organization headquartered in Geneva, Switzerland that regulates and facilitates international trade

<sup>3</sup>- ISMAIL Yasmin, E-commerce in the World Trade Organization: History and latest developments in the negotiations under the Joint Statement, International Institute for Sustainable Development and CUTS International, Geneva, 2020, P 02, available on: <https://www.iisd.org/system/files/publications/e-commerce-world-trade-organization-.pdf> , date of browsing: 05/06/2024.

**“An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders”.<sup>2</sup>**

In addition, it is also defined as: a process which makes people buy and sell goods, transfer funds and avail services online using internet, where sellers and consumers are connected globally.<sup>3</sup>

Nonetheless, in the Algerian legislation we find the definition of the e-commerce in Article 06/01 of law 18-05 related to e-commerce as:

**“the activity through which an electronic provider<sup>4</sup> suggests or ensures the supply of goods or services remotely to an electronic consumer via e-communications.”<sup>5</sup>**

Therefore, the Algerian legislator stipulated the definition of the electronic commerce in order to frame the meaning to prevent any violation or any wrong way of using.

From the after mentioned definitions, we can say that the electronic commerce is the set of commercial transactions to which the Internet contributes, in whole or in part.<sup>6</sup>

## **Second - commercial relationships of e-commerce:**

Despite the general meanings of the e-commerce that have been mentioned above, it can also be divided into six basic forms.

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<sup>1</sup>- OECD: The Organization for Economic Co-operation and Development is an intergovernmental organisation with 38 member countries, founded in 1961 to stimulate economic progress and world trade.

<sup>2</sup>-Available on:

<https://www.oecdilibrary.org/sites/1885800aen/index.html?itemId=/content/component/1885800a-en> ,

Date of browsing: 05/06/2024.

<sup>3</sup>- BASANTI Mathew Merlin & HAIMANTI Sengupta, Consumer Protection in E-commerce: A legal and compliance framework, Quest Journals, Rabindranath Tagore University, Bhopal India, Volume11, Issue9, 2023, P111.

<sup>4</sup>- e-provider: Any natural or legal person who shall market or suggest the supply of goods or services via e-communications. Taken from Article 06/02 of law 18-05 related to e-commerce.

<sup>5</sup>- Law N°. 18-05, related to the e-commerce, of 24 Chaaban 1439 corresponding to 10th Mai 2018, JORA N° 28.

<sup>6</sup>- SADEK Djamila & MELHAOUI Fatima Zohra, The Development of E-Commerce in Algeria during the period 2010-20121, reality and obstacles, Beam Journal of Economic Studies, University of Tissemsilt, Algeria, N°: 02 , Vol: 07, 2023, P325.

Based on the OECD they are: Business-to-Business (B2B), Business-to-Consumer (B2C), Consumer-to-Consumer (C2C), Consumer-to-Business (C2B), Business-to- Government (B2G), Government-to-Consumer (G2C). We will give an explanation about each major type as it follows:

1: E-commerce between Business and Business (B to B)

It is where the operation of buying and selling of goods and services between businesses goes through using electronic means, such as the e-market.<sup>1</sup>

2: E-commerce between business and consumer (B to C)

It can be described as the relationship between businesses that offer different types of goods and services they wish to market via the Internet, and the consumer who reviews the goods or services available and obtains from them his needs to satisfy his desires.<sup>2</sup>

3: E-commerce between the government and Business (B to G)

It is used by the government for commerce transactions and exchanging of information with business organizations or public administrations.<sup>3</sup>

4: E-commerce between consumer and consumer (C to C)

It is to conduct a transaction between consumers of goods or services electronically via the internet.<sup>4</sup>

5: E-commerce between the consumer and Business (C to B)

It is where consumers sell goods and services to businesses.<sup>5</sup>

6: E-commerce between government and consumer (C to G)

It includes all electronic purchases between governments and individuals.<sup>6</sup>

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<sup>1</sup>- SADEK Djamila & MELHAOUI Fatima Zohra, Op.cit ,P325

<sup>2</sup>- KADRI Abdelmadjid & MEDJAHED Sid Ahmed, E-Commerce In Algeria Between Legislation And Implementation, Journal of Economic Integration, University of Ahmed Draria – Adrar, N°: 04, Vol: 11, 2023, P513.

<sup>3</sup>- بن زيدان حاج و بورحلة زهرة، التجارة الإلكترونية طريق جديد لتحقيق النمو الاقتصادي في الجزائر "دراسة تحليلية"،

جامعة عبد الحميد بن باديس، مستغانم، المجلد 21، العدد 01، 2021، صفحة 360.

<sup>4</sup>- المرجع نفسه، صفحة 359.

<sup>5</sup>- SADEK Djamila & MELHAOUI Fatima Zohra, Op.cit, P326.

<sup>6</sup>- VIPIN Jain, BINDOO Malviya & SATYENDRA Arya, An Overview of Electronic Commerce (e-Commerce), Journal of Contemporary Issues in Business and Government, Department of Management, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India, No. 3, Vol. 27, 2021, P667.

## **Section two: The concept of the e-consumer and the e-contract**

What actually link the e-consumer with the e-contract, is that this last one cannot be existed without the e-consumer, so as the e-consumer. So we can say that it is a relationship of integration and existence.

And since the e-commerce is growing more and more, which means that the virtual environment, where people buy and sell products and services, using more and more e-contracts and e-commerce platforms, is getting bigger as well<sup>1</sup>. That leads to the expansion of the terms e-consumer and e-contract, for that reason, the Algerian legislator while obtaining the e-commerce, he framed the definitions of each term into a legal conceptual framework that suit the current situation that the country is living.

In order to provide the safeguard and the protection to the e-consumer, the Algerian legislator used the method of framing the definitions of each term related to the e-commerce, and that`s due to the widespread of the e-commerce, which may also lead to the misusing of it or one of its terms against the e-consumer, and the center of attention in this section is both the e-consumer and the e-contract, since they both belong to the same circle.

We will divide this section into two parts, where we will address in the first part the concept of the e-consumer, and in the second part, we will talk about the concept of the e-contract.

### **First - the concept of the e-consumer:**

The consumer has been always considered as the weakest part in the contracts<sup>2</sup>, basically in all the legislations, in view of the danger and the risks that may face him. So to ensure the full and the completed protection, the legal rules and regulations have been constantly getting reformed and promulgated.

