

## Electronic commercial transactions evidence in the Algerian legislation

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### Abstract:

One of the most important impediments that face the electronic commerce is it is difficult to be proving therefore, the Algerian legislator expedites the recognition of the electronic signature as a evidence method in the electronic commercial transaction field and explicitly excludes the goods and services that require the official document in accordance with Article 3,of the Algerian electronic commerce law.

### Keywords:

Electronic Commerce, Electronic Signature, Electronically written message.

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## إثبات معاملات التجارة الإلكترونية في التشريع الجزائري

### الملخص:

من أهم العراقيل التي تواجه التجارة الإلكترونية هو صعوبة إثباتها، لذلك سارع المشرع الجزائري إلى الإقرار بالتوقيع الإلكتروني كوسيلة إثبات في مجال المعاملات التجارية الإلكترونية، واستثنى صراحة السلع والخدمات التي تستوجب فيها المحررات الرسمية بموجب المادة 3 من قانون التجارة الإلكترونية الجزائري.

### الكلمات المفتاحية:

التجارة الإلكترونية، التوقيع الإلكتروني، المحرر الإلكتروني.

## La preuve des transactions commerciales électroniques dans la législation algérienne

### Résumé :

L'une des contraintes les plus marquantes auquel le commerce électronique est confronté est la difficulté de l'aprouver. C'est pour cette raison que le législateur algérien s'est empressé d'adopter la signature électronique comme moyen de preuve dans le domaine des transactions commerciales électroniques et a explicitement exclu les marchandise et services qui requièrent des actes authentiques selon l'article 3 de la loi algérienne relative au commerce électronique.

### Mots clés:

Commerce électronique, signature électronique, document électronique.

## Introduction:

Our modern world witnesses a huge technological leap especially with the spread of using the computers, the emergence of the internet and the increase of its users<sup>1</sup>, where the electronic commerce (e-commerce) is weighing the world economy<sup>2</sup>.

However, the most important problem that may face the e-commerce users is the difficulty of evidencing this new sort of commerce as it takes place in an intangible virtual world which makes most people back down from conducting an e-commerce contract.

Most legislations; either national or international, had a great interest in solving this problem by declaring evidence methods that match with the nature of the e-commerce, however, it has adopted the possibility of evidencing e-commerce contracts by, what is called, the electronic signature (E-Signature).

The Algerian legislator moved in this direction of the recognition of validity effect<sup>3</sup> of the e-signature in the civil in law no.10 – 05 as amended and complementary to the civil code<sup>4</sup>, after which, an amended executive order no.162 – 07<sup>5</sup> was declared, complementary to the executive order no.123-01 on the exploitation system applied to all sorts of networks, whereas such order was cancelled on issuing law no.15-04<sup>6</sup> identifying the general rules concerning the e-signature and authentication and law no. 15-03 on modernizing equity acknowledging the validity effect of the e-signature in the judicial statements.

Nevertheless, it is noticed that the Algerian legislator, on issuing the e-commerce law, has explicitly excluded some actions that are electronically transacted, including, the goods and services that require documents.

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<sup>1</sup>-The internet users as per 30<sup>th</sup> June 2018 statistics exceeds 4 billion and the number in Algeria reaches more than 1 million as per 31<sup>st</sup> December 2017 statistics, quoted from the website: <https://www.internetworldstats.com/stats.html>- login date: 31<sup>st</sup> January 2019

<sup>2</sup>-The volume of the E-Commerce sales worldwide reaches around 25.3 trillion dollars, whereas the highest percentage of this Commerce takes place among companies with a value equals to 22.4 trillion dollars and 2.9 trillion dollars take place between companies and consumers, quoted from the website:<https://al-ain.com/Article/25-trillion-commerce-sales-per-year>- login date: 31<sup>st</sup> January 2019

<sup>3</sup>-validity effect:legal effect or determinative effect.

<sup>4</sup>-Law No. 10-05 dated on 20 June 2005 amends and complements Order No. 58-75 dated on 26<sup>th</sup> September 1975 including the amended and complemented Civil Law(O G 44), issued on 26<sup>th</sup> June 2005, [p17 and thereafter](#).

<sup>5</sup>-Executive Decree No. 07-162 of May 30, 2007 amending and complementing the Executive Decree No. 01-123 of May 9, 2001 relating to the operating regime applicable to each type of networks, including radio and to the various telecommunications services (J.O No 37) June 07, 2007.

