

REVIEW OF COVID-19 AND E-COMMERCE IN THE MOROCCAN LEGAL SYSTEM: CHALLENGES AND OPPORTUNITIES

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ABSTRACT

Covid-19 is spreading throughout the world, with its negative impact on health, economic, and financial institutions. This is affecting the countries' economic and social activities in general and companies in particular. To contain the virus's spread, Morocco declared a state of emergency and sanitary containment on March 20, 2020.

One area that concerns us as jurists is the legal e-commerce system and the latter's fate during and after the pandemic. We are trying to introduce e-commerce to analyze its situation during and after this state of a health emergency. E-commerce is an unprecedented and astonishing phenomenon. To be convinced of this, we look for evidence. More precisely, we aim to show, on the one hand, the mechanisms by which the concept of emerging diseases is imposed, in our case, covid-19. On the other, we consider new configurations that are related to e-commerce, legislative and regulatory frameworks.

The objective of our scientific analysis is to target issues that are related to consumer protection in e-commerce law, such as the information communicated within companies, unfair commercial practices, the security of online payments, data protection and confidentiality, dispute resolution and remedies, and the international and national electronic transactions.

Keyword: E-commerce, Covid-19, Legal E-commerce System, Digital Trust, Electronic Transactions, Morocco Numeric 2013, Morocco Digital 2020.

INTRODUCTION

Coronaviruses are a large family of viruses that can cause various diseases, from the common cold to severe acute respiratory syndrome "SARS". Coronaviruses (Coronaviridae in Latin) can infect another living being: a human, an animal, or a plant. There are even viruses that infect bacteria. They are also used as a treatment for certain bacterial infections (called bacteriophages or bacteria-killing viruses). Coronaviruses, infect mammals - including humans- and birds. The first coronaviruses were observed in the 1960s. Their name comes from the Latin corona, which means "crown" (Kierzek & Bernardon 2020), because of the presence of small particles on its surface, which are reminiscent of a crown.

E-commerce is an unprecedented economic phenomenon. It took 38 years for 50 million Americans to have access to radio, 13 years for television, 16 years for computers, and only 4 years for the Internet. Simultaneously, global e-commerce sales reached \$350 billion in 2002, up from \$7 billion in 1998 (D'Auzon, 2004). Despite the late start of e-commerce in Morocco in

2007, this activity recorded, one year later (in 2008), and significant revenues of MAD 31 million. Since then, the sector shows exponential growth rates and an overall amount of MAD 22.9 billion in 2015 (Interbank Electronic Banking Center). However, the share of E-commerce in Morocco in the Moroccan national GDP is not yet significant compared to traditional trade. Like e-commerce at the global level noted above, this booming sector in Morocco, allowing an increasingly rich online offer, does not escape the constraints and difficulties specific to the Moroccan society (El-Khalkhali & El-Ghazouli, 2017). Knowledge and speed are the codes or passwords of the revolution of emerging and new information and communication technologies (NICTs) across different industries (Alkhudary et al., 2020). In this world, the most powerful country is no longer the one that is hyper-armed with nuclear weapons, but the one that is the fastest to have information. To be fast is to be armed with NICTs. E-commerce is only one aspect of this revolution. It is the use of telecommunications networks to carry out commercial transactions. These online transactions concern products and, or services of all kinds: we can find those that are material, that is to say, that they can be physically quantified, and those that are electronic, that is to say, of an immaterial nature (Dridi, 2015).

In the operation of online transactions, trust plays a central role. To ensure this, legal texts must be useful on at least two levels: information security and electronic signature certification. In this way, there will be no difference between the person who buys the product and service directly from the seller and the person who does so online. Preserving both parties' trust during the online transaction is a matter that first of all comes down to the text that regulates the activity of electronic commerce. This text must prepare the favorable ground for implementing the said trust as envisaged in the two parties' reciprocal commitments to the contract: electronic contract. As soon as the commitments arising from this contract are validly formed, they will take the place of law for those who have made them (Dridi, 2015).

This contract can be defined (in the absence of an explicit textual definition) as a contract concluded through a telecommunications network. Moreover, to guarantee its validity and authenticity, the conclusion of this type of contract must comply with all the formalities relating to the status of the parties, consent, and the subject matter of the contract as provided for in ordinary law texts. In the context of electronic commerce, the conclusion of an electronic contract may be carried out (in the context of e-commerce) either between a merchant and a consumer (Business to Consumer-B to C), or between merchants (Business to Business-B to B). Knowing that it can be concluded outside the framework of e-commerce, there may be cases where this contract is concluded between Consumer to Consumer (Consumer to Consumer - C to C), or between Public Administration and Consumer (A to C), or between Public Administration and Merchant (A to B), etc. However, what interests us in this study is the fate of the legal e-commerce system in this state of a health emergency. To answer this question, we will successively examine (I) the problems posed by the regulation of e-commerce in Morocco in the face of Covid-19, then (II) the prospects for regulating e-commerce in the face of the pandemic.

RESULTS AND DISCUSSION

Problems Posed by the Regulation of E-Commerce in Morocco in the Face of Covid-19

“Times change: In the beginning, the jurist saw the Internet as the death of law. Today, the Internet brings its signature to a renewal of the law (Duong, 2010)”

The adoption of the Internet is having a positive impact on economic growth. Making the transfer of information almost instantaneous, facilitating the interoperability of different management systems, and, above all, making them accessible from anywhere, this new technology has allowed the advent of relations that were previously difficult, if not non-existent, between users from all walks of life (Guimonde 2008). However, in the context of our study on the electronic merchant versus Covid-19, we ask ourselves the following question: What are the main obstacles to the development of e-commerce in Morocco in the face of the pandemic? For methodological reasons, we will (A) assess the law on confidence in the digital economy, then, (B) the transposition of specific rules of the Lex electronica into Moroccan law.

