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The Applicable Law to the International Electronic Consumer Contract according to Algerian Legislation

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Doi Serial <https://doi.org/10.56334/sei/8.4.89>**Keywords** Electronic consumer contract; applicable law; law of will; supplier; consumer.**Abstract**

This study aims to clarify the applicable law to the international electronic consumer contract according to Algerian legislation. Due to the importance of this issue, it has not been left unregulated. It has been settled by an individual connecting rule contained in Article 02 of Law 18-05 relating to electronic commerce. This regulation excludes what is known as the Law of Will ("lex voluntatis") and subjects the contract to Algerian law whenever it is connected to Algeria, whether in terms of the parties or in terms of the contract itself. This is all in order to guarantee the protection of the interests of both parties, especially the interests of the electronic consumer, who is considered the weaker party in the international electronic consumer contract pre-drafted by the electronic supplier, and who cannot effect any modification in its terms, including the issue of the applicable law. If the latter is not Algerian law, it is set aside by the Algerian judge pursuant to the aforementioned Article 02 and replaced by Algerian law.

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Introduction:

The major technological development witnessed by humanity in the late twentieth and early twenty-first centuries led to significant changes in all areas, including contracts. Contractors are no longer required to be physically present to conclude the intended contract. The development in information and communication technologies has enabled suppliers of products and services to offer them online and has also allowed consumers to shop online and obtain what they need without the trouble of going to the point of sale. This process involves what is known as electronic offer and acceptance, which necessarily results in the conclusion of an electronic contract that differs from the traditional contract.

The emergence of so-called electronic contracts has raised many issues, most notably the question of the applicable law, especially since these contracts often involve parties belonging to different countries and have as their subject the provision of a product and/or service by one party to the other. As such, the contractual relationship is considered international, being connected to the legal systems of more than one country and related to the interests of international commerce, giving it an international character. Conversely, electronic contracts

concluded between parties of one state or concluded and executed within one state are not subject to the conflict of laws, as all elements are internal, making the relationship domestic.

The Algerian legislator, like many others, allows contracting parties in international contracts to choose the law governing their contracts—the so-called "law of will". These contracts can be classified by the nature of their parties into international commercial contracts and international consumer contracts, whether electronic or not. While the former are subject to the law of the parties' will, as determined by their agreement, the latter involve a supplier and a consumer, raising the question of the applicability of the law of will to such contracts, especially since they are pre-drafted by the electronic supplier, which introduces a degree of specificity in the context of private international law. Further, it prompts the inquiry into the position of the Algerian legislator, according to Law 18-05 on electronic commerce¹.

To answer the above problem, the study will utilize the descriptive method (to introduce the international electronic consumer contract), the analytical method (to analyze various legal texts relevant to the applicable law), and the comparative method as required.

The study will be divided into two axes: The first concerns the law of will and the specificity of the international electronic consumer contract; the second is devoted to Algerian law as the law applicable to this contract.

Section I: The Law of Will and the Specificity of the International Electronic Consumer Contract

The Algerian legislator allows parties to international contracts to subject their contracts to the law of their will according to Article² 18 of the Civil Code and Article 1050 of the Civil and Administrative Procedures Code³. As long as the parties are professionals concluding contracts for their professional needs, it can be assumed that they negotiate or agree on the applicable law, making the chosen law their law of will. This is true for international commercial contracts. However, the situation is different for another type of international contract, namely, international consumer contracts (electronic or not), due to the nature of their parties. Since one party is a supplier and the other a consumer, this contract manifests some specificity under the rules of private international law, as the supplier unilaterally drafts the contract and consequently decides the applicable law.

A) The Specificity of the International Electronic Consumer Contract under the Rules of Private International Law

The specificity of the international electronic consumer contract under private international law, and the suitability of applying the law of will to it, stands out when defining this contract and its parties, given that their nature directly determines the law most suitable for its application.

1. The Specificity Emerging from the Concept

Referring to Law 18-05 on electronic commerce, we find that the Algerian legislator did not directly define the electronic consumer contract, only the electronic contract—defined by Article 06 para. 02 as “a contract concluded remotely using electronic means of communication, without the actual and simultaneous presence of its parties.”

From this, it is evident the Algerian legislator has clarified how this type of contract is concluded—that is, remotely, using electronic communication techniques and without the actual and synchronous presence of the parties (i.e., in a virtual meeting). This is the same definition used by the Jordanian legislator⁴, who considered the electronic transaction as one executed by electronic means.

It is worth noting that Article 06 has considered the electronic contract to be treated as per Law 04-02⁵, which sets the rules for commercial practices. Article 03 para. 04 defines a contract as “any agreement the subject of which is providing a service or selling a commodity, pre-drafted by one of the parties without the other party being able to discuss or modify that drafting.” Thus, international electronic consumer contracts are mostly adhesion contracts, since the consumer can only accept or reject the pre-defined terms by the supplier, among which is the clause determining the applicable law. Thus, if such a clause is present, it cannot be seen strictly as the law of the parties' will, since the weaker party—the consumer—cannot negotiate or modify it; it instead reflects the supplier's will.