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<sup>1</sup>- GOLBAN Artur, E-commerce and E-contracts: Challenges, Risks and Opportunities in The Cross-border Markets, Scientific Papers Series Management, Economic Engineering in Agriculture and Rural Development, Faculty of Management, Economic Engineering in Agriculture and Rural Development, Moldova, Vol. 23, Issue 2, 2023, P263.

<sup>2</sup>- KHDIM Karim & MOULAY Zakaria, Protection of Consumer in E- commerce –comparative study between Algeria and European Legislations- , the Algerian and Comparative Public Law Journal, Algeria, Vol.06, N02, December2020, P8.

One of the ways in order to make this protection is to frame the definition in a legal conceptual framework, in order to avoid using it against the consumer. The Algerian legislator is one of the legislators that try to safeguard the consumer from being a victim of fraud and swindling, by avoiding the general global concepts of the consumer and set specific ones.

Thus firstly, before mentioning the definition of the e-consumer, we will talk about the definition of the consumer in the traditional context, and then we will address the definition of the consumer in the electronic context which is the e-consumer.

## **1- Definition of the consumer in the traditional context:**

The commerce needs basic elements so that it continues moving forward because it is expanding continually. One of these important basics is the consumer, who has been always a center of attention and concern in all the legislations, because of his impact that cause the economic development and growth.

Noticing that, it has been through many different changes in the Algerian legislation because of the constant development in the commerce, which leads to keep looking after it to put it in the right suitable definition.

Generally, it is known that: “the consumers are anyone who uses goods or services for their personal use and not to trade”.<sup>1</sup> However, the conceptual framework of the consumer must be organized and specific as a way to protect the consumer.

The Algerian legislator prescribed the definition of the consumer in Article 3 of Law 04-02 which fixes the rules applicable on the commercial practices amended and supplemented, as it follows:

**“The consumer is any natural or legal person who acquires for final except any professional character, goods or services offered for sale or use.”<sup>2</sup>**

Where we notice that he made a specific definition based only on the personal use, unlike what was mentioned before in the previous Law No.09-03

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<sup>1</sup>- MEYKE Alvianieta Ali, MUTIA CH Talib & BAKUNG Dolot Alhasni, Consumer Legal Protection in Electronic Commerce Transactions, Estudente law journal, Faculty of law, state university of Gorontalo, Indonesia, Number1, Volume1, 2019, P210.

<sup>2</sup>- Law N°. 04-02 of 5 Jumada El Oula 1425 corresponding to 23rd June 2004, on the Rules for Commercial Practices, JORA N° 41.

which includes the protection of consumer and the suppression of fraud<sup>1</sup>, in Article 3 that goes like:

**“The consumer is any natural or legal person who acquires, either for a fee or free of charge, goods or services for a final use in order to fulfill his personal needs, or to fulfill someone else’s needs, or an animal that is in his charge.”<sup>2</sup>**

Here, it was sort of a mix and interchange between the consumer and the customer.

However, the customer is the person who buys the product, while the consumer can be the one who did not actually purchase the product, but for sure he is the person who uses it.<sup>3</sup>

## **2 - Definition of the consumer in the electronic context:**

Generally, it is well known that the electronic consumers are consumers who are buying, consuming or selling goods or services using digital medium (Internet or any other electronic platform).<sup>4</sup>

Apparently, the consuming in the world of electronic commerce transactions is based on goods and services for the fulfillment and the satisfaction of the personal needs.<sup>5</sup>

Because of Algeria’s delay in obtaining the e-commerce the term e-consumer is so exclusive in the Algerian legislation that’s why the legislator addressed a specific meaning of the e-consumer in Article 06/03 of Law N°. 18-05 of Electronic Commerce as:

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<sup>1</sup> - بن جيلالي عبد الرحمان، بن ناجي مديحة، مفهوم المستهلك في القانون الجزائري، مجلة الصدى للدراسات القانونية و السياسية، جامعة الجيلالي بونعامة خميس مليانة، الجزائر، العدد 1، المجلد 5، 2023، صفحة 50.

<sup>2</sup> - Law N° 09-03 of 25 February 2009 related to consumer protection and the suppression of fraud, JORA N° 15.

<sup>3</sup> - NEEDLE Flori, Customer vs. Consumer: What’s the Difference?, 2021, available on: <https://blog.hubspot.com/service/customers-vs-consumers> , date of browsing: 03/02/2024.

<sup>4</sup> - CONSUMER PROTECTION IN CYBERSPACE, P37. Available on: <https://www.egyankosh.ac.in/bitstream/123456789/7658/1/Unit-4.pdf> , date of browsing: 03/02/2024.

<sup>5</sup> - خالد ممدوح ابراهيم، حماية المستهلك في العقد الالكتروني، دار الفكر الجامعي، الاسكندرية، الطبعة الاولى، 2008،

**"The electronic consumer is any natural or legal person who acquires, either for a fee or free of charge, goods or services via e-communications from the e-provider for final use."**

According to these definitions, the consumer in the electronic commercial transactions differs from the traditional ones in the way of dealing that goes via the international internet connection.<sup>1</sup>

Apparently, now it is obvious that the consumer is any natural or legal person who obtains goods or services with the intentions of satisfying his non-professional needs whether he completes his legal procedures by traditional or electronic means.<sup>2</sup>

## **Second - the concept of the e-contract:**

There's no such a big difference between the traditional commerce transactions and the electronic ones, however the main difference between these two is in the way of conducting the contracts<sup>3</sup>, whether it goes as the traditional one or via the electronic communications which called the e-contracts.

In the first part, we will mention the meaning of the contract then and its content in the second part.

### **1- Definition of the contract:**

The contract has an expanded meaning and it is well known that it is the law between parties. It is considered as one of the most significant classical theories in civil law, as it has been addressed by legislation as one of the oldest legal systems<sup>4</sup>.

As we find the global definition of the contract in the Algerian legislations is referred to it in Article 54 of civil code as: **a contract is an agreement by which**

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<sup>1</sup> - خالد ممدوح ابراهيم، المرجع السابق، صفحة 23 .

<sup>2</sup> - MAHMOUD Ismail & Al SAMARAE Fatima, Legal Definition of Consumer in European Union and Arab Consumer Protection Laws, International Journal of Research in Engineering, Science and Management, Science Private University, Issue 2, Volume6, 2023, P09.

