

RESEARCH
ARTICLE**Rules and Mechanisms for Protecting the E-Consumer During Contract Formation in Algerian Electronic Commerce Law No. 18-05****Belkhir Halimi**

Doctor

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Abstract

The advent and widespread use of modern technology in all aspects of life has significantly transformed human lifestyles. Contracts are now often concluded in a different environment contract formation. To restore balance in these contractual relationships, legislation was enacted to align with the digital medium, providing consumers with legal tools and protective mechanisms from the start to the end of the contractual process. Most legislations, including Algeria's, have taken this path, issuing special laws in addition to general consumer protection laws, most notably Law No. 18-05 on Electronic Commerce.

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Introduction

The tremendous technological development across the globe has made digital engagement essential. Business and commercial transactions, in particular, have become the primary domain for applying internet technologies, offering speed, efficiency, and cost reduction key pillars of modern commerce. Internet benefits extend beyond businesses to consumers, who can now purchase goods and access services remotely. This represents a major shift from traditional transaction methods, making digital commerce a key model of modern trade.

Electronic commerce includes all exchanges and transactions performed via modern communication means, where a professional seller—natural or legal—engages in trade targeting a consumer, also natural or legal. These activities include contract formation, payment, delivery, and any other process involving digital tools, either entirely or partially.

Given the risks of the digital environment, contract formation stands out as one of the most sensitive areas requiring legal protection to ensure fairness and trust. Accordingly, global legislations have moved to define protective legal frameworks. Algeria followed this path, albeit recently, by enacting Law No. 18-05, which governs e-commerce and specifically includes provisions to protect e-consumers throughout the contractual process.

In contractual relationships, the consumer is considered the weaker party, particularly in contrast to the supplier, which justifies the need for legal protection especially at the contract formation stage.

Key research question: What mechanisms and rules has Algerian Law No. 18-05 provided to protect consumers in the context of electronic commerce?

To answer this, the study adopts a legal analytical approach, clarifying the legal basis of consumer protections during e-contract formation and analyzing relevant legal texts.

Section 1: The Right to Information Obligation

The right to information constitutes one of the safeguards established by the Algerian legislator for the electronic consumer during the contracting process under Law No. 18-05, with the aim of ensuring informed consent, enhancing awareness, and protecting the consumer from potential abuses by the electronic supplier, who is considered the stronger party in the contractual relationship.

1.2 Definition in Legal Doctrine and Law : The obligation to inform is a pre-contractual legal duty that requires one party typically the supplier to disclose all essential information about the product or service using electronic means, transparently and in good faith.

Comparative laws such as the French Civil Code (Article 1602) and Consumer Code (Article 121-18) require clear, unambiguous consumer information. Similarly, Tunisian, UAE, and Egyptian laws include similar provisions.

In Algeria, Law 09-03 and Executive Decree 13-378 emphasize the importance of informing consumers through appropriate labeling or other communication means, including modern technologies.

Law 18-05, particularly Article 12, requires:

- Availability of contractual terms
- Order detail verification
- Clear consumer confirmation

Articles 11 to 13 of Law No. 18-05 reaffirm the duty to inform by clearly extending its scope to include both traditional professionals and digital suppliers. These provisions impose a legal obligation on the supplier to provide the electronic consumer with clear, accurate, and sufficient information prior to the conclusion of the contract, ensuring transparency and enabling the consumer to make an informed decision. By doing so, the legislator seeks to level the contractual playing field and protect the weaker party namely, the consumer from potential abuse, ambiguity, or manipulation in digital transactions

1.3 The Legal Basis of the Duty to Inform Opinions have diverged both in legal doctrine and in judicial decisions regarding the legal foundation of the right to information. One prevailing view considers the duty to inform as grounded in the principle of contractual safety and balance between the contracting parties. This perspective emphasizes that such a duty is essential to ensure the soundness of contracts, particularly in situations where there is an imbalance in bargaining power between the parties.

Furthermore, the duty to inform also finds a legal basis in the concept of knowledge of the subject matter of the contract. This is explicitly reflected in Article 352(1) of the Algerian Civil Code, which states: "The buyer must have sufficient knowledge of the object *of sale*. Such knowledge is deemed sufficient if the contract includes a description of the item and its essential characteristics in a way that allows it to be identified."

This provision requires that the consumer have sufficient knowledge of the item being sold. By implication, this necessitates that the seller who is presumed to be in possession of the item prior to the contract take proactive steps to ensure that the consumer is adequately informed about the object of the sale. Such knowledge can only be achieved if the seller is under a duty to disclose all essential characteristics of the product for the benefit of the consumer.

