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Electronic negotiation in e-commerce contracts

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Abstract

E-commerce has created a new contracting environment where it is impossible for both parties to agree on all aspects of e-commerce contracts at once. Instead, negotiations must take place over a specific period. Often, a party wishing to enter into a contract does not finalize a binding offer until after the negotiation process, during which the main elements of the contract are defined.

This stage is characterized by its legal specificities and raises several issues, primarily concerning the nature of the obligations arising, good faith, liability, and the penalties for breach of contract.

Keywords: Electronic negotiation, Internet, e-commerce contracts, electronic contracting.

Introduction

E-commerce is one of the most prominent outcomes of the information revolution sweeping the modern world. It has given rise to a new contractual reality based on the use of electronic media for concluding and managing commercial transactions between individuals and companies. This transformation is not limited to the contract formation stage alone, but extends to a preceding stage: "electronic negotiation."

This stage occupies a significant space and holds great importance, especially in remote contracting, as the internet has provided it with an ever-expanding scope, fueled by the desire to contract. It offers parties to the relationship numerous and varied contracting opportunities, far exceeding those offered by traditional negotiations. It is a vital and essential stage prior to contract formation, where offers and conditions are exchanged, and contract terms are agreed upon via digital media, whether through email, instant messaging applications, e-commerce platforms, or any other digital means.

E-commerce is a crucial stage before contracts are finalized. Within this context, the importance of this topic lies in providing a comprehensive study of electronic negotiation in e-commerce transactions, particularly within the framework of e-commerce contracts, from a precise legal perspective. This aims to clarify its concept, its effects, and the most important obligations arising from it, in addition to the penalties for breaching it.

The objective of this study is also to shed light on this topic by highlighting the role of modern legislation in regulating it, identifying the most important legal rules governing its components, and exploring the extent to which general principles can be adapted to accommodate these components, especially within the framework of laws regulating electronic transactions, and specifically Algerian legislation.

Accordingly, we ask whether electronic negotiation in e-commerce contracts constitutes a legally binding stage, and whether it imposes liability on the parties in case of breach.

To answer this question, we employ a descriptive, analytical, and comparative approach. This involves describing the topic of electronic negotiation, presenting the research issue, analyzing and discussing it, and comparing it in light of relevant comparative legislation.

To address this topic, we have decided to divide our study into two sections. The first section will discuss the general framework of electronic negotiation, while the second section will address the legal implications of the electronic negotiation phase.

Section One: The General Framework of Electronic Negotiation

A contract often goes through legal or material stages before its conclusion, the most important of which is conducting negotiations to resolve disputes and reach a mutually agreeable contract. Although the negotiation stage is not part of the contract formation process[1], it plays a significant and effective role in interpreting and concluding e-commerce contracts. It ensures that contracting parties fulfill their obligations correctly and avoids disputes that may arise during contract execution. Therefore, we must clarify this stage further by addressing its concept in the first subsection and discussing its phases in the second subsection.

We will now examine these phases.

The First Requirement: The Concept of Electronic Negotiation

Defining the concept of electronic negotiation necessitates defining negotiation as a preparatory stage for concluding an e-commerce contract. It also requires outlining its most important characteristics, stages, and methods of conclusion. This will be addressed in the following sections:

The First Section : Definition of Electronic Negotiation

Similar to other legislations, the Algerian legislator did not address the pre-contractual stage, nor did it provide a definition of the negotiation process itself. However, in reality, providing definitions is not primarily the responsibility of

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legislation, but rather of legal scholars. Some legal scholars have defined negotiation as "a type of dialogue and exchange of proposals and studies between the contracting parties in order to conclude a future contract."[2] Other legal scholars consider negotiation in general to be "dialogue and discussion to reach a mutual agreement between the parties, to obtain a mutually acceptable solution that protects the interests of all parties, resolves any problems between them, or brings their viewpoints closer in a civilized manner."

Despite the importance of negotiation and its crucial role in contract drafting, some civil codes, including the Egyptian, French, Jordanian, Iraqi, and Algerian codes, lack any specific provisions regulating the pre-contractual phase, leaving this task to legal scholarship and judicial discretion.