<sup>3</sup> - مأمون أحمد سليمان إيمان، إبرام العقد الإلكتروني و إثباته (الجوانب القانونية لعقد التجارة الإلكترونية)، دار الجامعة

الجديدة للنشر، الاسكندرية، 2008، صفحة 55.

<sup>4</sup> - DJERBOUA Mounira, The Impact of the Evolution of the Public Order Concept on the Contract, Algerian Journal of Legal and Political Sciences, Faculty of Law - University of Algiers 1, Vol:60, N°:03, 2023, P129.

**one or more people bind themselves, towards one or more others, to do or not do something.**<sup>1</sup>

However, in the commerce transactions field, the definition of the traditional contract is mentioned in Article 3 of Law 04-02 which fixes the rules applicable on the commercial practices amended and supplemented.

Not to mention, the definition of the electronic contract is: the contract that is concluded via an electronic way.<sup>2</sup> That's the obvious meaning of it.

Hence, what refers the electronic contract from the other contracts is the method, where the agreement in which the offer and the acceptance converge on an international network in an audible and visual telecommunication way.<sup>3</sup>

The definition of the electronic contract in the Algerian legislation has never been mentioned until 2018, however there was a hint related to matters of proof in civil code but it cannot be considered as a proper definition to the e-contract.<sup>4</sup>

The Algerian legislator has mentioned the definition of the electronic contract in Article 06/02 of Law N°. 18-05 of Electronic Commerce as:

**“The contract, as defined by law N°. 04-02 of 5 Jumada El Oula 1425 corresponding to June 23, 2004, on the Rules for Commercial Practices, is concluded remotely without the real and actual presence of its parties, exclusively through e-communication technology.”**

The notice here is also that the main difference between the traditional and the electronic contract is in the way of dealing that this last one goes remotely and via the Internet.<sup>5</sup>

Apparently, the Algerian legislator has given a precise legal meaning of the e-contract in order to adjust it in a way that suit the expansion of the e-commerce.

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<sup>1</sup>- Ordinance N°, 75-58 of 20 Ramadhan 1395 corresponding to 26th September 1975, on the Civil Code amending and supplementing, JORA N° 78.

<sup>2</sup>- مأمون أحمد سليمان إيمان، مرجع سابق، صفحة 58.

<sup>3</sup>-AMROUNE Celia, MAAZI Djihad, Electronic contract: A Legal mechanism for the e-commerce an analytical study under law no 18-05; related to e-commerce, The journal of El-Ryssala for studies and research in humanities, faculty of law, Algeria, Volume: 07, N°:01, February 2022, P414.

<sup>4</sup>- Ibid, P415

<sup>5</sup>- DJEBBAR REKIA, The privacy of mutual consent in the electronic contract in the Algerian Legislation -Between general rules and special legislation-, Journal of Politic and Law, Faculty of law, university Medea, Algeria, Volume: 12, N°: 02, 2020, P03.

Ultimately, the electronic contract can be defined as: an arrangement made between two or more parties as an agreement drafted and signed in an electronic form, with respective rights and obligations, which legally bind them, where it requires confirming a transaction such as the sale or supply of products<sup>1</sup>.

## **2 - Content of e-contract:**

The e-contract must include<sup>2</sup>:

- The detailed features of goods and services.
- Terms and methods of delivery,
- Conditions of guarantee and postpaid services,
- Conditions of e-contract cancellation,
- Conditions and methods of payment,
- Conditions and methods of product return,
- Methods of handling complaints,
- Conditions and methods of prior purchase order, if any,
- Conditions and methods of experimental sale, if any,
- The competent legal party in case of dispute,
- The contract duration as appropriate,

So in case the provider does not respect these conditions, the e-consumer may ask for cancelling the contract and claim compensation for damage.<sup>3</sup>

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<sup>1</sup>- AZMAT Ali, Electronic Contract and Consumer Protection Issues in India; Emerging Legal Challenges and Remedial Measures, International Journal of Research in Social Sciences, Aligarh Muslim University Center Malappuram, India, Vol. 8, Issue 7, 2018, P525.

<sup>2</sup>- Guide of E-commerce, P08, available on: [https://www.mpt.gov.dz/wp-content/uploads/2024/01/guide\\_EN.pdf](https://www.mpt.gov.dz/wp-content/uploads/2024/01/guide_EN.pdf) , date of browsing: 03/24/2024.

# **Chapter two:**

**The protection of the electronic  
consumer**

Due to the huge pace of technological developments that came with the advance of the commerce transactions especially in the digital world, the protection of the electronic consumer remain as an important aspect, where they can be enabled to make the best choices based on their interests and be prevented from being mistreated or misled.

In general, the whole main point of protecting the consumers is to provide the welfare, referring to the goods and services that the consumers need to fulfill their necessities. And in order to achieve this goal to keep a sustained economic growth is to introduce to the consumers their rights and also the correct way to protect these rights, during all stages of making the contract.

In consideration of the standard of living, it is quite important to look after the quality and price of goods and services in order to match the consumers' income, because with high prices, the consumers will fall into the trap of bad qualities that may cause physical disorders or mental illnesses, and that's just one of the reasons that can put the consumers in an obvious position of threat and risks.

For that purpose, the role of the legislations in setting regulations and enacting rules that leads to organise the commerce and provide the safe and full protection to the consumers, because as much as the commerce does actually bring many benefits to consumers, it is also surrounded by some legal problems, whether before or after the conclusion of the contract of course especially in the electronic world.

So, in this chapter we will talk about the protection of the electronic consumer, by looking through the laws that were encompassed, in order to provide safeguard for consumers to be treated equitably, honestly and fairly at all stages of contract, starting with the first section under the title "during the formation of the electronic contract" , where we will put in words the essential elements that should the consumer know about before conducting an electronic contract then we explain the protection of the electronic consumer "during the execution of the electronic contract" in the second section by giving an explanation about the rights that the consumer should be aware of.

## **Section one: During the formation of the e-contract**

To make a successful e-commerce transaction, the e-contract must be well done during all phases, and the stage of formation is considered as the most important one, due to the danger and risks that may face and threaten the e-consumer in the beginning of the preparation of concluding an e-contract.