<sup>6</sup>-Law No. 15-04 on February 01 2015, setting the general rules relating to electronic signature and certification. (O.J N 6) of February 10,2015.

**The research problematic:** thus, we may question the Algerian legislator stance on the topic of evidencing the e-commerce and its authenticity in excluding formality in the e-commerce? is it legally and practically valid?

This is what we are about to answer in this article.

**The importance of the research:** the reason for choosing this topic is due to the paramount importance of the e-commerce in the life of individuals and countries where the commercial exchanges on the internet are estimated at round billions of dollars a year. however, evidencing such transactions is of great importance in the development of the e-commerce until its users feel secured.

**Research methodology:** we have adopted the content analysis method, especially on analyzing the Algerian legislation stance on the issue that has been clearly apparent in article 3, the e-commerce law. we have, as well, adopted the comparative methodology on explaining the comparative legislation stance regarding that issue.

**Research plan:** in order to solve this problem we have divided this article into two into sections. in the first section we will tackle the role of the unofficial electronically writing messages in evidencing the e-commerce in accordance with the Algerian legislation. in the second sections we will tackle the role of the official electronically written message in evidencing the e-commerce in accordance with the Algerian legislation.

## **Chapter I: Role of the unofficial e-written messages in evidencing the e-commerce in accordance with the Algerian legislation.**

We will explain in the first requirement the conditions that were set up by the Algerian legislator in order to validate the electronically written messages, and then we will explain the role of the unofficial document in evidencing the e-commerce in the second requirement.

### **Section I: Conditions validity effect of the unofficial-written messages in evidence e-commerce.**

It is required for the validity of any unofficial document, in general, either electronically written messages<sup>7</sup> or on paper-based writing two main conditions: writing and signature, which the Algerian legislator has relied on in accordance with article 327-1, civil code<sup>8</sup> even though some legal writers<sup>9</sup> only require signature for the validity of the unofficial document.

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<sup>7</sup>-electronically written messages, or writing in electronic form, or electronic record, or electronic document: "means a record created, stored, generated, received or communicated by electronic means but not limited to electronic data interchange, electronic mail, telegram, telex or telecopy". "Data messages, contracts, or records generated, sent, received or stored by electronic means".

<sup>8</sup>- Article 327, Algerian Civil Law states as follows: "the private deed shall be deemed to emanate from the person to whom the handwriting, signature or fingerprint affixed to it is attributed..."

<sup>9</sup>-Ahmed Nashaat, thesis of evidence, from Dar Dawen For Publishing, 2000, p 261 & Abdel Razik AL Sanhory "Mediator in explaining the Modern Civil Law", the new third edition, AL-Halabi Legal Publications Beirut, 2000, p176 & thereafter

In general, it has been noticed that doctrine did not care much to define writing despite its great importance and the reason for that, for some doctrine, was that writing was intuitive without any close form for writing that requires its definition<sup>10</sup>.

Traditional French doctrine is based on the fact that the written word is what has been recorded on the paper-based writing, which prevails over specific legal action<sup>11</sup>.

In general, unofficial electronically written messages should be electronically written and signed to have the validity effect for evidence provided. It is very clear because such documents are electronically supported, unlike the traditional unofficial documents mentioned above and are paper supported.

The Algerian legislator was keen on giving the unofficial electronically written messages the same probative value as an unofficial document, define writing in general in article 323 bis to include electronic writing with them: "Documentary evidence, or evidence in writing, results from a sequence of letters, characters, figures or of any other signs or symbols having an intelligible meaning, whatever their medium and the ways and means of their transmission may be".

After that he equated electronic-based writing with paper-based writing documents in article 323 bis 1 of the civil code, provided that the person from whom it proceeds can be duly identified and that it be established and stored in conditions calculated to secure its integrity, this was also confirmed by the French legislator in the text of article 1316-1<sup>12</sup> and 1316-3<sup>13</sup>, but where a statute has not fixed other principles, and failing a valid agreement to the contrary between the parties, the judge shall regulate the conflicts in matters of documentary evidence by determining by every means the most credible instrument, whatever its medium may be.

In order to identify the person who has issued the electronically written messages, the e-signature<sup>14</sup> may be implemented, which the Algerian legislator has adopted under article 2/327, the civil code<sup>15</sup>.

