

## Requirements for Regulating the Electronic Store in Light of Algerian Law

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### **Abstract:**

The significance of this study lies in highlighting the core principles that govern the organization of electronic stores, while drawing a comparison with traditional commercial establishments under the framework of Algerian Commercial Law and the legislation related to e-commerce. From this perspective, the proper creation of an electronic store requires ensuring that all fundamental components necessary for its establishment are present. Furthermore, this entity produces various legal consequences, including the legal acts it may be subject to, as well as the protection granted to it under the law.

Moreover, it can be observed that the Algerian legislator has not provided a specific legal framework dedicated exclusively to electronic stores. This situation has prompted this study to rely on the general rules applicable to traditional commercial establishments and extend their application to electronic stores, with the aim of proposing a general legal framework for their regulation.

**Keywords:** Electronic store, electronic commerce, digitalization.

### **Introduction:**

It is necessary to first define the specific nature of the regulation of the electronic store in order to properly approach the subject, beginning with the legal framework governing e-commerce as applied in Algerian legislation, notably Law No. 18-05 of 10 May 2018 relating to electronic commerce. The digital revolution constitutes one of the most prominent manifestations of technological advancement in the contemporary world, having significantly contributed to the widespread expansion of e-commerce due to the ease and simplicity of information exchange and the conclusion of transactions and contracts related to the electronic store. This development, as a legal consequence, calls for the establishment of adequate legal protection.

E-commerce is thus considered at the core of modern economic activities and among the most important contemporary fields, especially in light of the rapid

expansion of electronic communications in daily life. This evolution has impacted commercial activity, competition, and competitiveness, leading to the emergence of electronic markets that promote and sell goods and services to customers through virtual websites. These platforms share, in their legal nature, similarities with traditional commercial establishments, as they encompass most of the essential elements and components of a commercial store.

This situation necessitates keeping pace with such developments through the enactment of appropriate legal frameworks. Accordingly, various legislations have sought to establish and regulate specific provisions governing e-commerce, including legal transactions related to the electronic store, the protection of parties, and the assignment of liability. In this context, the Algerian legislator intervened through Law No. 18-05 of 10 May 2018 on electronic commerce, establishing a new legal foundation for the regulation of the electronic commercial establishment.

In light of the foregoing, the following research question may be raised: What are the main features of the legal framework governing the regulation of the electronic store under Algerian law?

To address this research paper, we have adopted the descriptive, analytical, and, to a lesser extent, comparative approaches, with the aim of clarifying the concept of the electronic store, the principal legal transactions applicable to it in comparison with the traditional commercial establishment, and the aspects of its legal protection, structured into two main sections.

### **First Axis: The Concept of the Electronic Store**

There are multiple terminological concepts related to the electronic store, including similar and closely related notions that are useful for this research paper in the fields of jurisprudence and Algerian law. In order to access the meaning of the electronic store with greater precision and clarity, it is first necessary to address the electronic contract, then move on to the traditional commercial establishment, before finally arriving at the concept of the electronic store, thereby completing its definition.

#### **First: Definition of the Electronic Contract**

Jurists have defined the electronic contract as: “A contract involving an exchange of consideration between the seller and the buyer, concluded through pre-formulated terms processed electronically, and giving rise to binding contractual obligations.”<sup>1</sup>

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<sup>1</sup> - Mustafa Ahmed Abu Amr / Electronic Contract Council, A Comparative Study, Dar Al-Jami'a Al-Jadeeda, Alexandria, Egypt, 2011, p. 29.

It has also been defined as: “An agreement concluded through the convergence of offer and acceptance over an open international communication network, using audio-visual means that enable direct interaction between the offeror and the offeree.”<sup>2</sup>

### **Second: Definition of the Traditional Commercial Establishment**

The commercial establishment is the tool of the commercial enterprise. It is composed of a set of tangible and intangible elements designated for the exercise of a commercial activity. It may be referred to as a “store” or a “factory” depending on whether it is intended for carrying out trade in the narrow sense or for industrial activity. It is also called an “undertaking” (enterprise)...