For that reason it requires a safe way to protect the electronic consumer in order to do not be a victim of fraud and swindling.

Moreover, we will divide the protection during the formation of the electronic contract into two parts. The first part will be about protecting the electronic consumer from the electronic advertising where we will address the legal framework of the e-advertising and also we will explain how the legislation provided the safeguard and the protection from it.

Then we will talk about protecting the electronic consumer's personal data, where we will hint at the meaning of it and we will give an explanation about how to keep the electronic consumer's personal data in the right safe way based on how the legislation organised and framed it.

### **First - The protection of the e-consumer from the e-advertising:**

Before the e-commerce reaches Algeria's economic world, and take a whole fast expansion in it, the advertisements were limited for specific types of products and also for a specific categories as well.

But now, since everything is depending on technology so is the commerce, that's getting advanced in such a hectic way, the advertisements are no longer limited, which means that they can reach all categories and also serve different types of products, and that's called the electronic advertising.

This type helps attracting a greatest number of consumers, which will contribute in advancing the e-commerce by providing an interactive environment, with the necessary information on goods and services.<sup>1</sup>

Furthermore, it is considered as the bridge between the seller and the buyer. Where the seller targets a particular audience by promoting his products that reach the buyer who gets to choose and pick what he's looking for and what he wants

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<sup>1</sup>- KADRI Abdelmadjid & MEDJAHED Sid Ahmed, Op.cit, P515.

and desires. This is in order to gain popularity and increase the sale of the products.<sup>1</sup>

However, the promotion does not stand on only the products, but also services, and that's what we're going to explain in the first part, where we will address the meaning of the electronic advertising, then in addition to that we will hint at the definition that the Algerian legislator has enacted in Articles related to commerce.

After that, we will talk about the protection from the electronic advertising where the e-consumers get influenced by it, and use it as a way to reach their desires of goods and services.

Nonetheless, as good as the electronic advertising is useful and it helps the e-consumer to fulfil their needs; it can also be deceiving by using misleading and false information in order to attract them in such a fast and a speed way, where they end up as victims of fraud and swindling.

## **1 - Definition of the e-advertising:**

With the development of the economic world today, especially in the virtual life, the e-commerce is getting bigger in an extensive way, and the numbers of the internet users are growing exponentially, which lead to make the merchants, companies, and services' providers to exhibit their products and services via the internet for the purpose of gaining popularity and getting the e-consumers' attention.

On the other hand, the electronic advertising is considered as an electronic combination that combines text, voice, and image media in a fixed or moving form, usually it is a paid activity aimed at convincing the recipient - the electronic customer -the content of the idea.<sup>2</sup>

Additionally, it can be defined as:

**"Every commercial or professional news that merchants and service providers make by using electronic means to inform the consumer of the**

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<sup>1</sup>- Arti, Electronic Advertising, Sanatan Dharma College, Ambala Cantt, 2019, P84, available on: <https://www.sdcollegeambala.ac.in/wp-content/uploads/2021/08/raitecom2019-19.pdf> , date of browsing: 5/15/2024.

<sup>2</sup>- KEMOUCHE mourad, Electronic advertising in the modern communication environment, International Journal of Social Communication, University of Mostaganem, Algeria, Number: 02, Volume: 08, 2021, P136/137.

**advantages of goods and services in order to motivate them and their willingness to contract.”<sup>1</sup>**

However, the legal definition of the electronic advertising in the Algerian legislation is in Article 06/06 of Law N°.18-05 of Electronic Commerce as it follows:

**“E-advertising: Likewise advertising, it aims, either directly or indirectly, to promote the sale of goods or services via e-communications.”**

Also the Algerian legislator hinted at the meaning of the e-advertising in Article 30 of Law N°.18-05 of Electronic Commerce as: **“... any advertising or promotion or message of nature or a commercial purpose via e-communications...”**

According to the after mentioned, the e-advertising is a tool used to promote the goods and services via the internet, in order to reach the e-consumers which is helpful to acquire their needs in an easy hectic way.

## **2 - The protection from the e-advertising:**

"Be aware" has been always a term specialized for the consumers while concluding a contract, due to the risks that threat them because of the position they are in, as they are considered as the weakest part in the contract.

However nowadays, the electronic contract has dangerous impacts more than the traditional one, and the reason of that is in the method of concluding that goes via the electronic communications, which is as easy as it can be it is also a huge threat to the consumers that may cause them to be misled. One of the ways to achieve this misleading is the electronic advertising.

It does actually help a lot the two parties in making the e-commerce transaction, where the e-providers have an easy access to the e-consumers by exhibiting their goods and services and giving them all the characteristics and features, prices and descriptions of their products.<sup>2</sup>

In the other hand, the e-consumers receive what they desire but they became now difficult to satisfy which lead the businesses to do whatever it takes to makes

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<sup>1</sup>- BOUKEMOUCHE Sourour, The Legal System for Electronic Advertisements, Journal of LEGAL STUDIES (Class C), Faculty of Law and Political Science, University of Blida 2, Algeria, Number: 02, Volume: 09, 2023, P940.

<sup>2</sup>- BEN AMOR Lakhdar, BENINE Baghdad & GAID Brahim, The role of electronic advertising in influencing the behavior of the Algerian consumer, Journal Of North African Economies, University of El Oued, Algeria, Volume: 17, Number: 25, 2021, P101.

the purchases and do the services. However, it must take into account that the e-consumers is fully aware of their activities though the internet. <sup>1</sup>

The Algerian legislator as any other legislator has set a specific rules to provide the protection of the electronic consumer from the e-advertising, from Article 30 to Article 34. Where he stipulated the conditions that must be taken in order to make an electronic advertising as:

The e-advertising must be clear and obvious specifies a commercial message or an advertisement.<sup>2</sup> Because for the purpose of pushing the e-consumer to contract, the advertiser use wrong information and lie in the advertisement which lead to fraud and deception. <sup>3</sup>

In addition, the advertising must be just about what is allowed to be in the Algerian commerce society, and the message must well expressed and have a sociable value and do not across the boundaries and religious basics which means it must be suitable to the whole community with consideration of the basic standards, sociable, political, cultural and economic ones.<sup>4</sup> And make sure that all the conditions that must be done in order to make a commercial show aren't misleading or mysterious. <sup>5</sup>

Hence, the Algerian legislator has given the option to prevent receiving unwanted advertisements, which are deceptive misleading electronic advertisements.