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<sup>10</sup>-Ali Filali, *The Contract General Theoretical Obligations*, Muafam Publishing, Algeria, 2008, p295

<sup>11</sup>-Nagwa Abou Heba, *the E-Signature; its definition and authority in evidence*, a research submitted to the international banking conference between Sharia & Law, Part One, Dubai Chamber of Commerce & Industry, from 1 to 12 May 2003, P:436.

<sup>12</sup>-Art. 1316-1 "A writing in electronic form is admissible as evidence in the same manner as a paper-based writing, provided that the person from whom it proceeds can be duly identified and that it be established and stored in conditions calculated to secure its integrity".

<sup>13</sup>- Art. 1316-3 : "An electronic-based writing has the same probative value as a paper-based writing".

<sup>14</sup>-Electronic signature: electronic, numeric or photic data or others taking the shape of letters, numbers, symbols, or signs, or the like in a data message or added or related thereto, having a shape identifying the person who timed or distinguished it from others for reasons of the person's signature and the approval of content.

<sup>15</sup>-These conditions provide the identity of the person issuing the electronic document & keeping the electronic document in conditions guaranteeing its safety.

Emphasizing the importance of the e-signature, the Algerian legislator, at first, has issued the executive order 162 – 07 as amended and complementary to the executive order 123 – 01 concerning the exploitation system applied to all types of networks, and then it was cancelled under law. 15–04 identifying the general rules for the e-signature and ratification.

The Algerian legislator granted the qualified electronic signature<sup>16</sup> the equivalent validity effect of a handwritten signature, with some conditions set forth in the electronic signature and ratification law, article 7 as follows:

1- To be carried out on the basis of an qualified electronic ratification<sup>17</sup>; the e-signature results in issuing a described qualified electronic ratification, the meaning of that this signature shall be connected with an approved and valid e-ratification certificate issued by an authorized or accredited certification-service-provider electronic<sup>18</sup>, and ascertaining the validity of the e-signature according to article 15 of the electronic signature law.

2- It is uniquely linked to the signatory; this condition aims at making the qualified electronic signature achieve the main purpose of signing in general which is the identification of the signer, where the e-signature origination data of the signer is attributed to the signer only. it could in no way be one e-signature for two persons<sup>10</sup>.

3- It is capable of identifying the signatory; it means that the e-signature precisely identifies the signer. this often happens when the receiver requests from the e-ratification entities issuing what is known as the electronic ratification certificate, a certificate that includes all of the signer particulars, which has been identified by the Algerian legislator in article 15, the electronic signature law.

4- To be designed by means of a secured device for creating the electronic signatures: the Algerian legislator has accorded a great importance to that condition and allocated a whole chapter for it in the electronic signature law, called “mechanisms for creating and verifying certified electronic signature” as the baseline of the certified e-signature is that it should be secured in order to reassure its users.

5- It is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; the person that has the legal capacity to sign<sup>19</sup>.

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<sup>16</sup>-qualified electronic signature or authenticated electronic signature: means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures;

<sup>17</sup>-  
<sup>18</sup>-Art. 2./12-Certification-service-providers electronic:”natural or legal person who issues qualified electronic certificate providing possibly other services in electronic certification”.

<sup>19</sup>-Art. 61/1:”As soon as the certificate is signed electronic, the holder is solely responsible for the confidentiality of signature creation data.

If in doubt as to maintaining confidentiality data on the creation of the signature or the loss of conformity to the reality of the information contained in the electronic certificate, the holder is required to do so revoke by the certification service provider electronic”.

6- It is linked to the data signed therewith in such a way that any subsequent change in the data is detectable: where any subsequent change in these particulars can be detected, this condition aims mainly at the effectuation of a very important function for the favor of the signature, which is, the signature determines the satisfaction of the signer in general whether it is written or electronic<sup>13</sup>.

It should be pointed out that the Algerian legislator<sup>20</sup>, did not exclude the ordinary or uncertified signature, yet they remain as a means of evidencing in court, either for its electronic form, for not relying on a certified electronic ratification, or for not being originated by a secure mechanism for the e-signature origination.