2. Specificity Stemming from the Nature of the Parties

The specificity of the electronic consumer contract also emerges from the nature of its parties, particularly concerning the determination of the applicable law. Like other contracts, it requires more than one party: the first offers or guarantees services or goods via electronic communications—called the electronic supplier, while the second is called the consumer. Both terms are discussed below.

2.1. The Electronic Consumer

Article 06 para. 03 of Law 18-05 on electronic commerce defines the electronic consumer as “any natural or legal person who, for final use, acquires a good or service, for consideration or not, from the electronic supplier by using electronic means.” Thus, Algerian legislation equates the natural and legal person as consumers if the good or service obtained is for final (non-professional) use via electronic means such as email, social media, etc.

The Algerian legislator had already defined the consumer under Article 03 para. 02 of Law 04-02 on commercial practices and Article 03 para. 01 of the Consumer Protection and Fraud Repression Law⁶ as anyone acquiring goods/services for personal (not professional) use, making the only distinction in Law 18-05 the use of electronic communication in contracting.

When comparing to other legislations, for instance, Egyptian law⁷ (Article 01 para. 01 of the Consumer Protection Law), the consumer is “any natural or legal person to whom a product is supplied to satisfy non-professional/non-commercial needs.” Notably, the Egyptian definition doesn't mention services, in contrast to the Algerian, and limits consumer contracts to personal needs only, not professional/professional requirements.

2.2. The Electronic Supplier

The electronic supplier is the party who unilaterally determines the law applicable to the contract without involvement from the consumer. Algerian legislation defines the supplier as⁸ “any natural or legal person who, via electronic communications, markets or offers to provide goods or services to the consumer.”

Comparative legislations, such as Egyptian consumer protection law, provide broader definitions, encompassing manufacturers, importers, exporters, marketers, distributors, sellers, for any product or service supplied via electronic means.

After illustrating the parties, Algerian legislation excludes electronic contracts between the supplier and non-consumer (i.e., professional) parties from the scope of Law 18-05—meaning the specificity is due to the consumer's presence as a party, making the “law of will” actually the will of the supplier, not the consumer!

B) The Possibility of Applying the Law of Will to International Electronic Consumer Contracts

International character naturally brings the issue of which law to apply, as more than one legal system may claim relevance—such as the consumer's or supplier's national law, the place of conclusion, or execution of the contract.

As a rule, national and international regulations allow freedom of contract (law of will). The meaning and suitability of the law of will for electronic consumer contracts must therefore be analyzed.

1. The Concept of the Law of Will in Private International Law

The law of will means recognizing the right of both parties to an international contract to jointly choose the applicable law. This joint selection should not be a unilateral act favoring one party. In practice, where there is an economic imbalance, often one party imposes this choice, usually to their own benefit.

Various international conventions uphold the parties' right to choose: for example, the Rome Convention on the law applicable to contractual obligations⁹, and The Hague Convention¹⁰, and Vienna Convention¹¹, Algerian law (Article 18 of the Civil Code) also recognizes the law of will, provided there is a real link between the contract/parties and the chosen law. This is to prevent the choice of a wholly irrelevant law (e.g., fraud on the law).

If parties omit to specify the applicable law, Algerian law provides fallback connecting factors: joint domicile or nationality, or, failing these, the place of conclusion. Curiously, Algerian law omits “place of execution” as a connecting factor, which is prominent in many other legal systems.

2. Suitability of Subjecting the International Electronic Consumer Contract to the Law of Will

Permitting parties to choose the applicable law is intended to allow them to select the most appropriate and connected legal order. However, this assumption is most valid when both parties are equal professionals. In international consumer contracts, which are generally adhesion contracts, the supplier alone determines the contract’s content including the applicable law clause. Thus, applying the law of will is in reality the will of one (the supplier) and not both parties, hence not permissible and not in the consumer’s interest.

Therefore, and in recognition of this imbalance, Algerian legislation subjects such contracts to Algerian law whenever one of the cases stipulated in Article 02 of Law 18-05 arises. This is elaborated upon in the following part.

Comparatively, French law¹² (Law of 1988 and its 2016 amendments) and EU instruments (Rome I Regulation)¹³ increasingly favor the consumer’s protection: any contractual clause depriving the consumer of the mandatory protective provisions of the law of the consumer’s habitual residence is considered void.

Section II.: Algerian Law as the Law Applicable to the International Electronic Consumer Contract

Through Law 18-05 on electronic commerce, and as demonstrated above, the specificity of the electronic consumer contract and its parties led to Algerian law establishing a unique connection rule: the contract is subject to Algerian law whenever certain conditions exist (Article 02), which can be divided into two groups: those relating to the parties and those relating to the contract itself.