Following the enactment of the consumer protection law, the legal basis for the duty to inform has become an indispensable requirement in the conclusion of electronic contracts. This obligation is explicitly affirmed in Articles 17 and 18 of Law No. 09-03 on Consumer Protection and Fraud Prevention, as well as in Articles 04, 05, and 08 of Law No. 04-02, which sets the rules applicable to commercial practices, along with the implementing texts

relating to labeling and information in Algerian legislation. This obligation was further reinforced by the subsequent enactment of Law No. 18-05 on Electronic Commerce.

1.4 Means of Enforcement: According to Article 17 of Law No. 09-03 on Consumer Protection and Fraud Prevention, the duty to inform may be fulfilled through labeling, marking, or by any other appropriate means. The Algerian legislator has set out the methods by which the consumer must be informed, including through labeling and the presentation of the electronic commercial offer.

a. Labeling (Wasm): Defined in Law 09-03 Article 3-4 as all indicators marks, symbols, images used to describe product nature and characteristics. Article 18 requires such data to be in Arabic, with optional other languages, and must be visible and permanent.

b. Electronic Commercial Offer : Defined as a clear, precise, and binding proposal that includes:

- Supplier's ID details (tax ID, physical/electronic address, phone number, commercial register).
- Product/service prices and conditions.
- Transparent terms that avoid professional favoritism.

Additionally, while not explicitly addressed in Law 18-05, the right of withdrawal (i.e., the right to cancel the contract) is recognized in comparative law and suggested as necessary to protect consumers who cannot physically inspect goods beforehand.

b.1 Definition of the Commercial Offer : Legal scholars unanimously agree on referring to the commercial offer as an "electronic offer" (or e-offer), which corresponds to the traditional concept of an offer under general contract law, with the distinctive feature being the use of electronic means of communication. It is a unilateral expression of will directed either to the public or to a specific person, with the intention of concluding a contract.

It is also defined as "a legal obligation that precedes the electronic contract, whereby the electronic supplier is required to inform the electronic consumer of all information, data, and details related to the good or service that is the subject of the commercial transaction via the Internet, under an electronic contract approved by the consumer.

Not every commercial offer is legally binding; only the offer that is accompanied by acceptance holds legal value, since acceptance constitutes the formation of the contract. This is affirmed by Article 12 of Law No. 18-05, which states: "Confirmation of the order results in the formation of the contract."

Thus, the commercial offer serves as a means of fulfilling the duty to inform, as it must include all relevant information for the consumer regarding the electronic supplier such as the tax identification number, physical and electronic address, telephone number, commercial registration number, or the professional identification card for artisans. It must also disclose the prices of goods and services, as well as the terms and conditions of sale, in a manner that enables the consumer to become fully aware of product and service prices without having to consult sellers or service providers. This empowers the consumer to freely decide whether or not to enter into the contract. Moreover, it helps prevent discriminatory or preferential treatment by professionals toward certain consumers.

b.2 Conditions for the Validity of the Commercial Offer:

A number of conditions must be met for the commercial offer to be considered valid, including the following:

1. The electronic commercial offer must be precise: The legislator, in Article 11 of the same law, requires that the electronic offer include, by way of example and not limitation, all essential information relevant or necessary for the conclusion of the aforementioned contract.
2. The electronic commercial offer must be definitive and binding: For an expression of will to constitute an electronic offer, it must be firm and unequivocal, with the intent to form a binding offer. It must not be subject to any conditions, meaning that the offer must be capable of forming a contract upon acceptance by the offeree.