### **Legal translation (Arabic → English with legal terminology preserved):**

The application of tax and labor laws has been addressed, and the new Commercial Code uses the term “store,” which is also referred to as “commercial premises,” a term that is more commonly used.<sup>3</sup>The concept of the commercial premises, as an independent aggregate of its constituent elements and components, which may serve as the subject of contracts and legal transactions, is a modern notion that was not expressly addressed in the provisions of commercial law. In comparative law systems, such as Egyptian legislation, it first appeared in 1940 concerning the sale and pledge of commercial premises, which was derived from French law issued on 17 March 1909<sup>4</sup>.

### **Third: Definition of the electronic store and its components**

In this section, we address the definition of the electronic store through the provisions of commercial law and electronic commerce law, without departing from providing a comparison between the common elements of the traditional commercial premises and the electronic store, which will be further clarified as follows:

#### **1- The legal scope of the electronic commercial store:**

The commercial legislator did not specifically address the electronic store in 1975

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<sup>2</sup> - Ahmed Diahi, The Electronic Nature of the Electronic Contract, Academy for Social and Human Studies, Values of Economic and Legal Sciences, No. 10, Algeria, June 2013, p. 99.

<sup>3</sup> - Mustafa Kamal Taha, Wael Anwar Bunduq, Principles of Commercial Law, (n.d.), Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2006, p. 645.

<sup>4</sup> - Mustafa Kamal Taha, Wael Amour Bunduq, previous reference, p. 645.

under Law 75-59<sup>5</sup>, unlike the traditional commercial premises. Rather, it merely mentioned and enumerated its elements, stating that: “The commercial premises include as part of its assets the tangible assets allocated for the exercise of a commercial activity... and the commercial premises mandatorily include its clientele and goodwill.”

According to Article 78<sup>6</sup> of the Commercial Code, it also includes all other assets necessary for the operation of the business, such as the business name, trade name, leasehold right, equipment and machinery, goods, as well as industrial and commercial property rights.

It can be inferred from the aforementioned definitions and the relevant legal provisions in Algerian legislation that there exists a fundamental and essential element upon which the business establishment is based, namely the element of customer connection (clientele). It is also defined as the set of means employed to attract, acquire, and retain customers. This definition applies, in particular, to the electronic store, especially in light of Law No. 18-05 relating to the rules governing electronic commerce activity and defining the legal status of the electronic supplier, as will be clarified below.

The Algerian legislature has adopted a law establishing the general framework for electronic commerce through Law No. 18-05<sup>7</sup> of 10 May 2018. Pursuant to its provisions, “electronic commerce shall be conducted within the framework of the legislation and regulations in force.” Furthermore, under Article 6(1) of the same law, electronic commerce is defined as “the activity by which an electronic supplier offers or ensures the provision of goods or services remotely to an electronic consumer through electronic communications.”

Moreover, case law has not yet addressed this type of commercial establishment through disputes, due to its novelty and recent emergence. Nevertheless, this has not prevented certain doctrinal attempts, through analogy and comparison between the electronic store and the traditional business establishment, to formulate a definition of the electronic commercial store. Some scholars define the online commercial store as comprising a set of elements characterized by their capacity to attract customers to the commercial services offered through such websites.

### **Translation (with preserved legal terminology):**

The virtual nature of the store requires that it include the essential elements of a

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<sup>5</sup> - Order No. 75-59 of September 26, 1975, relating to commercial law, (JR), (78).

<sup>6</sup> - Article 78 of Order No. 75-59, same source.