It should be noted that an electronic signature has been developed which is more secure than the qualified electronic signature under regulation (eu) no 910/2014 of the European parliament and of the council of 23 July 2014<sup>21</sup>, which is the advanced electronic signature, which is defined as: article 3/11: "advanced electronic signature" means an electronic signature which meets the requirements set out in article 26<sup>22</sup>.

## **Section II: Position of unofficial e-written messages in evidencing e-commerce.**

The Algerian legislator has granted to the natural and legal person the right to practice the e-commerce a general principle<sup>23</sup>; thus, anyone has the right to electronically evidencing this transaction, whether they were unofficial or official electronic document.

In general it is noted that, the commercial transactions, whether traditional or electronic, are governed by what is known as the freedom-to-proof, in accordance with what is stated under Algerian commercial code, article 30, the claimant has the

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<sup>20</sup> -Art. 9 of the E-Signature and Ratification Law:" Notwithstanding the provisions of article 8 elicited, an electronic signature cannot be deprived of its legal effectiveness and cannot be denied as proof in court on the sole ground that it:

- 1- is in electronic form, or
- 2- is not based on a certified electronic certificate, or
- 3- is not created by a secure creation device electronic signature".

<sup>21</sup>-on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

<sup>22</sup>-Article 26 : "An advanced electronic signature shall meet the following requirements:

- (a) it is uniquely linked to the signatory;
- (b) it is capable of identifying the signatory;
- (c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and
- (d) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable".

<sup>23</sup>- Article 1/3, the Electronic Commercial Law, states that "the E-Commerce is practiced in accordance with the legislative and regulatory framework applied thereto"

full right to prove what it claims no matter what the value of the transaction is, even if it values over what was legally approved<sup>24</sup>.

This condition requires that the transactions and contracts are concluded between two merchants and for the purposes of their commerce. if a partner is not a merchant then the later will solely benefit from that condition, which was also declared by the Algerian judiciary, “It is established judicially that the evidence rules of the commercial transactions vary among parties as they are subject to the evidence rules in the commercial code when the parties therein are merchants or when the debtor is a merchant it becomes subject to the evidence rules”.

This precept is particularly important in the recognition of the electronic writing validity effectin general before issuing the legislation governing the electronic verification<sup>25</sup>, whereas the Algerian legislator has declared the freedom-to-proof principle of the e-commerce law on stating that the e-commerce is conducted according to the legislative and regulatory framework applied thereto. since the evidence issue was not regulated hereto, then we should refer to the e-signature and ratification law, as such law has given the individuals the absolute freedom to prove their transactions without the indivisibility between the electronic unofficial or official document.

Usually the e-signature is applied to various fields, including, the electronic check, which contains the same paper check data except that it is concluded online and contains an e-signature attributed to its source. once it has fulfilled the required data and contained the e-signature, it acquires the same validity effect as the paper check<sup>26</sup>.

The credit card is considered one of the oldest domains that used the e-signature. at the beginning, it was a method of payment instrument for the gas station and supermarkets employees, and then was later expanded to include banks. there are many types of credit cards, such as; a-t-m card, payment card<sup>27</sup>.

It has excluded the goods and services that require a formal contract in accordance with article 3, stating “the e-commerce is practiced in accordance with the legislative and regulatory framework applied thereto.

Whereas, it forbids every transaction conducted through the electronic communication, in relation with:

Any goods and services that require a formal contract”

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<sup>24</sup>- **Sadia EL Badawy EL Sayed Ahmed EL Badawy**, towards a general theory for the commercial electronic books, a PhD in Law, the Faculty of Law, Ain Shams University, 2012, P 241.

<sup>25</sup>- **Mohamed Hossam Mahmoud Lotfy**, “Legal Framework for Electronic Transactions”, a study in the field of the evidencerules of the civil commercial matters with a special reference to some Arab countries, Golden Eagle for Publishing, Cairo, Egypt, 2002, P 37 and thereafter.

<sup>26</sup>-**Nadia YasBayati**, “the Online E-Signature, its determinative in evidence”, a comparative study of the Islamic jurisprudence, EL Bedaya House, Jordon, 2017, P: 204 & 205

<sup>27</sup> - For more details, see, **Nadia YasBayati**, *ibid.* P: 208 & 209.

Therefore, we are entitled to question the motives that have resulted in adopting such a stance by the Algerian legislator? was he/she right in excluding the official document as an instrument of evidence in the e-commerce field? this is what we will tackle in the second topic.