As an exception to this legislative policy that overlooks the importance of the negotiation phase, some modern civil codes explicitly address contractual negotiations, such as the Italian, Greek, Yugoslavian, Lebanese[3], German, Swiss, and Japanese civil codes, among others. These codes stipulate that parties must exercise their rights and fulfill their obligations during negotiations in accordance with the principles of good faith, honesty, and integrity. It is worth noting that the preceding definitions refer to the traditional concept of negotiation, and they also apply to electronic negotiation with two key differences: first, the absence of the physical presence of the negotiating parties, and second, the use of modern negotiation tools such as email, chat programs, and video conferencing[4]. Negotiations may also take place between parties through online data messages. These messages must include three characteristics:

*A clear statement of basic needs, meaning the client precisely explains their needs and their purpose so that negotiations can be based upon them.

*Negotiation through a data page displayed on the computer screen, which must include the conditions each party desires in the subject of their commitment to define their fundamental requirements.

*Sending data messages containing negotiation proposals, through which negotiations continue until the contract is finalized. Accordingly, electronic negotiation can be defined as the exchange of proposals and compromises between negotiating parties electronically, with the aim of understanding the proposed transaction and its components, as well as the resulting rights and obligations, all based on the principles of good faith and a balance of interests.[5]

Therefore, we believe that three essential elements are necessary for any definition of electronic negotiation: the existence of conflicting interests between the negotiating parties; a sincere and earnest effort to conclude the contract without necessarily expecting a successful outcome; and, importantly, that the negotiation must be conducted electronically using modern communication technologies, with the parties not physically present at the negotiating table.[6]

Second Section : Characteristics of Electronic Negotiation

Electronic negotiation has several characteristics, including:

- It takes place via modern communication methods: Consequently, the physical presence of the parties is eliminated, and there is no actual contractual meeting. Negotiation occurs remotely using modern communication technologies.

- It is a bilateral contract at least: Negotiation cannot take place without at least two parties. It involves two or more parties and is conducted either through face-to-face discussion and dialogue or through correspondence. In this context, negotiation cannot be considered a contract with oneself, as negotiation is fundamentally based on reconciling differing viewpoints and conflicting interests, which is inconceivable.[7]

- It is a voluntary act:

This means that the will of both parties remains free throughout the negotiation phase. Each has complete freedom to enter into negotiations, continue them, or withdraw. This stems from the application of the principle of freedom of contract to the negotiation process. The principle is that freedom of negotiation should prevail in the negotiations preceding the conclusion of the final contract. Contractual negotiations express the shared will of the contracting parties and serve as an important reference for interpreting the contract. Therefore, each negotiator is free to terminate negotiations at any time they decide[8]. The party who withdraws is not held liable and is not required to prove the reasons or

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motives for their withdrawal. However, in some cases, withdrawal may entail liability for the party who terminates the negotiations if this withdrawal is accompanied by a fault that harms the other party. In such a case, the negotiator who withdraws bears the consequences of the fault based on tort liability, not contractual liability, due to the breach of the duty of good faith.

- Negotiating the contract is the preliminary stage for its conclusion: it aims to prepare for the final contract. While negotiation is not binding on both parties, its ultimate goal is to finalize the contract after both parties have paved the way for its conclusion through negotiation and reaching an agreement that ultimately leads them to solidify it into a final contract.[9]

- It is based on the agreement of the contracting parties: Whether the agreement is explicit or implicit, and whether it is oral or written, contractual negotiations do not occur by chance. Rather, they are based on a prior agreement whereby both parties agree in principle to proceed with concluding the contract.[10]

- It is based on exchange and compromise: The parties cooperate to bridge their differing viewpoints by exchanging offers and proposals. Each party makes concessions by modifying their terms and demands until a balance is reached between their conflicting interests. If there is no room for discussion or compromise, then there is no negotiation process. [11]

- It is a probabilistic outcome:

The natural outcome of negotiation is the conclusion of the negotiated contract, meaning that the parties successfully reach a final agreement on all the essential terms of the contract through the exchange of identical offers and acceptances and the signing of the contract document. However, this outcome is probabilistic; it may or may not materialize[12]. In other words, not every negotiation on a contract necessarily leads to its actual conclusion; the negotiation may end with nothing.