<sup>7</sup> - Law 18-05, dated May 10, 2018, relating to electronic commerce, (Official Gazette), (No. 28).

commercial establishment, particularly and especially the element of customer contact (clientele). Thus, the electronic store operating through such websites constitutes the electronic counterpart of the traditional commercial establishment.<sup>8</sup>

## **2- Components of the electronic store by analogy with the elements of the traditional store:**

Certain elements of the traditional commercial establishment may be transposed to the electronic store, particularly the intangible elements:

### **A- Customer contact (clientele):**

Customer contact refers to the group of persons who habitually deal with the commercial establishment. It is an essential element of the business and is considered a major factor contributing to its value. It should be noted that a part of legal doctrine does not regard customer contact as an element of the commercial establishment; rather, in its view, the commercial establishment is nothing more than a right over the clientele connected to the business due to the elements used in its operation.<sup>9</sup>

### **B- Domain name or trade name:**

This is the most important distinctive element of the electronic store. It determines the location of a company or a specific enterprise on the Internet and distinguishes it from others in cyberspace. It is defined under Article 04 of Law No. 18-05 relating to electronic commerce<sup>10</sup>.

### **Translation (with preserved legal terminology):**

The Algerian legislator defined it in Article 06 of Law No. 18-05 relating to electronic commerce as follows: “Within the meaning of this Law, the domain name means a string of characters and/or numbers, selected and registered with the National Domain Name Registry, which allows ...”

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<sup>8</sup> - Rabah Hamdi Bacha, Wahiba Abdel Rahman, The Evolution of Payment Methods in E-Commerce, Journal of Economic, Management and Trade Sciences, University of Algiers 3, Volume 15, No. 4, 2011, pp. 168-169.

<sup>9</sup> - Mustafa Kamal Sah, Wael Amour Bunduq, previous reference, p. 650.

<sup>10</sup> - Hinault Verbiest, Maxime Le Born, The Virtual Business Fund, a Legal Reality 2, Journal des Tribunaux, February 23, 2020, 121st year, no. 6044

Domain Name Registry, which allows the identification of and access to the website.”

From an analysis of the wording of this provision, it can be inferred that the domain name constitutes a fundamental element of electronic commerce, as it enables access to and identification of the website, and consequently the electronic store, thereby facilitating the conduct of commercial activity<sup>11</sup>. The legal nature of the domain name has been the subject of three doctrinal approaches: the first considers it a personal right, since it is granted under a registration system; the second regards it as an intellectual property right due to its connection with commercial activity; while the third, which represents the prevailing and conciliatory view, considers it an intangible asset of a special nature subject to a hybrid legal regime<sup>12</sup>.

### **C- Use of digital means in establishing the electronic store:**

The transition from traditional commerce to a digital environment has contributed to the emergence of new legal and technical challenges, particularly in light of legislative efforts, including those of the Algerian legislator, to keep pace with such developments. These means are defined as a set of tools and technologies that rely on digital technology for data processing and exchange, and include:

- The Internet
- Software and applications
- Computers and smartphones
- Electronic payment systems

### **Translation (with preserved legal terminology):**

These means constitute the cornerstone and fundamental basis upon which the electronic store is built, through the display of products, the conclusion of contracts, and the execution of payment transactions<sup>13</sup>. These digital tools play a crucial role in the formation of the electronic store at several levels, including: the creation of the store interface after designing the website using programming languages and content management systems; then the selection of the domain name, which represents the electronic address of the store and a fundamental element of its digital identity; followed by web hosting, whereby digital servers provide storage space for the

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<sup>11</sup> - Rasha Mohammed Tasir, Maha Yousef, Applying the legal system of the commercial establishment to the electronic commercial website, an article published in the Journal of Sharia and Law, Issue 46, April 2011, United Arab Emirates, p. 353.

<sup>12</sup> - Mabrouki Said, Youssefi Nour Eddine, The Legal Nature of the Domain Name, Al-Mufakker Journal, University of Biskra, Algeria, No. 17, 2021.

<sup>13</sup> - Abdel Fattah Bayoumi Hegazi, The Legal System for the Protection of Electronic Commerce, (n.d.), Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2002, p. 123.

store's data and ensure its operation on the Internet; then electronic payment systems via bank cards or digital wallets; and finally cybersecurity systems to ensure data confidentiality and consumer protection<sup>14</sup>.