They're called "unwanted ads" or "spams", and they're displayed by email messages that reach the e-consumers without his approval or acceptance, regardless of its content, whether it is legitimate or unlawful.<sup>6</sup> That's one of the annoying things that face the electronic consumer caused by the electronic advertising. So the Algerian legislator did set specific conditions in order to manage protecting the electronic consumer from the electronic advertising.

Moreover, he stipulated in Article 40 of Law N°.18-05 of Electronic Commerce that any violation of these conditions previously explained exposes the

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<sup>1</sup>- BEN AMOR Lakhdar, Op.Cit, P101.

<sup>2</sup>- Law N°. 18-05, Op.cit

<sup>3</sup>- Boukemouche Sourour, Op.cit, P947.

<sup>4</sup>- خوالف صراح، الاليات القانونية لحماية المستهلك الالكتروني في قانون التجارة الالكترونية الجزائري، مجلة الفقه القانوني و السياسي، جامعة سيدي بلعباس، الجزائر، المجلد 01، العدد 01، صفحة 237.

<sup>5</sup>- Law N°. 18-05, Op.cit

<sup>6</sup>- BOUKEMOUCHE Sourour, Op.cit, P955

owner to punishment, whether by paying a fine or raising civil or criminal liability for the violator and this is in accordance.<sup>1</sup>

## **Second - Protecting the e-consumer's personal data:**

Being an internet user means immediately, that a part of personal information is getting shared. So obviously concluding a contract means that the electronic consumer is handing over some of his personal data, whether with his knowledge or without it.

For that reason, it may end up in the wrong hands, so it is quite important to adopt a reasonable safeguards to protect the e-consumers' personal data in order to prevent them from getting their identities stolen, what's called Impersonation, or used in any way that can cause harm.

### **1- Definition of personal data:**

Personal data is any information that can be used to identify a living person directly or as result of combinations of data relating to or being about a person.<sup>2</sup>

However in EU law and the Algerian law is defined as:

#### **A - In the EU law:**

According to the EU law, personal data is "any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity".<sup>3</sup>

#### **B - In the Algerian law:**

The Algerian legislator addressed the definition in Article 03/01 of Law N 18-07 related to the protection of individuals in the processing of personal data as it follows: "**any information relating to an identified or identifiable natural person (data subject) an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number**

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<sup>1</sup>- BOUKEMOUCHE Sourour, Op.cit, P956.

<sup>2</sup>- Understanding Personal Data, Information Assurance Office, University of East London, available on: <https://uel.ac.uk/sites/default/files/what-is-personal-data.pdf> , date of browsing: 29/05/2024.

<sup>3</sup>- MILLARD Christopher, HON W Kuan, Defining Personal Data in e-Social Science, P09, available on [https://www.researchgate.net/publication/228280110\\_Defining\\_'Personal\\_Data'\\_in\\_e-Social\\_Science](https://www.researchgate.net/publication/228280110_Defining_'Personal_Data'_in_e-Social_Science) , date of browsing: 29/05/2024.

**or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity."**<sup>1</sup>

The notice here is that the Algerian legislator obtained the same definition of personal data from the EU law.

That's due, to the impact of the conventions related to protecting natural person in field of data processing, also the definitions are all related to the natural persons and not the moral ones.<sup>2</sup>

## **2 - Definition of personal data protection:**

To ensure the confidentiality of the information, the Algerian legislator mentioned personal data protection in Article 26 of Law N.18-05 related to electronic commerce. However he did not stipulate a specific definition to it.<sup>3</sup>

In the other hand, personal data protection can be defined as "the law designed to protect the consumers' personal data in order to empower us to control our data and to protect us from abuses, it is essential that data protection laws restrain and shape the activities of companies and governments."<sup>4</sup>

In conclusion, security of data and the confidentiality of the information have a big role in the electronic commerce, because if they are not organised and well protected, they can get easily hacked and stolen and used in a negative way. Thus, the legislation must keep looking after providing the security of the personal date and information related to the private life of the e-consumers.<sup>5</sup>

## **Third - The right to the electronic informing:**

The electronic commerce is witnessing a great development and a widespread expansion. However, the electronic consumer is still considered as the weakest part

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<sup>1</sup>- Law N°. 18-07 dated on 10 June 2018 related to the protection of private persons in the processing of personal data JORA N° 34.

<sup>2</sup>- مقدم ياسين، حماية البيانات الشخصية للمستهلك في العقد الإلكتروني، جامعة الحقوق و العلوم السياسية، جامعة عباس لغرور خنشلة، الجزائر، العدد02، المجلد10، 2023، صفحة 1067.

<sup>3</sup>- المرجع نفسه، صفحة 1066 و1071.

<sup>4</sup>- A Guide for Policy Engagement on Data Protection, Part: Data Protection, Explained, P09, available on: <https://privacyinternational.org/sites/default/files/201809/Part%201%20%20Data%20Protection%2C%20Explained.pdf>, date of browsing: 29/05/2024.

<sup>5</sup>- ABBACI Ayoub et REDJDAL Rosa, Application de la loi algérienne relative au e-commerce: état des lieux et diagnostic, University of Bejaia, N° 01, Vol 06, 2020, P261.

of the electronic contract. Despite All the facilities that the e-contracts are bringing to the e-consumers, they are still victims of fraud and swindling, and that's due to many reasons, e.g. their less experience in the field of e-commerce transactions.

In order to prevent such risks, there's a balance between the e-consumer and the e-provider that should be achieved, because the first part has less experience than the other one. One of the ways to make this balance, is the electronic informing, which is also a tool used to provide the safeguard and the protection to the electronic consumer.

## 1 - Definition of the electronic informing:

Generally the e-information goes through specifying the personality of the provider and describing the product or service subject of the contract and requiring that it be informed in the national language. An increase in the consumer's right to renounce the contract.<sup>1</sup>

Additionally, it can be defined as: "an obligation to the electronic merchant, or the service provider who's contracting with the e-consumer via the internet, where he addresses his own character and his commercial basic main data related to the contract, and based on these information, the e-consumer get to choose with his own free will whether he makes the decision of contracting or he does not".<sup>2</sup>

Moreover, the Algerian legislator mentioned the right of information in Article 11 of Law 18-05 related to electronic commerce, where he obliged the e-provider to provide a commercial electronic exhibition with a visible, readable and understandable way. And must contain the specific information

Apparently, as much as it is a right to the electronic consumer to get information about the contract, it is also an obligation to the electronic provider to post this information and make a commercial electronic exhibition. That's all in order to provide the safeguard and protection to the both partners of contract.