It is important to note that probabilistic negotiations cannot be classified as probabilistic contracts, as they are still ongoing and not yet finalized. However, each negotiator has complete freedom to withdraw from concluding the contract, provided that the principle of good faith required during the negotiation phase is not violated, along with any related obligations such as the obligation to maintain confidentiality.[13]

- Electronic contract negotiation is temporary: It exists only for a limited period, the time the parties use to negotiate via the internet. Upon the expiration of this period, whether or not a final contract is reached, the negotiation agreement is nullified, provided that the rights of third parties are not harmed by the termination of negotiations in bad faith.[14]

- It is binding on both parties:

Electronic negotiation imposes obligations on both parties. These obligations vary from one contract to another, depending on the agreement between the parties and the nature and type of the final contract.

Third Section: The Importance of Electronic Negotiation

The importance of electronic negotiation is evident in several aspects:

- A significant portion of electronic contracts raises ambiguity and uncertainty regarding the practical aspects of contracting, particularly concerning the verification of the contracting party's identity, the nature of the subject matter, guarantees, methods of execution, and other related matters. This necessitates each party raising questions, expressing reservations, and engaging in negotiations before entering into the contract.[15]

- E-commerce contracts involve numerous precise technical and artistic aspects, sometimes requiring experience and expertise. This makes negotiation crucial for gaining experience. Electronic negotiations play a significant role in interpreting e-commerce contracts when they are ambiguous, clarifying the intentions of both parties through the discussions held. As a pre-contractual stage, negotiations are instrumental in mitigating future disputes. Furthermore, negotiation is crucial for determining the applicable law in the event of a dispute arising from the application of the international contract[16]. It also outlines the agreed-upon methods for resolving any disputes that may arise between the parties, thus ensuring a balance between their mutual rights and obligations.

Therefore, the importance of negotiation lies in its role as a means of fostering understanding and bridging differing viewpoints between contracting parties. It also plays a vital and effective preventative role in preparing for the contract's conclusion, minimizing potential conflicts, and ensuring that each negotiator has access to the precise details of the contract terms and essential specifications related to the subject matter under negotiation. It should be noted that there are contracts that do not require prior negotiations, such as those that occur frequently in daily life. However, the importance of negotiation is particularly evident in commercial or industrial contracts whose execution extends over a long period of time, as it is an effective means of re-evaluating the contract.[17]

Contractual balance arises when circumstances change, potentially disrupting the equilibrium of contractual relationships and making the agreed-upon execution of the contract burdensome for the debtor. Therefore, in such contracts, both parties are careful to include a clause obligating each to negotiate how to overcome these difficulties. This clause is called "renegotiation" [18](clause de menégociation) or the contractual equilibrium clause (équilibre-contractuelle), known in English jurisprudence as the "Hordship Clause." It expresses the hardship or crisis the contract experiences as a result of the changed circumstances under which it was concluded. The objective of this clause is to modify the contract's provisions through renegotiation between the parties to align with the new circumstances and restore balance to the obligations caused by these circumstances (Article 26 of the International Trade Law, adopted by the Institute for Private Law Standardization in 1994).[19]

The second requirement: Stages of electronic negotiation.

The pre-contractual period consists of three stages, which are as follows:

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The First Section: Feasibility study

In this stage, the client conducts a feasibility study related to the provision of the information service. This study is based on the essential foundations for delivering the anticipated information service, such as accurately and clearly defining the needs. The client may also consult a specialist who can highlight their basic requirements for negotiation, such as selecting the necessary machinery, equipment, and software for the work environment.[20]

Second Section: Terms and conditions

After completing the feasibility study, the client prepares a document outlining the contractual terms. This expression of needs and conditions is translated into a simple handwritten document containing several key points, ultimately forming a list of requirements. Its function is to clarify the various conditions and relationships that should be addressed in an informational manner.