## **Second Axis: Legal transactions relating to the electronic store in comparison with the traditional commercial establishment**

The subject of the principal legal transactions relating to the electronic store may be studied in comparison with the traditional commercial establishment within a comparative framework, through which points of similarity and difference are identified in terms of legal nature and legal effects. This will be clarified as follows:

### **First: General framework of legal transactions**

In general, the legal transactions applicable to the commercial establishment, whether traditional or electronic, are those legal acts whose subject matter is the establishment itself, considered as an intangible movable asset composed of...

### **Translation (with preserved legal terminology):**

...of both tangible and intangible elements<sup>15</sup>. In the case of the electronic store, it consists essentially of intangible components such as:

- The domain name
- The database
- The digital trademark
- The virtual clientele<sup>16</sup>

Accordingly, the legal transactions applicable to the traditional commercial establishment include sale, pledge, lease-management, and the contribution of the establishment as a share in a company (in-kind contribution), in accordance with the general rules of civil law and the provisions of commercial law<sup>17</sup>.

### **Second: Forms of legal transactions in both the traditional establishment and the electronic store**

The traditional commercial establishment is subject to formal and legal requirements

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<sup>14</sup> - Ait Mubarak Samia, The Role of E-Commerce in Activating Commercial Performance: Reality and Prospects in Algeria, Master's Thesis, Faculty of Economic Sciences, Management Sciences and Commercial Sciences, University of Algiers 3, 2012, p. 164.

<sup>15</sup> - Mustafa Kamal Sah, Wael Amour Bunduq, previous reference, p. 648.

<sup>16</sup> - Issawi Muhammad, Consumer Protection in Electronic Contracting, Journal of the Legal Researcher, Chadli Bendjedid University, El Tarf, Algeria, No. 5, 2021, p. 102.

<sup>17</sup> - Nadia Foudil, Algerian Commercial Law (Commercial Activities, Merchant, Commercial Establishment), 6th ed., University Publications Office, Faculty of Law, University of Algiers, 2004, p. 67.

(writing, publication/registration, and protection of creditors), and encompasses both tangible and intangible elements.

As for the electronic store, its transfer (sale) is carried out through the transfer of:

- The domain name
- The database
- Digital rights

Thus, the point of similarity lies in the fact that both constitute objects of sale, whereas the point of difference resides in the predominance of the intangible nature in the electronic store<sup>18</sup>.

### **Translation (with preserved legal terminology):**

The transaction may take the form of a **license to use (exploit)** rather than a sale, whereby the owner of the electronic store grants authorization to use the platform or software. There may also be an **assignment of the domain name**, involving the transfer of its ownership, which is subject to specific rules and international registration authorities, with the possibility of it being pledged. This constitutes a relatively modern concept, similar to a website or a database, along with restrictions on the right to exploit an electronic store model<sup>19</sup>.

### **Third Axis: Establishment of Legal Protection for the Electronic Store**

With the growing significance and rapid expansion of electronic commerce in today's world., particularly in light of digital transformation, the electronic store has become a fundamental means of conducting commercial activities. However, this development has been accompanied by numerous legal challenges, particularly in relation to safeguarding the parties to the contractual relationship, notably the consumer and the electronic trader.

Accordingly, the legislator has intervened to establish a legal framework aimed at thereby ensuring trust and security within the digital environment. The key aspects of this protection can be summarized under two main headings, as follows:<sup>20</sup>:

#### **First: Consumer Protection in the Electronic Store**

The legislator has sought to provide protection and safeguards for the electronic consumer, **as** the more vulnerable party in the contractual relationship. The most significant aspects of this protection include pre-contractual information obligations,

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<sup>18</sup> - Hamada Muhammad Anwar, Legal Transactions Related to the Commercial Establishment, Sale, Mortgage, Leasing, (n.d.), Dar Al-Fikr Al-Jami'i, Algeria, 2001, p. 30.

<sup>19</sup> - john dickie,intenetand Electronic commerce low in the EV, Hart publishing,2016,p 314.