A) Cases Related to the Parties

The contract is subject to Algerian law if one party is an Algerian national, a foreigner legally residing in Algeria, or a legal entity subject to Algerian law.

1. Application When One Party is an Algerian National or a Foreigner Legally Residing in Algeria

Article 02 provides that Algerian law is applicable if one party is Algerian or a foreigner with legal residence in Algeria, regardless of whether they are the supplier or consumer.

In the event one party possesses both Algerian and any foreign citizenship, only Algerian nationality is considered, based on sovereignty principles, supported by Article 22 of the Civil Code and The Hague Convention 1930 on nationality conflicts¹⁴.

Subjecting the contract to Algerian law in these instances serves as protection for the party connected to Algeria, assumed to be familiar with its provisions.

2. Application When One Party is a Legal Entity Subject to Algerian Law

The law does not specify the nature (public or private, national or foreign) of the legal person; it suffices that they are subject to Algerian law for Article 02 to apply.

In summary, whenever one party is connected to Algeria (nationality, residence, or subjection to Algerian law), the contract is subject to Algerian law.

B) Cases Related to the Contract Itself

These involve cases where the contract was concluded or executed in Algeria.

1. Application When the Contract is Concluded in Algeria

While subjecting a contract to the law of the place of conclusion may seem appropriate, in consumer electronic contracts this rarely reflects the consumer's true will, but rather the supplier's.

Given the electronic means of contracting, identifying the place of contract conclusion can be problematic. Algerian Civil Code Article 61 uses the theory of receipt for acceptance, but for electronic contracts, determining place of sending/receipt is challenging due to the digital context.

The UNCITRAL¹⁵ Model Law on Electronic Commerce (Article 15(4)) and Jordanian law¹⁶ resolve this by considering the place of business of the sender/receiver as the respective place of despatch/receipt, unless otherwise agreed, or, if more than one place of business, the one most closely connected to the contract.

2. Application When the Contract is Executed in Algeria

Execution is a critical connecting factor, as it makes the contract 'real'—e.g., delivery of goods/service to the consumer. If execution occurs in Algeria, Algerian law applies. However, in the digital environment, determining the place of execution can also be complicated.

Algeria's Civil Code (Article 18) further requires, when parties exercise their choice of law, that it be truly connected to the contract, such as the place of conclusion or execution.

Conclusion

Due to the specificity of the international electronic consumer contract—mainly the presence of a consumer as a party—the Algerian legislator has established a unique connecting rule (Article 02 Law 18-05):

- If either party (supplier or consumer) is Algerian, the contract is governed by Algerian law;
- If either party is a foreigner with legal residence, likewise;
- If a contract is concluded or executed in Algeria, Algerian law applies;
- If one party is a legal entity subject to Algerian law.

Findings:

1. By enumerating when Algerian law applies, the legislator intended to protect parties connected to Algeria, particularly the weaker consumer party.
2. The exclusion of the law of will for such contracts is not absolute—if neither of the Article 02 cases applies, the contract may be governed under Article 18 Civil Code according to the law of will.
3. Electronic commercial contracts involving only professionals remain subject to the law of will.
4. Applying Algerian law to such contracts when executed or concluded in Algeria may be practically difficult given the digital setting.
5. Subjecting any contract involving a supplier or consumer who is Algerian protects national interests, even when the consumer is abroad.

Statement of conflict

Authors declare that there is no any conflict of interest.

Recommendations:

1. Amend Article 02 of Law 18-05 to limit the application of Algerian law only to cases where the consumer is Algerian (or legally resident), and allow supplier-only contracts with foreign consumers to be subject to foreign law.
2. Explicitly subject international B2B electronic commercial contracts (which do not involve consumers) to the law of the parties' will.
3. The legislator should clarify how to define the place of conclusion of electronic consumer contracts, perhaps by following the UNCITRAL Model Law.

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2. Hague Convention, dated 15 June 1955, concerning the law applicable to contracts for the international sale of goods, entered into force on 1 September 1964.
3. Vienna Convention, dated 11 April 1980, on Contracts for the International Sale of Goods, issued by the United Nations Commission on International Trade Law (UNCITRAL), entered into force on 1 January 1988.
4. Rome Convention, dated 19 June 1980, on the law applicable to contractual obligations, issued by the Council of Europe in coordination with the Member States of the European Community, entered into force on 1 April 1991.

2. International Model Laws

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2. Law No. 04-02, dated 27 June 2004, defining the rules applicable to commercial practices, Official Gazette No. 41, issued 27 June 2004.
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⁸ Article 6, paragraph 4 of the law, No. 18-05, concerning electronic commerce.

⁹ Article 3 of the Rome Convention, dated 19 June 1980, on the law applicable to contractual obligations, issued by the Council of Europe in coordination with the Member States of the European Community, entered into force on 1 April 1991.

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