Third Section: Selecting the service provider (supplier)

After the client has defined their needs and prepared the list of requirements, they move on to selecting a service provider, considering the various offers available. They may benefit from consulting an expert who can advise them on choosing the best service provider.[21]

Section Two: Legal Implications of the Electronic Negotiation Phase

The electronic negotiation phase is no longer merely a preliminary stage devoid of legal effect. It has become a distinct phase in its own right, during which legal relationships are established, imposing a set of obligations and restrictions on the parties involved. Although negotiation does not necessarily culminate in the conclusion of a contract, it requires adherence to the principle of good faith, the obligation to disclose information, and the maintenance of the confidentiality of exchanged data and information.

Breach of these obligations entails legal liability, the consequences of which vary according to the severity of the resulting harm. Therefore, this section examines both the obligations of the electronic negotiator in the first subsection and the penalties resulting from breaches of electronic negotiation in the second subsection.

First requirement: Obligations of the electronic negotiator

The electronic negotiation phase has several legal implications, as it constitutes a preliminary stage in e-commerce contracts. During this phase, obligations arise for both parties, which they must adhere to. These obligations are discussed as follows:

First Section: The Obligation to Enter into Negotiations

The parties to a preliminary agreement must commit to entering into negotiations to discuss the final contract to be reached within the specified timeframe. Therefore, the obligation to negotiate stems directly from the negotiator's agreement, and no party has the right to refuse or delay entering into these negotiations; otherwise, they will be held liable for any damages incurred by the other party.[22]

While each party's obligation is to achieve a result—namely, to enter into negotiations—their obligation during the negotiations is an obligation to exercise due diligence[23]. Each party must exercise the necessary care to ensure the success of the negotiations. If any party commits an act that could lead to the failure or obstruction of the negotiations, they are in breach of their obligation to exercise due diligence, which requires them to follow the customary conduct of a reasonable person, consistent with the requirements of good faith in fulfilling obligations.

The second Section: The obligation of good faith

Any obligation must be characterized by integrity, honesty, trustworthiness, and confidence. Therefore, the obligation to negotiate in good faith is a fundamental

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obligation arising from electronic negotiation as an initial stage of contracting. This obligation requires the negotiator's conduct to be characterized by integrity, honor, and honesty, and to refrain from any action that could hinder or cause the negotiations to fail, or from employing deceitful or evasive tactics with the intent to harm the other party.[24]

The principle of good faith plays a crucial role in the realm of contracts, both during and after their execution. This is emphasized in numerous legal systems, including Italian law[25], the Uniform Commercial Code of the United States[26], French law[27], Egyptian law[28], Jordanian law[29], Moroccan law[30], and Algerian law. Article 107 of the Algerian Civil Code addresses this principle, stipulating that: "The contract must be executed in accordance with its terms and in good faith. The contract is not limited to the contracting party's obligations as stated therein, but also encompasses its requirements according to law, custom, and equity, depending on the nature of the obligation."[31]

It is worth noting that, as we have observed in this article, the Algerian legislator, like the other positive laws mentioned previously, did not explicitly stipulate the principle of good faith during the formation of the contract, but rather limited it to the contract execution phase.[32]

This obligation is reciprocal and constitutes an obligation to achieve a result, not a duty of due diligence. Therefore, a negotiator cannot evade responsibility by proving that they exerted every effort to act in good faith but were unable to do so.[33]

In this regard, the Supreme Court, in a landmark decision of October 24, 1999, stated:

"It is established in law that a contract must be executed according to its terms and in good faith. However, if exceptional and unforeseeable general events occur, the judge may, depending on the circumstances and after considering the interests of both parties, reduce the burdensome obligation to a reasonable level. Any agreement to the contrary is void."[34]

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Regarding the position of international agreements on the obligation to act in good faith in negotiations, the United Nations Vienna Convention on the International Sale of Goods of 1980, in Article 7/1, refers to this.[35]

Third Section: The Obligation to Inform

The obligation to inform is defined as: "The obligation by which one party possessing essential information regarding the contract to be concluded undertakes to provide it electronically, in a timely manner and with complete honesty, to the other party who cannot access it through their own means[36]."