## **Chapter II: The role of the official e-written messages in evidencing e-commerce according to Algerian legislation.**

At the beginning, we will tackle the Algerian legislator stance to the electronic official document. whether they were granted the determinative evidence (first requirement), and then we will evaluate the Algerian legislator stance regarding such issue (second requirement).

### **Section I: The Algerian legislator stance from the official e-written messages in the e-commerce field.**

There has been a huge jurisprudential debate around the official electronically written messages issue before being recognized by the Algerian legislator. should in this case the traditional official notion be amended that is based on the physical presence of the notary<sup>28</sup>, witnesses and the concerned parties?

As a general concept, the physical presence of the notary is deemed essential for creating an official electronically written messages<sup>29</sup>, therefore, the presence of one notary is deemed insufficient for creating an official electronically written messages.

On reading legal provisions, we notice that the Algerian legislator didn't give much attention to the official electronically written messages, but focused mainly on the recognition of the validity effect of the electronic writing and signature in general, which we apparently observe throughout law 10 – 05, amended and complementary to the civil code, especially in articles 323 bis, 323 bis 1 and 327.

It, as well, has not tackled that issue in the executive order 162 – 07 as amended and complementary to the executive order 123 – 01 concerning the exploitation system applied to all networks, neither in law 15-04 determining the general rules concerning the e-signature and ratification.

It has tackled that issue for the first time in law 15– 03 regarding the modernization of justice and the explicit recognition of the possibility of issuing electronic statements by the judge, where it can be sealed by an e-signature linked to the original document in a guaranteed way through a credible evidence method, on the ground that the judicial sentence deemed an official document.

Thereafter, the Algerian legislator has issued the e-commerce law<sup>30</sup> and excluded from article 3 thereof all of the goods and services that require an authentic act and added some other forbidden activities, such as: gambling, betting and lotteries,

<sup>28</sup> - L. Grynbaum, «the law of March 13, 2000: the consecration of the written word and the proof at the cost of the chutede the authentic act», Commu.Comm.élec , April 2000, chron. p.14.

<sup>29</sup> -J. FLOUR, on a new notion of authenticity, Defrénois, 1972, art.30159, p.981.

<sup>30</sup> - Law 18–05, dated on 10 May 2018, on the E-Commerce, (G J 28), issued on 16 May 2018.

alcoholic beverages and tobacco, pharmaceutical products, products infringing property rights intellectual, industrial or commercial.

On analyzing that Article, we notice that the Algerian legislator meant by it to exclude all of the goods and services that require formality as an element in the contract or an action, such as: selling vessels or planes.

We notice that the Algerian legislator stance was aligned with the various legislations organizing the e-commerce. For instance, we find that the e-commerce model law granted the right for every country to exclude from its legislation the recognition of the electronic writing and document, taking into consideration, not establishing any general exceptions that in turn may lead to any unjustified hindrances for the modern communication technology<sup>31</sup>.

Besides, the European directives, particularly in electronic commerce in the internal market on 8 June 2000<sup>32</sup>, has precisely set out the transactions that cannot be electronically practiced in accordance with article 9, paragraph 2: "member states may lay down that paragraph 1 shall not apply to all or certain contracts falling into one of the following categories:

- (a) contracts that create or transfer rights in real estate, except for rental rights;
- (b) contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
- (c) contracts of surety ship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession;
- (d) contracts governed by family law or by the law of succession".

For emphasizing that, law no. 575 – 2004, on the confidence of the digital economy, has declared such principle and excluded some transactions to be practiced electronically, including, for instance: "Exception is made to the provisions of article 1108-1 in regard to:

- 1- Instruments under private signature relating to family law and the law of succession;
- 2- Instruments under private signature relating to surety ship or property charge, of commercial or non-commercial character, except where they are drawn up by a person for the needs of his occupation".<sup>33</sup>

Despite such exceptions, the French legislator declared the validity effect of official electronically written messages, issued either by the judicial notary or bailiff in accordance with the ordinance no. 973 – 2005<sup>34</sup>.

<sup>31</sup>- See: the UNCITRAL Model Law on E-Commerce, 1991, P: 35.

<sup>32</sup> - Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

<sup>33</sup>- Art. 25 (Act no 2004-575 of 21 June 2004), for more details, see: **Azro Mohamed Reda**, a comparative study on the evidence of electronic contracts problem, a doctoral thesis in private law, faculty of law and political sciences, university of Tlemcen, p: 104 and thereafter.