<sup>20</sup> - Ben Warith Muhammad, Consumer Protection in Algerian Law, 1st ed., Dar Houma, Algeria, 2011, p. 21.

whereby the electronic trader is obliged to disclose clear and transparent information regarding their identity, the characteristics of the product, the price, payment terms, the right of withdrawal, and the protection of personal data<sup>21</sup>.

## **Second: Protection of Electronic Transactions**

This protection includes the recognition of the legal validity of electronic writing and electronic signature as a means of electronic documentation for evidentiary purposes in contractual matters, as well as the securing and safeguarding of electronic payment systems and the combating of cybercrimes such as fraud and data breaches<sup>22</sup>.

The importance of protecting the electronic store lies in enhancing customer trust, reducing electronic risks, ensuring the continuity of commercial activity, and safeguarding the digital economy. The Algerian legislator has also established sanctions to protect the electronic store and ensure the integrity of transactions and the protection of both consumers and traders. These include criminal sanctions, most notably offenses of electronic fraud, deception, and cyber fraud, punishable by imprisonment and fines, among others; administrative sanctions imposed by regulatory authorities (notably the Ministry of Commerce), such as website closure and withdrawal of licenses; and civil sanctions aimed at compensating the injured party<sup>23</sup>.

## **Conclusion:**

From the foregoing discussion presented in this research paper regarding the regulation of the electronic store under Algerian legislation, it is concluded that the study addressed the concept of the electronic store, the most important legal transactions applicable to it in comparison with the components of the traditional commercial establishment, as well as the forms of its protection. Accordingly, the following key findings and recommendations may be highlighted:

### **First: Findings**

- The Algerian legislator has not provided a precise definition of the electronic store, and its understanding is derived from various provisions of the

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<sup>21</sup> - Law No. 09-03, dated February 25, 2009, relating to consumer protection and the suppression of fraud, (Official Gazette), No. 15, issued on March 8, 2009 and amended by Law No. 18-09.

<sup>22</sup> - Chris Reed, *Intmet Law: Text and Materials*, Cambridge: Cambridge University Press, 2004, p 215.

<sup>23</sup> - Zoutat Nassira, *The Specificity of Criminal and Administrative Sanctions in Algerian Electronic Commerce Law*, *Journal of Management and Development for Research and Studies*, University of Belhadj Chaib Ain Temouchent, Issue 2, Algeria, 2022, p. 204.

Commercial Code, the Electronic Commerce Law, and consumer protection legislation.

**Translation (with preserved legal terminology):**

- The electronic store in Algerian legislation is considered an extension of the traditional commercial establishment, connected to it in terms of general legal rules, while being distinguished by its technical and regulatory specificity.
- Weakness in digital infrastructure in some cases affects the effectiveness and efficiency of legal implementation.
- There is a lack of implementing and regulatory texts that clarify the provisions of Law No. 18-05 relating to electronic commerce.
- The absence of clarity regarding certain concepts related to the electronic store, such as the legal characterization (qualification) of the electronic store.
- Transactions relating to the electronic store are governed by the rules of commercial and civil law, most notably: sale, pledge, lease, and assignment, with the necessity of adapting them to the digital nature of transactions.
- The increasing and growing role of electronic evidence in the protection of transactions, as these digital means have become essential for proving digital legal acts.
- The need to strengthen and ensure legal protection for operators, particularly with regard to consumer protection and ensuring transparency in transactions relating to the electronic store.

**Second: Recommendations**

- Strengthening legal protection for the electronic consumer.
- Establishing specialized regulatory bodies for the regulation of electronic commerce.
- Strengthening cybersecurity and safeguarding personal data.
- Developing the legal framework governing electronic commerce.
- Organizing electronic payment operations in a more effective and efficient manner.
- Developing mechanisms for the settlement of electronic disputes and encouraging investment in the field of electronic commerce.
- Promoting and raising awareness among both consumers and traders in the legal field.