It constitutes one of the elements of good faith negotiation, whereby the negotiators participating online are obligated to provide the other negotiator with all available information pertaining to the subject matter of the contract and which the other party should be aware of. This obligation to disclose information during the negotiation phase exists in many legal systems, including the Algerian Civil Code, specifically Article 86/2. This article establishes the obligation to inform on the grounds that the traditional protection of contractual intent through the theory of defects of consent is no longer sufficient. This is because many contracts require special and effective protection for the negotiator due to their nature, particularly when one party is a professional and the other lacks sufficient expertise or complete knowledge of the subject matter, or due to the novelty or novelty of the subject matter.[37]

Therefore, to ensure that the negotiator is fully informed and can make an informed decision regarding the contract, legislation has enshrined the principle of the obligation to inform, which contributes to sound consent. Examples include the French Consumer Code[38] (Article 111/1), the Tunisian Law on Electronic Commerce (Article 25 of which specifies the information that must be provided to the consumer)[39], and Egyptian law.[40]

As for Algerian law, this principle is referenced in several legal texts, including: the Civil Code (Article 352), Law No. 09/03 on Consumer Protection (Article 17)[41], and Law No. 10/06 on General Rules Applicable to Commercial Practices (Article 4)[42]. In addition to Executive Decree No. (06/306), which defines the essential elements of contracts concluded between economic operators and consumers in Article 4,[43] and Executive Decree No. (13/378) concerning consumer information in Articles 4, 52, and 53[44], as well as Article 11 of the Electronic Commerce Law[45], this obligation is further stipulated in Article 11.

European Directive No. (97/7) of May 20, 1997, concerning consumer protection in distance contracts, also mandates this obligation. It requires suppliers to inform consumers of the primary markets for goods and services, as well as specific contract information such as prices, payment methods, delivery and performance procedures, the consumer's right of withdrawal, and the validity period of the offer or proposal.

From the above, we conclude that the obligation to provide information in electronic negotiation contracts is one of the most important newly introduced safeguards in e-commerce contracts. It provides protection for the negotiating party[46] and has become a fundamental pillar in laws concerning consumer protection and e-commerce.

Fourth Section: The Obligation to Cooperate in Electronic Negotiation

This obligation is imposed by the principle of good faith when concluding contracts. Therefore, it is implicitly imposed without the need to explicitly state it. This obligation remains in place throughout the negotiation phase. The forms of cooperation are not exclusive, but rather every act or behavior based on cooperation and mutual trust falls under the category of cooperation. Everything needed for the optimal progress of the negotiation process is necessary and hoped for within the framework of mutual trust. The standard for this is the moderate person who aims to make the negotiations a success and not to go back by enriching the dispute without reasonable justification on a matter that has already been settled.[47]

Fifth Section: The Obligation to Maintain Confidentiality

The principle of good faith in electronic negotiation requires the negotiating party to maintain the confidentiality of important secrets, whether technical or professional, that may be revealed during the negotiation process. Each party is obligated not to disclose certain information to third parties and to protect confidential technological data, industrial secrets, business secrets, and technical expertise[48]. If one party discloses these secrets without the consent of the other negotiating party, they have committed a violation and are liable if their violation results in harm to the other party.[49]

Therefore, this obligation aims to protect the party who discloses their secrets from the use or publication of information received by the other party during the negotiation, as this is considered a direct consequence of such disclosure. Furthermore[50], the secrets that must be maintained and not disclosed do not necessarily require legal protection. This obligation pertains to the preservation of secrets that are not legally protected, such as applications based on scientific principles used in the production of goods and services.[51]

The Algerian legislator referred to this principle in Article 26 of Law 18/05, which stipulates that: "The electronic resource that collects personal data... must guarantee the security of information and the confidentiality of data.[52]" Thus, we observe that the Algerian legislator has mandated data protection by ensuring its security in accordance with applicable legislation, and prohibits its exploitation without the owner's consent.