<sup>34</sup>- Decree n°2005-973 of 10 August 2005 amending the decree no. 71-941 of 26 November 1971 relating to deeds drawn up by notaries.

There are, usually, two ways to originate official electronically written messages, the first one is by the presence of all parties to the contract proceedings, where it is entitled to all parties to choose the pillar according to which the authentic instrument is drafted, either electronic-based writing or on paper-based writing for the application of the equity between the electronic and paper documents. If more than one party fails to attend, in such a case more than one notary may intervene to originate the official electronically written messages, there will be a notary to conclude the document and a notary present and participating in concluding the document – the latter may check the consent of the concerned parties that failed to attend on the notarized document then sends the documents to the main notary by an accredited<sup>35</sup>, system for information transmission.

At the level of Arab legislation, we, generally, notice that it adopted the same Algerian legislation stance and excluded some electronically practiced transactions, such as: emirates legislation that states the same in article 2/2<sup>36</sup>, federal law no. 1 of 2006 on electronic commerce and transactions, Jordan legislation<sup>37</sup> ...etc.<sup>38</sup>.

## **Section II: The authenticity of the Algerian legislation stance on the official document in the field of the e-commerce.**

We, generally, notice that the Algerian legislator on excluding the goods and services that require the conclusion of a formal contract, it did not deviate from what

<sup>35</sup> - **Azro Mohamed Reda**, *ibid.* P: 122.

<sup>36</sup>- article 2/2: "This Law applies to Electronic Records, Documents and Signatures that relate to Electronic Transactions and Commerce but does not apply to:

- a) Transactions and issues relating to personal law such as marriage, divorce and wills;
- b) Deeds of title to immovable property;
- c) Negotiable instruments;
- d) Transactions involving the sale, purchase, lease (for a term of more than 10 years) and other disposition of immovable property and the registration of other rights relating to immovable property;
- e) Any document legally required to be attested before a notary public; and
- f) Any other documents or transactions exempted by special provision of law".

<sup>37</sup>-Electronic transactions law no (85) of 2001. Article (6) : "The provisions of this Law shall not apply to:

A- Contracts, instruments or documents that are drafted in accordance with special legislation in a certain format or in accordance with specific measures, such as the following:

- 1- Establishing and amending wills.
- 2- Establishing and amending the conditions of the waqf.
- 3- Transactions disposing of immovable property, including agencies pertaining thereof, their title deeds, and establishing real rights, excluding lease contracts.
- 4- Agencies and transactions relating to civil status.
- 5- Notices relating to cancelling or revoking water, electricity, health insurance and life insurance contracts.
- 6- Bills of indictment, court proceedings, judicial notification notices and courts decisions.

B- Securities, unless provided under special regulations issued by the competent authorities in accordance with the Securities Law in force".

<sup>38</sup> - For more details, see: **Nadia YasBayati**, *ibid.* P: 213 and thereafter.

was stipulated in all of the other countries legislations, however, most of the countries have already adopted the same exclusions.

However, it was generally noticed that such stance may result in many hinders in the field of the e-commerce and make individuals hesitate in the porter for e-commerce, where the Algerian legislator should have stated, including but not limited to, the goods and services that require originating a formal contract instead of generalizing the matter.

Whereas, excluding formality from the field of e-commerce explicitly contradicts with the Algerian state endeavor to what is known as the electronic governance and administration which basically rely on the electronic official documents.

The Algerian state is in relentless pursuit to advance from the paper-based world to the electronic world. the issuance of the modernization of justice law, in accordance to which, the issuance of electronic judicial statements sealed by an e-signature became possible, is best evidencing such pursuit.

Moreover, the Algerian state nowadays endeavors, through the *ministry of the interior*, to generate what is known as the electronic municipal (e-municipal), where any individual may benefit from the various services electronically through the internet without the urge to visit the municipality. before which, the execution of the e-signature on the official electronic documents should be applied.

It is illogic for the Algerian state to adopt the e-judicial statements issued by justice of major importance and exclude the same in the e-commerce field at the same time.

A person may extract the citizenship and voucher certificates no.3 for the certificate of criminal record electronically without the need to visit the court, under the condition of considering some procedures<sup>39</sup>.