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<sup>1</sup> - معداوي نجية، حماية المستهلك الالكتروني بموجب الحق في الاعلام و الحق في العدول عن التعاقد، مجلة الفكر القانوني و السياسي، كلية الحقوق و العلوم السياسية، جامعة لونييسي علي، البليدة 2، العدد الاول، المجلد السادس، 2022، صفحة 644.

<sup>2</sup> - العرابي خيرة، بسعدي نورة، الاعلام الالكتروني السابق على التعاقد كآلية لحماية المستهلك الالكتروني على ضوء قانون التجارة الالكترونية الجزائري 18-05، مجلة صوت القانون، جامعة أحمد بن أحمد، وهران، العدد 02، المجلد 08، 2020، الصفحة 1371.

## **2 - The protection of the e-consumer from the e-informing:**

Since the e-consumer is considered as the weakest part in the contract, due to his less experience in the field of the commerce transactions, it is quite important to provide the right protection by informing him about the specific information and data related to the contract. <sup>1</sup>

The e-informing is a tool used to make a balance between the parties of the contract, in order to protect the e consumer from being in a position where they take advantage of him, and being a victim of fraud and swindling.<sup>2</sup>

Ultimately, the Algerian legislator is seeking the whole full protection of the e-consumer, so he obliged the e-provider to inform the e-consumer of all information related to the products and services, for the purpose of not causing any harm to the e-consumer and providing safety and security.<sup>3</sup>

### **Section two: During the execution of the e-contract**

Protecting the e-consumer during the formation of the e-contract is not enough, because the protection must be during all stages of e-contracting. For that reason it is quite important to provide the safeguard to the e-consumer during the execution of the e-contract as well, since he is the party who has less experience in the field of e-commerce transactions, and can be in a position deception or a victim of fraud and swindling.

This section will be divided into two parties, we will give an explanation to the e-signature and certification first, and then we will talk about the right to retraction second.

### **First - The electronic signature and certification:**

The most common problem that faces e-commerce users is the difficulty of evidencing the contract they have conduct via the internet, so legislations adopted a

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<sup>1</sup>- ELFODDA Mohammed, NOUACER Tahar, The Legal protection for the electronic consumer in the Algerian Legislation, IJTIHAD Journal On Legal and Economic Studies, Hadj Moussa Ag Akhamok University, Tamanrasset, Algeria, Number: 02, Volume: 12, 2023, P103.

<sup>2</sup>- خوازم عبد الغفار، حماية المستهلك الالكتروني في ظل القانون 05-18، مذكرة لنيل شهادة ماستر تخصص قانون أعمال، كلية الحقوق و العلوم السياسية، قسم الحقوق، جامعة الشهيد حمه لخضر، الوادي، 2021-2022، صفحة 08.

<sup>3</sup>- BOUHALA Tayeb, MOULAY Zakaria, Protecting consumer from fraud and counterfeiting of goods and services in Algerian legislation, Law and Political Science Magazine, University Abbès Laghrour Khenchela, N°: 08, 2017, P20.

mechanism to prove the integrity of the contract, it is called the electronic signature.<sup>1</sup>

For a start, pointing on the definition, it is defined as a method used to prove that the person who is adding their signature agrees to the terms in the contract they are signing. It is different from a ‘wet signature’ where parties are required to physically make a mark on a paper contract with a pen. Instead, electronic signatures are created on devices such as desktops, tablets, and mobiles.<sup>2</sup>

In other words, it is “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” which is taken from Texas law.<sup>3</sup>

According Article 2 of UNCITRAL Model Law on Electronic Signatures, “Electronic signature” means **data in electronic form that is in, affixed to, or logically associated with an electronic data message that may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message.**<sup>4</sup>

Moreover, the eIDAS<sup>5</sup> regulation defines the e-signature as: “**data in electronic form which is attached to or logically associated with other data in electronic form and used by the signatory to sign.**”<sup>6</sup>

In addition, Algerian legislator addressed the definition of the e-signature in Article 02/01 of Law N°. 15-04 that establishes general rules regarding electronic signature and certification as: “**data in electronic form which is attached to or logically associated with other data in electronic form and used by the signatory to sign.**”<sup>7</sup>

The notice here is that the Algerian legislator adopted the definition of the e-signature from the eIDAS regulation.

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<sup>1</sup>- AZROU Mohamed Rida, EL Mossouess Attou, Electronic Commercial Transactions Evidence in The Algerian Legislation, RARJ, Vol. 12, n° 01, 2021,P730.

<sup>2</sup>- Available on: <https://juro.com/learn/electronic-signature#> , date of browsing: 05/22/2024.

<sup>3</sup>- Available on: <https://www.tml.org/DocumentCenter/View/1970/Electronic-Signatures---2019-08---updated-070920> , date of browsing: 05/22/2024.

<sup>4</sup>- Available on: <https://pacificecommerce.org/wp-content/uploads/2022/06/24.-UNCITRAL-texts-on-e-transactions-and-e-signatures.pdf> , date of browsing: 05/22/2024.

<sup>5</sup>- eIDAS: electronic IDentification, Authentication and trust Services") is an EU regulation with the stated purpose of governing "electronic identification and trust services for electronic transactions"

<sup>6</sup>- available on: <https://legamart.com/articles/electronic-signature/> , date of browsing: 05/22/2024.

<sup>7</sup>- Law N° 15-04 of 11 Rabie Ethani 1436, corresponding to 1st February 2015, which establishes general rules regarding electronic signature and certification, JORA N° 06 .

Furthermore, he addressed the e-signature as a method or a way of evidence. However he did not present the way of using it.<sup>1</sup>

Apparently, electronic signatures are treated as equivalent to traditional wet signatures and are also legally recognised.<sup>2</sup>

So the e-signature is data used with the intention of authenticating a contract, and to reinforce it and make it trustful. Also it helps the parties of the contract to conduct in a legal, secure and efficient way.