Section Six: Commitment to Moderation and Seriousness

Each party to the negotiation is committed to seriousness and moderation during the negotiation phase. This seriousness includes: the parties continuing negotiations with seriousness and moderation in presenting offers and discussing the opinions and ideas of the other negotiator, avoiding exaggeration that could jeopardize the negotiations and prevent their failure; avoiding rigidity and inflexibility; respecting prevailing trade agreements and customs; striving to conclude the negotiation process within a reasonable timeframe; and refraining from negotiating with a third party, which is known as the risk of conducting parallel negotiations, unless there is a prior agreement.[53]

The second requirement: Penalties for breaching electronic negotiations.

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In compliance with general principles, if one of the negotiating parties fails to fulfill their obligations, they will bear the responsibility for this breach. However, it is generally agreed that the law does not assign any legal effect to preliminary negotiations. Each negotiator is free to terminate the negotiation at any time as long as no agreement has been reached, meaning the contract has not yet been concluded.

Furthermore, some argue that the default position of negotiation is that it does not entail legal consequences, as each party has the right to terminate negotiations at any time they decide, and there is no liability on the party who does so. However, in some cases, withdrawing from negotiations may give rise to tort liability based on fault. Therefore, whoever withdraws from negotiations through fault that causes harm to another party is obligated to provide compensation.[54]

This will be explained in the following sections:

The second Section: Civil Liability for Breach of Electronic Negotiation

Most legislations consider liability for breach of negotiations to be tortious. Among these are the Egyptian Court of Cassation, as well as the UNDROIT Rules, which adopted this principle and considered liability resulting from the termination of negotiations to be tortious, based on the principle of negligence, according to Article 2/5 thereof. The French Rio Court of Appeal also ruled on this principle in 1992.[55]

Tortious liability arises in cases of breach of negotiations based on negligence, defined as a failure on the part of the online negotiator that would not be committed by a vigilant negotiator in the same external circumstances surrounding responsible negotiation. Examples of negligence include: refusing to enter negotiations or terminating them arbitrarily and without a valid reason; negotiating with the other party in bad faith, provoking them, and causing them to break off negotiations; disclosing confidential information; and violating negotiation obligations, etc.[56]

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The mere fact of a negotiator's fault is insufficient to establish liability. The fault must result in harm to the other negotiator, whether material or moral. Material harm includes financial losses incurred by the negotiator, such as missed opportunities due to preoccupation with negotiations or expenses for accommodation and travel related to the negotiations[57]. Moral or psychological harm encompasses any damage to the negotiator's dignity, reputation, and standing. For example, a failed negotiation might damage the commercial or civil reputation of the affected party, or cast doubt on their professional competence due to the disclosure of their secrets and technical skills during or in connection with the negotiations[58]. The Algerian legislator stipulated in Article 182 bis of the Civil Code that "compensation for moral damages includes any infringement upon freedom, honor, or reputation," and further regulated this matter through amendments and the enactment of new laws[59]. However, the mere existence of fault and damage is insufficient to establish the negotiator's liability for tort; a causal link between the fault and the damage suffered by the other party must also be established. In other words, the fault committed by the negotiator must be the direct cause of the damage. This indicates that if the negotiator proves that the damage arose from an external cause, they are not liable. The burden of proof rests on the injured party to demonstrate the causal link between the damage suffered and the defendant's fault. The defendant, in turn, can prove the contrary, for example, by demonstrating that the damage arose from an unavoidable cause such as a sudden accident, force majeure, or fault on the part of the injured party or a third party.[60]

The second Section: Assessing Compensation in the Digital Environment

Regarding compensation, the other negotiator is entitled to it due to the negotiator's liability resulting from the breach of the electronic negotiation agreement.

According to the legal principle of compensation, the injured party is entitled to compensation for lost profits and incurred losses. However, since the contract has not yet been concluded at this stage, compensation is not applicable under general legal principles. However, some argue that this issue pertains to a contract where one party complains of errors committed before its conclusion. In such a case, there is no impediment to compensation, according to general principles, for lost profits and incurred losses. The judge has discretionary power to award compensation for damages resulting from the termination of negotiations, including negotiation expenses, lost time, and missed opportunities.[61]

The judge bases the assessment of compensation on the standard of actual damages, taking into account the specific nature of digital transactions, such as: the duration of electronic negotiations, the degree of seriousness demonstrated by the breaching party, and the nature of the electronic means used, such as email platforms.