3. The offer must be visible :Prices and rates must be displayed in a manner that is clearly visible to the consumer. If this condition is not met, the economic operator is deemed not to have fulfilled their duty to inform, even if the price has been posted or labeled—for example, if the price is marked beneath the product or on the opposite side of a wall. This confirms that the obligation to inform regarding prices and rates is an obligation to achieve a specific result, not merely an obligation of due diligence.¹⁰
4. The offer must be legible: It is not sufficient, for the purpose of informing the consumer about the electronic commercial offer, that the offer merely be visible; it must also be legible. If it cannot be read, it does not achieve consumer awareness, and the economic operator cannot invoke it as evidence of having fulfilled the duty to inform. For example, the price must be written in clearly legible numerals or letters, and in a language that is understood by the general consumer. This implies the use of the Arabic language when the price is expressed in words, as Arabic is the national and official language. This requirement is consistent with the language mandated for product labelling even though, in practice, prices are more commonly displayed using numerals rather than words.²¹ In addition to the two guarantees established by the Algerian legislator to protect the electronic consumer, an additional safeguard has been introduced namely, the right of withdrawal. This right stands in clear contrast to the principle of the binding force of contracts, as it allows the consumer to revoke a fully concluded contract. However, it is considered one of the most appropriate mechanisms for protecting consumers in electronic contracts, particularly given the consumer's inability to physically inspect goods or verify the proper performance of services in such transactions. The right of withdrawal is a legal tool increasingly adopted in modern legislation to safeguard the consent of the electronic consumer. Its core purpose is to grant the consumer a period for reflection and reconsideration. It is worth noting that the Algerian legislator did not explicitly provide for the right of withdrawal in Law No. 18-05. Instead, it leaves room for the contracting parties to include terms and time limits for withdrawal in the electronic contract, where appropriate.

Section 2: Ensuring Digital Privacy for E-Consumers:

Privacy is considered one of the most fundamental human rights. Accordingly, the constitutions and legal systems of various countries have recognized and guaranteed this right. In the context of the Internet where electronic transactions and contracts take place clients are often required to disclose their personal information in order to complete such transactions. This disclosure is deemed necessary for contracting, whether directly or indirectly, during the formation of the contract and even after its conclusion.

Privacy is a fundamental human right protected in most constitutions. In e-commerce, consumers are required to share personal data, making them vulnerable. Recognizing this, Law 18-05 (Article 26) mandates:

- Only essential data may be collected
- Systems must ensure data confidentiality and security
- Storage and processing methods to be regulated.

2/1. Definition of Privacy :Law 18-07 (Article 3/01) defines personal data as any information identifying an individual directly or indirectly (e.g., names, biometric data, economic status). The concept of privacy varies from one society to another, depending on factors such as religion, customs, language, and other societal components. It also differs according to individual circumstances, including lifestyle, living conditions, family situation, health, emotional state, and more. Moreover, a set of moral values such as dignity, honor, religious beliefs, and intellectual convictions are also considered part of an individual's personal data.

Types of Personal Data:

- The first category concerns data of a nominative nature, such as name, surname, address, email, personal photographs, etc.
- The second category is referred to as indirect nominative information, such as phone number, national identification number, secret passwords, etc.²⁶

2/2. Privacy Protection Measures in Law 18-05:

The Algerian legislator has enshrined the right to privacy through Article 26 of Law No. 18-05, which states: "An electronic supplier who collects personal data and creates files on customers or potential customers must collect only the data necessary for concluding commercial transactions. Moreover, the following must be ensured:"

- A. Electronic consumers' consent must be obtained prior to the collection of their personal data.
- B. The security of information systems and the confidentiality of data must be ensured.
- C. Compliance with all applicable legal and regulatory provisions in this field is mandatory.

The modalities for the storage and protection of personal data shall be defined by regulatory texts.²⁷

The enshrinement of the right to privacy in **Law No. 18-05** is made evident through the following:

Prior consent as a prerequisite for the collection of personal data: Any expression of informed will by which the data subject or their legal representative agrees to the processing of personal data relating to them, whether by manual or electronic means.²⁸

Here, the key criterion for valid consent is discernment. According to the Civil Code, this is presumed at the age of 13. Thus, consent must be given by an electronically mature consumer.

However, Article 7 of the same law allows for the collection of personal data without prior consent from the data subject when the processing is necessary and aims to serve a legitimate interest, provided that the interests and rights of the data subject are respected.²⁹

The collection of necessary data while ensuring its confidentiality, security, and retention for a specific period: According to Article 26 of Law No. 18-05, the legislator requires the electronic supplier to collect only the necessary data essential for concluding the commercial transaction, and not all personal information of the electronic consumer. The supplier is also obligated to ensure the security and confidentiality of the collected data and to implement electronic systems that protect such data from breaches and theft.³⁰ Based on the foregoing, the electronic supplier is required to disclose the contractual terms related to the protection of consumers' personal data within the electronic commercial offer and to comply with the regulations governing the processing of such data. Additionally, under Article 11 of the E-Commerce Law, the supplier's electronic offer must include the general terms and conditions of sale, especially those related to the protection of personal data.