Ultimately, trust and confidentiality is a basic element to conduct a contract, and in order to achieve it, it is somehow difficult, due to the way that the contracts are getting conducted by which is via the internet. For that reason to provide the protection and safeguard for both parties especially the e-consumer, the Algerian legislator set a mechanism known as the e-signature.<sup>3</sup>

## **Second - The right to retraction:**

The right to retraction is considered as one of the modern legal mechanisms created by the legislations, with the aim of providing an effective and necessary protection for the consumer at the stage of executing the contract.<sup>4</sup>

Usually the electronic consumer acquires goods or services from a person who has more experience, who is a specialist and a professional in the commercial transactions, and then he finds out that what he received does not match what he ordered. That's due to the false e-informing and the misleading advertising.<sup>5</sup>

For that reason, the Algerian legislator set a regulation called the right to retraction, in order to make a balance between the two parties, especially the e-consumer, since he is considered as the weakest party in the contract. However he

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<sup>1</sup> - هشام كلو، التنظيم القانوني للتوقيع الالكتروني في التشريع الجزائري، مجلة الباحث للدراسات الاكاديمية، جامعة قسنطينة 1، العدد 01، المجلد 10، 2023، صفحة 450.

<sup>2</sup> - Manish Kumar Sharma & Sudhanshu Gupta, E-signing of contract and documents in India, Singhania & Partners LLP, Solicitors & Advocates, 2021, P01.

<sup>3</sup> - سديرة نجوى، الحماية القانونية للتوقيع الالكتروني كآلية لتدعم الثقة في المعاملات الالكترونية عبر الانترنت، مجلة الدراسات القانونية، جامعة يحيى فارس بالمدينة، الجزائر، العدد 02، المجلد 08، 2022، صفحة 354.

<sup>4</sup> - LATRECHE Zahia, E-Consumer right of cancelling contracts in electronic commerce, Journal OF LEGAL STUDIES, Faculty of law, University of Algiers 1, Number: 02, Volume: 09, 2023, P838.

<sup>5</sup> - AZROU Mohammed Reda, The Right to Withdraw as a Mechanism for Protecting the Satisfaction of the Electronic Consumer, IJTIHAD Journal On Legal and Economic Studies, , Faculty of Law, Relizane University, Algeria, Number: 02, Volume: 13, 2024, P403.

restricted the use of this right, in order to do not cause any harm to the e-provider as well.<sup>1</sup>

In addition, it is defined as the contractor's ability, after concluding the contract, to choose whether to proceed or revert to the contract.<sup>2</sup>

It can also be defined as: a legal privilege or right given by the legislator to the consumer to able to return goods or refuse services, with a specific duration stipulated by law.<sup>3</sup>

Moreover, the right to retraction is a mechanism, created by law objectively to inform the consumer, of using the feature of retraction from the contract he conducted, whenever he finds out that the goods or services does not match the descriptions given by the provider, without explaining the reason behind the retraction.<sup>4</sup>

Furthermore, the Algerian legislator mentioned the right to retraction, in Article 11 of Law N°. 18-05 related to e-commerce, where he stipulated that the electronic commercial offer must also contain along with other information, the way of retracting the product, or exchanging it or repaying it.

Additionally, he addressed the right to retraction in Article 19/2 of Law 18-09, amending and supplementing Law 09-03 on Consumer Protection and Fraud Prevention as: **“The consumer's right to unduly reverse the acquisition of a product.”**<sup>5</sup> And he added “no-justification” feature, which enabled the consumer to retract the contract without giving any reasons. It is one of the advantages of electronic retraction.<sup>6</sup>

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<sup>1</sup> - شندارلي توفيق، الحق في الرجوع في عقد البيع الالكتروني في التشريع الفرنسي و تشريعات المغرب العربي، مجلة المنار للبحوث و الدراسات القانونية و السياسية، كلية الحقوق و العلوم السياسية، جامعة يحي فارس بالمدينة، العدد الخامس، 2018، صفحة 01.

<sup>2</sup> - DERRAR Nassima, DJILALI SAOU Fatima, Electronic Consumer's Retraction from Contract, Journal of law and political science, Khenchela University, Issue 02, Volume 10, 2023, P1120.

<sup>3</sup> - جحايشية نورة، نجاح عصام، حق المستهلك في العدول في التشريع الجزائري، مجلة العلوم القانونية و السياسية، جامعة قالمة، الجزائر، العدد 01، المجلد 11، 2020، صفحة 483.

<sup>4</sup> - DERRAR Nassima, DJILALI SAOU Fatima, Op.cit, P1120.

<sup>5</sup> - Law N°. 18-09 of 25 Ramadhan 1439 corresponding to 10th June 2018, on Amendments to Law N°. 09-03 of 29 Safar 1430 corresponding to February 25, 2009, relating to Consumer Protection and the Repression of Frauds, JORA N° 35.

<sup>6</sup> - DERRAR Nassima, DJILALI SAOU Fatima, Op.Cit, P1120

As a result from what have been mentioned above, the right to retraction can only exist under a legal text, and it can be exercised before or after the conclusion of the contract, and no liability or compensation falls on the consumer, and no effect on the provider's financial liability.<sup>1</sup>

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<sup>1</sup>- AZROU Mohammed Reda, Op.cit, P406.

# **The Conclusion**

## The Conclusion :

The protection of the e-consumer is considered as one of the challenges in the e-commerce, especially during the e-contracting, since he is not conducting a contract in an actual real way but virtually based on information, pictures, descriptions, and the price gets paid electronically as well, this leads to a situation full of risks and threats.

For that reason, there must be a protection to the e-consumers during e-contracting so they can be able to face these risks that expose them during all stages of e-contract. Whether during the formation and the execution of the e-contract, it is quite important to provide this protection, and that's what the Algerian legislator is trying to do through setting a specific legal rules, enacting them and promulgating them, in order to create a successful and a trustful space where e-consumers can do their e-commerce transactions in a safe way without having any fears nor doubts.

This research aims mainly to present and show the protection of the e-consumer in the Algerian legislation during the stages of the e-contract.