Furthermore, proving damages in the digital environment can be done through:

- Electronic correspondence and communications: This includes emails, text messages, and conversations via applications and digital platforms. These serve as strong evidence of the seriousness of the negotiations, the parties' commitments, and the conduct of the breaching party.

- Electronic records and data: This includes timestamps and the duration of negotiations, in addition to reports from electronic platform systems. These also serve as strong evidence of the duration of negotiations, particularly in relation to their breach or sudden termination. It should also be noted that the judge has broad discretionary power in accepting this digital evidence, assessing its validity and evidentiary value, and extracting the most important technical clues and evidence from the behavior of the parties. He also has the right to resort to technical expertise to determine the validity of this evidence.

He has the right to resort to technical expertise to determine the validity of this evidence.

Conclusion

In conclusion, this study can say that electronic negotiation is no longer merely a preliminary means of concluding e-commerce contracts, but has become a

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legally independent stage that entails legal consequences if one of the parties deviates from the requirements of good faith. Furthermore, despite its intangible nature, it does not fall outside the general framework of traditional legal rules governing conventional negotiation, as it is subject to the same fundamental principles. The only difference is that it takes place via electronic media due to the specific nature of the digital environment, which makes it more complex in terms of proof and legal classification.

Through the preceding study, the most important findings were reached:

- Negotiation has become a reality imposed by the nature of electronic transactions in the digital environment. It is a pre-contractual stage where parties agree on various contractual matters to finalize the agreement.

- Electronic negotiation is subject to the principle of good faith, which is a general rule governing the conduct of parties in the pre-contractual phase.

- The negotiation phase in an e-commerce contract entails obligations for both parties, and both must adhere to and abide by them. Failure to comply will result in liability.

- Proving damages in the e-commerce environment faces practical difficulties, despite the development of digital evidence tools.

We propose the following:

- Updating national legislation to align with the specific nature of electronic negotiations and e-commerce contracts.

- Enhancing the use of technical expertise in evaluating digital evidence and proving damages.

- Raising legal awareness among e-commerce participants regarding the importance of good faith during negotiations.

Footnotes:

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[21] Belkacem Hamdi, op. cit., p. 51.
[22] Khaled Mamdouh Ibrahim, "The Conclusion of Electronic Contracts: A Comparative Study," op. cit., p. 303.
[23] Mohamed Abdel-Zaher Hussein, "Legal Aspects of the Pre-Contractual Stage," Kuwaiti Journal of Law, Year 6, Issue 4, 1998, p. 74.
[24] Mohamed Hussein Mansour, op. cit., p. 47.
[25] See Article 1337 of the Italian Civil Code.