Furthermore, the supplier's website must present clear procedures on how personal data is protected, by providing comprehensive information regarding data transmission methods, how the data will be used, protection mechanisms, and the options available to consumers for accessing their information while also committing not to disclose this data to third parties without the consumer's consent.

2/3: Protection of Electronic Signatures

2/3/1 Definition of Electronic Signatures (Law 15-04, Article 2) defines the electronic signature as: Electronic data in electronic form that is attached to or logically associated with other electronic data and used as a means of authentication.³¹

This definition aligns with the approach taken by comparative legislations in this field. For instance, the **UNCITRAL Model Law on Electronic Signatures (2001)** defines it in Article 2(a) as: "Data in electronic form that is attached to or logically associated with a data message and that may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message." Others define it as: "A set of symbols, numbers, letters, signs, or sounds composed in the form of electronic data connected

to an information message, with the purpose of identifying the signatory and confirming their approval of the contents of that message."³²

2/3/2 . Forms of Electronic Signature

- **Biometric Signatures** : This type of electronic signature is based on an individual's unique personal characteristics whether behavioral or physical in order to distinguish and identify them (such as fingerprints, iris patterns, or voice features). The signature is created by capturing a precise image of the person's biometric trait and storing it on a computer system using encryption. The encrypted data is later decrypted to verify the authenticity of the signature.³³
- **Digital Pens** :The handwritten signature is transferred by scanning it using an optical scanner, after which the scanned image is inserted into the file to which the signature is to be added, in order to confer the necessary legal validity. This type of signature requires a computer with specific technical specifications.³⁴
- **Digital signature** : It consists of a set of numbers or letters chosen by the signatory and arranged in a specific code that serves to identify the individual. This type of signature is commonly used in correspondence, banking transactions, and electronic payments. It is particularly relied upon in the use of Visa and Master Card.³⁵
- **Electronic Authentication**: authentication is vital to validate e-contracts, verify signers, and protect from fraud. Certification Authorities (Trusted Third Parties) authenticate signatures and alert users to suspicious platforms.

These entities also timestamp contract formation a critical legal element, particularly for electronic fund transfers.

A digital certificate confirms the authenticity of the data and the identity of the issuer.

Conclusion

In conclusion, one of the key issues raised in the context of electronic transactions is the protection of the electronic consumer the weaker party in the contractual relationship who may fall victim to the supplier's deception, fraud, or manipulation due to their lack of knowledge or experience.

As a result, various legal systems whether at the domestic, international, or convention and treaty levels have moved toward granting this party special legal protection, ensuring their rights are upheld and guarding against any abuse or misconduct. This is particularly crucial given the inherent risks associated with the internet environment, and aims ultimately to preserve the integrity of the contractual relationship as a whole.

This protection, which encompasses both civil and criminal measures, serves to provide compensation to the injured party and deterrence for the offender, and applies throughout all stages of the contractual process particularly during the formation of the electronic contract, which is the most critical phase.

The rise of electronic contracts presents numerous challenges, notably consumer protection. The consumer remains the weaker party, potentially vulnerable to manipulation. Legislations both national and international have increasingly addressed this through both civil (compensation) and criminal (penalty) measures.

- Law 09/03 (Consumer Protection & Anti-Fraud)
- Law 02/04 (Commercial Practices)
- Law 18/05 (Electronic Commerce)
- Law 18/07 (Data Protection)

These are supported by regulatory bodies and consumer protection organizations.

Key Findings:

1. Algerian lawmakers aim to safeguard e-consumers during contract formation through right to information and privacy protection.
2. The right to information is foundational for informed consent.
3. Law 18-05 rebalances the contractual relationship in digital settings.
4. Existing laws are still insufficient in fully protecting e-consumers unless effectively enforced.
5. Arbitrary contractual terms remain a risk and should be explicitly prohibited.
6. Several legal gaps and dependencies on general principles reveal the need for structural reform.
7. Protection levels vary globally depending on each country's resources and legal maturity.
8. Digital contracts, if well-regulated, can boost confidence and e-commerce growth.

Recommendations:

- Expand and strengthen e-consumer protections
- Legally reinforce consumer consent across all contract stages .
- Issue practical regulations to implement Law 18-05
- Clarify offer and acceptance mechanisms in e-contracts
- Regulate email communications as a key contracting tool
- Increase public awareness of the information obligation
- Establish oversight bodies for commercial offers
- Enhance punitive measures to deter violations
- Criminalize cybercrimes and unify consumer protection laws
- Support consumer advocacy groups
- Provide advanced legal training in e-commerce law.

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