Based on this study we reached these **results**:

- What refers all of the e-commerce, the e-consumer and the e-contract from the traditional ones mainly and basically is the way which goes via the internet.
- The Algerian legislator's aim by framing the basic terms is to narrow the expansion, that the e-commerce and what is related to it are witnessing. For that reason, he has enacted a law specialized in regulating the e-commerce and what is related to it, and we found that he has mentioned these definitions in Article 06 of Law N°.18-05 related to e-commerce.
- The consumer has been always considered as the weakest party in the contract, so as he in the electronic one, that's due to his less experience in the field of the e-commerce transactions, also he has been always a center of concern and attention by many legislations, for that reason the Algerian legislator tried to set a specific rules in order to manage providing him the right safeguard and protection.
- The definition of the e-contract is the same definition of the contract in Article 03/04 of Law No.04-02 of 5 Jumada El Oula 1425 corresponding to June 23, 2004, on the Rules for Commercial Practices, however the Algerian legislator added in the definition the feature that it is concluded remotely

without the real and actual presence of its parties, which means via the internet. This is the main difference between the e-contract and the traditional one, as it was mentioned before.

- The Algerian legislator provided different mechanisms that suit the e-contracting by enacting a special law related to e-commerce and also other laws and regulations that stipulate the protection of the e-consumer during each step and stage of conducting the e-contract.
- He also gave rights to the e-consumer since he is considered as the weakest party in the e-contract, in the other hand, they are obligations to the e-provider since he is considered as the one who has more experience in the field of e-commerce transactions.
- He set specific rules during the formation of the e-contract, as a way of protecting the e-consumer to prevent him from being in position of deception and misleading, starting with the e-advertising that must be clear and obvious with commercial message, and he restricted it with specific rules in case of any violation to its conditions.
- Personal data is a big concern to any internet user specially the e-consumer who is going to fulfill his personal information and data, to ensure the security of data and the confidentiality of the information the Algerian legislator stipulated and promulgated Law N°.18-07 related to the protection of individuals in the processing of personal data, as we can see that the rules are enacted for the natural persons and not the moral ones, that's due to the impact of conventions related to protecting natural person in field of data processing.
- The right to the e-informing is one of the necessary rights that the e-consumer must have, since the e-contract is done remotely via the internet, and not in the actual presence, the e-provider is obliged to inform the e-consumer about all information related to the goods and services in order to make a balance between the parties of the e-contract.
- The next stage of the e-contract is the execution of it, and it is so important, that's due to the fact that the e-consumer can be a victim of fraud and swindling, for that reason the Algerian legislator restricted the mechanisms to manage providing the safeguard to the e-consumer in this stage specifically.
- Since the e-contract is done via the internet it is somehow hard to prove its integrity, the Algerian legislator has set the e-signature and certification as a tool to evidence the approval and the acceptance of the parties on terms of the e-contract, in order to make it trustful and secured.

- The right to retraction is a right given by the Algerian legislator to the e-consumer in case he finds out that the goods or services he received does not match what he ordered. Despite he can retract the e-contract without an explanation; the Algerian legislator restricted this right in order to prevent causing any harm to the e-provider as well, because he is seeking to make a balance between the parties of the e-contract.

Based on these results, and despite the law related to e-commerce has been promulgated recently in 2018; however the Algerian legislator managed somehow to provide the protection to the e-consumer during all stages of e-contract.

Furthermore, even there were lot of laws related to the protection of the e-consumer; there were no such incorrect information or a legal rule that does not match another one.

However, there are some points that are not discussed or applied yet; we would humbly **recommend these suggestions:**

- It would be much better if all laws related to the protection of the e-consumer get collected in one law related to the e-commerce where it can regulate the e-commerce generally and the protection of the e-consumer in a special private way, to easily browse and check it.
- This kind of topics should be always checked, and keeping an eye on it, due to the constant developments and advances, that's why rules should be enacted in a way that suit the changes that are happening continually.
- It would be better if the Algerian legislator hardly restrict the rules of any violation to the rights given to the e-consumer.
- Raise awareness about how important and dangerous at the same time the use of the personal data and how to correctly fulfil them in the right safe sites, because setting a special law that regulate it is not enough, there must be a spread of knowledge and realisation of protecting the personal data.
- Fixing the information that should be contained in the e-informing to make easy and clarify the terms of the e-contract and to show more the personality and the character of the e-provider so the e-consumer can conduct with trust and no doubt.
- There should be a detailed explanation and verification to the law related to the e-signature and certification in order to apply it and use it correctly in the right way.

- It would be better if the Algerian legislator set specific rules that regulate the right to retraction and how to correctly use it and also stipulate the duration of the deadline.

These were the recommendations that we found out based on our research and study. The protection of the e-consumer during all stages of the e-contract is a topic that needs more restricted very well-organized laws and regulations, because it is not about enacting and promulgating many different laws, it is about giving the right safeguard and the correct protection to the e-consumer, also framing and stipulating the definitions of the terms related to it, in order to narrow the constant expansion of the whole e-commerce environment. Moreover, checking the developed countries to get inspiration or obtaining their way of regulating these challenges that the e-commerce forces them. In addition, setting rules related to the e-commerce in such a specific, correct and organized way to achieve the legal safety and the economy development.

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## Abstract :

The e-commerce is witnessing a significant development, and a widespread expansion, now the e-consumer is able to conduct an e-contract remotely via the internet, where he can acquire any goods or services that match the description that he is looking for, however he is considered as the weakest party in the e-contract, since he has less experience in the field of e-commerce transactions. For that reason the Algerian legislator is seeking to provide the protection during all stages of the e-contract in order to prevent him from being a victim of fraud and swindling.

## Keywords:

**E-commerce, E-consumer, E-contract, Fraud , Swindling**

## ملخص :

تشهد التجارة الإلكترونية تطورا ذو أهمية و انتشارا واسعا، حيث أصبح الآن المستهلك الإلكتروني قادرا على القيام بعقد الكتروني عن بعد بواسطة الانترنت، اين يمكن ان يقتني اي سلع او خدمات التي تتاسب المواصفات التي يبحث عنها، مع ذلك يعتبر الطرف الضعيف في العقد الإلكتروني كونه الأقل خبرة في مجال معاملات التجارة الإلكترونية. لهذا السبب المشرع الجزائري يسعى الى توفير الحماية خلال جميع مراحل العقد الإلكتروني، بغرض تقادي وقوعه ضحية نصب و احتيال.

## كلمات مفتاحية:

التجارة الإلكترونية، المستهلك الإلكتروني، العقد الإلكتروني، النصب، الإحتيال