[26] See Article 201.1/13 of the Uniform Commercial Code (UCC).
[27] See Article 1104/1 of the French Civil Code.
[28] See Article 148/1 of the Egyptian Civil Code.
[29] See Article 202 of the Jordanian Civil Code.
[30] See Article 231 of the Moroccan Code of Obligations and Contracts.
[31] Article 107 of the Algerian Civil Code.
[32] Some legal texts may indirectly refer to the principle of good faith in the formation of a contract, as in the case of defects of consent (Articles 85-86 of the Algerian Civil Code) and the interpretation of contracts (Article 111 of the Algerian Civil Code).
[33] SHMIDT (R). Notecass.com, 20/03/1972. J. C. P, 1973, 17543, p43.
[34] Supreme Court Decision No. 191705 of 24/10/9919 Judicial Journal, Issue 2, 1999, p. 95.
[35] Article 7/1 states: "In interpreting this agreement, its international nature and the necessity of uniformity in its application shall be taken into account, as well as ensuring respect for good faith in international trade."
[36] Maha Nassif Jassim and Rasha Amer Sadiq, "Electronic Negotiation," Madad Al-Adab Journal, Iraqi University, College of Law and Political Science, Volume 2018, Issue 15, 2018, p. 573.
[37]Belkacem Hamdi, op. cit., p. 53.
[38] Consumer Code (consolidated version of October 1, 2018), https://www.legifrance.gouv.fr
Having regard to Article (111-1) of the Consumer Code.
[39] -See Article 25 of the Tunisian Law on Electronic Transactions and Commerce.
[40] Refer to Article 76 of the Egyptian Commercial Code No. (99-17), Official Gazette No. 19, issued on May 17, 1999.
[41] See Article 17 of Law No. 09/03 dated 29 Safar 1430 AH, corresponding to February 25, 2009, concerning consumer protection and the suppression of fraud, Official Gazette No. 15.
[42] Article 4 of Law No. 04/02 of June 23, 2004, establishing the rules applicable to commercial practices, Official Gazette No. 41 of July 27, 2004, as amended and supplemented by Law No. 10/06 of August 21, 2010, Official Gazette No. 41 of August 23, 2010.
[43] See Article 4 of Executive Decree No. 06/306 of September 10, 2006, Official Gazette No. 56, issued on September 10, 2006, concerning the essential elements of contracts concluded between economic operators and consumers and the clauses considered unfair.
[44] See Articles 4, 52, and 53 of Executive Decree No. 13-378 of November 9, 2013, establishing the conditions and procedures relating to consumer information, Official Gazette No. 58, 2013.
[45] See Article 11. Law No. (18-05) dated 24 Sha'ban 1439 AH, corresponding to 10 May 2018, concerning electronic commerce, Official Gazette, No. 28, issued on 30 May 2018.
[46] Rahab Arjilous, The Legal Framework of the Electronic Contract: A Comparative Study, op. cit., p. 64.
[47] Belkacem Hamdi, op. cit., p. 54.
[48] Abbas Ben Jbara, op. cit., p. 122.
[49] The prevailing opinion in French jurisprudence and legal practice is that liability is solely tortious due to the absence of an explicit agreement on the obligation.
See: Letourneau (ph), La responsabilite civile (ancient Lalou et Azard), t.l., Assurances et responsabilite civile, Revue International d'droit comparé, 1973, 25-2, p. 892.
[50] Issa Bakheet, The Effects of Globalization on Pre-Contractual Liability, Academic Journal of Studies Social and Human Sciences, University of Chlef, Volume 7, Issue 2, 2015, p. 85.
[51] C. AREIMS, December 11, 1990, Ex pertbe, 1993, p. 155.
[52] See Article 26 of Law No. (18/05) relating to electronic commerce.
[53] Belkacem Hamdi, op. cit., p. 53.
[54] Dalila Maazouz, Electronic Negotiation as a Pre-Contractual Stage (A Comparative Study), Al-Ustadh Al-Bahith Journal for Legal and Political Studies, Volume 5, Issue 1, 2020, p. 294.

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[55] Mustapha Khider Nashmi, The Legal System of Preliminary Negotiations for Contracts, Master's Thesis, Department of Private Law, Faculty of Law, Jordan, 2014, p. 74.
[56] Rehab Argilos, Youssef Messaoudi, The Legal Framework for Negotiation in Electronic Contracts, Ma'alim Journal of Legal and Political Studies, Volume 2, Issue 1, 2018, p. 67.
[57] Reference Ibid., p. 69.
[58] Inas Makki Abdel Nasser, Electronic Negotiation: A Comparative Study under Some Contemporary Arab Legislations, *Babylon University Journal of Human Sciences*, Babylon, Iraq, Vol. 21, No. 3, 2013, pp. 958-959.
[59] (Articles 394 bis to 394 bis 07) of Law No. (18-07) issued on June 10, 2018, concerning the protection of natural persons in the field of personal data, Official Gazette, No. 34. However, Law No. (18-05) relating to Algerian e-commerce does not regulate a criminal penalty related to the personal data of individuals in Article 26 thereof; rather, the provisions are more preventive than punitive.
[60] Ali Ahmed Saleh, Negotiations in International Commercial Contracts, Dar Houma for Printing, Publishing and Distribution, Algeria, 2012, pp. 704-705.
[61] Dalila Maazouz, op. cit., p. 297.