Rather, more than that, the Algerian legislature has made it possible to communicate and exchange information electronically in the field of public procurement, in articles from 203 to 206 of the law on public procurement and public service delegations<sup>40</sup>, but without reference to the electronic signature and its validity in this field, and most of these documents refer us to regulatory decrees that have not been published so far<sup>41</sup>.

In contrast to the French legislator that dealt with this issue, as it allowed the use of electronic signature in the field of public procurement, whereby candidates for public procurement were not obligated to use a handwritten signature, but rather they could use the electronic signature during the submission of offers and when signing

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<sup>39</sup> - To know the required procedures to obtain citizenship online, please see the Department of Justice website: <https://www.mjustice.dz/>

<sup>40</sup>-Presidential Decree No. 15-247 of 16 September 2015, bearing regulation of public procurement and public service delegations.(G.J) September 20, 2015.

<sup>41</sup>-An example is the creation of an electronic portal for public procurement under Article 203 of the Law on Public Procurement and Public Utility Authorizations, but we refer to the necessity of issuing a decision by the minister in charge of finance in order for this article to be activated.

the contract in its final form, with the need to fulfill its conditions stipulated in accordance with the regulation of the European Union, and the center on a qualified certificate<sup>42</sup>.

In addition to that, the recognition of the e-writing and signature validity effect and the equalization of the same to the paper-based writing and signature necessarily requires the exclusion of any means of indivisibility between the unofficial and official document, as long as, the e-writing and signature and the paper-based writing and signature are determinative, which was explicitly acknowledged by the Algerian legislator in the e-signature and ratification Law, on titling section two, part one "Equivalence Principles and Indivisibility towards E-Signature".

practically, it was proved in most cases that the e-signature is more secure than the handwritten signature, due to the presence of a third party called the e-Certification services provider electronics<sup>43</sup>, that acts as an intermediate between the signer and the addressee guaranteeing the integrity of such kinds of signatures and that the e-signature is exclusively attributed to the signer<sup>44</sup>.

In accordance with the Algerian legislation, the e-ratification entities should be licensed to practice, obliged and monitored by the ratification authorities as prescribed in the Algerian legislation<sup>45</sup>.

Excluding formality from the field of e-commerce explicitly contradicts with the freedom-to-evidence principle in the field of e-commerce, and in accordance with the later, a person has the right to prove their electronic transactions freely and without restrictions. therefore, there is no need to restrict the freedom of evidence in the e-commerce field, because, in fact they are just commercial transactions practiced electronically.

## Conclusion:

It was made clear that the Algerian state's quest to recognize modern evidence means and its equity to the traditional ones of evidence through the issuance of many legal texts that gives the electronic signature and the writing signature the same determinative effect, among these laws; the e-signature and ratification law and the modernization of justice law.

Whereas, on issuing the e-commerce law a problem appeared regarding the goods and services that require formality and they were excluded from being electronically transacted, which is considered a withdraw from the evidence methods equity principle, therefore, our recommendations for the Algerian state are as follows:

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<sup>42</sup>-Regulation (EU) No 910/2014) on advanced electronic signatures based on a qualified certificate.

<sup>43</sup> - The entities authorized to issue the electronic ratification certificate and offer services connected with the electronic signature.

<sup>44</sup>-A person possessing the signature creation data, who signs for himself, for whoever delegates him, or for the one he legally represents.

<sup>45</sup>- See Article 16 et seq. of the E-Signature and Ratification Law

1- The necessity to narrow the exclusion of the electronic framework in the e-commerce, to exclusively identify such frameworks and to periodically modify them in accordance with the technological advancements in such field. it became obviously clear, throughout the French experiment that excluding formality in the e-commerce field is unjustified.

2- Giving effect to the e-signature in Algeria by originating what is called “the electronic ratification entities” and appointing the governing bodies thereto.

3- Reviewing the legal system in order to include the electronic official document, especially, the laws regulating the profession of the notary and bailiff in a way that enable them to issue electronic documents modelling the French legislation.

4- Prepare the notaries and the bailiffs and make them able to use the e-signature, raising their awareness of the importance of such step, originating an authenticated third party its main role is to grant a described electronic authentication certificate and to provide other services in relation with the electronic authentication.

5- Adopt advanced electronic signature as more secure than qualified electronic signature