Law on Confidence in the Digital Economy

“Virtually any commercial transaction has within itself an element of trust, certainly any transaction conducted over some time. It can be plausibly argued that the lack of confidence can explain much of the economic backwardness in the world (Knack & Keefer, 1997)”

While some sites offer payment on delivery, payment is made at the time of order for the majority. The consumer is then a little lost in his bearings; he is used to acquiring the product immediately after payment. There are many questions that any buyer on the Internet can ask himself because he becomes dependent on the merchant and has no control over his actions; the consumer then places himself in a vulnerable situation (Chouk, 2018). First of all, today’s electronic commerce’s impressive growth means that the existing contractual relationship between the parties to an acquisition of a good or service, through electronic distribution, can be secured within an appropriate legal framework (Malka, 2002). This analysis aims to take into account factors internal and external to the study environment while maximizing the potential of strengths and opportunities (Pahl & Richter, 2007) and minimizing the effects of weaknesses and threats (Desreumaux et al., 2009). To this end, the law of Obligations and Contracts of August 12, 1913, has been amended by introducing new articles such as article 417-1, which provides that:

“Writing on electronic media has the same probative value as writing on paper. Written documents in electronic form shall be admitted as evidence in the same way as paper documents, provided that the person from whom they emanate can be duly identified and that they are drawn up and stored in conditions such as to guarantee their integrity”.

What about consumer protection in e-commerce, such as information provided by businesses and unfair commercial practices? The impersonal nature of e-commerce weakens the relationship between merchants and consumers, increasing the latter are vulnerability. The Internet is, therefore, a medium that is conducive to unfair commercial practices. For this reason, one of the main challenges in the development of e-commerce is to ensure that consumers have confidence in online markets. Traders who engage in such practices mislead consumers into the nature of products by providing false information, using aggressive marketing techniques, confusing various trademarks and trade names, and posing as consumers to publish notices, for example, on online platforms. To gain an advantage over competitors who offer better quality goods and services or practically abusively low prices, traders may mislead consumers by

exaggerating the quality or misrepresenting their products or services' characteristics. The Moroccan legislative framework, in particular, Law No. 31-13, defines the rules applicable about the provision of fair, clear, and transparent information.

What about unfair contract terms? The terms of a contract define the rights and obligations of the parties. Article 29 of Law 31-08, promotes communication to consumers

“In a clear and comprehensible manner, by any means appropriate to the technique of distance communication used...”

Besides, Law No. 53-05 relating to the electronic exchange of legal data,

“The supplier must, before the conclusion of the contract, remind the consumer of his different choices and allow him to confirm his request or modify it according to his will”.

Moroccan legislators encourage businesses to provide complete, transparent, and non-misleading information on goods and services, terms and conditions. Business must also ensure that this information is easily accessible, regardless of the technology used.

What about the security of online payments? Online and mobile payment systems pose problems for consumers as they expose themselves to security risks. However, unauthorized third parties can access consumers' data without the consumer's knowledge and consent. To this end, we call on the government and stakeholders to put in place minimum levels of consumer protection for payments associated with e-commerce, building on the ICPEN statement that encourages stakeholders to adhere to four principles to ensure protection for all types of payment services and we cite:

“The promotion of adequate security mechanisms; the exclusion of consumer liability for unauthorized transactions; a limitation of consumer liability for unauthorized transactions based on the degree of consumer negligence; and finally, the provision of clear and adequate information to consumers, both on the terms and conditions of transactions and also on redress mechanisms”.

The Transposition of Specific Rules of the Lex Electronica into Moroccan Law: Risk Assessment

We are faced with two issues: what about data protection and confidentiality? What about redress mechanisms? Morocco has adopted Law No. 09-08 on the protection of individuals concerning personal data. Directive 95/46/EC of the European Parliament directly inspired this law and of the Council of October 24, 1995, on the protection of individuals regarding the processing of personal data and on the free movement of such data, as well as Directive 2002/58/EC of the European Parliament and of the Council of July 12, 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector. The rationale for such an adoption is the development of trust (Valle & Mackay, 2006). Besides, the National Commission for the Control of Personal Data Protection has been set up (CNPDP) (Decree no. 2-09-165 of May 21, 2009, implementing Law no. 09-08 relating to the protection of individuals concerning the processing of personal data). The current legal mechanism lists the rights of the individual, namely the right to information, which consists of the obligation for the data controller to provide certain information on the use of the data collected (except for processing operations relating to state or public security, including “*contact*

tracing”), the right to object on legitimate grounds (unless the processing operation meets a legal obligation), the right of access, which is the right of the data subject to request from the data controller the consultation of certain information relating to his/her personal data and to the processing of his/her data, the right of rectification, which consists of the possibility for the data subject to request the rectification, effective blocking or blocking of data which are incomplete or inaccurate, the right to lay down guidelines on the storage, erasure and communication of his personal data after his death, the requirements of proportionality and limitation, obligations of fairness, collection for specified, explicit and legitimate purposes, proportionality of collection to the objectives, accuracy of data and limitation of the storage period and data security (Feral-Schuhl, 2016).

Then, concerning consumer law, Article 2 paragraph 1 of Law No. 31-08 defines the consumer as follows:

“... Any natural or legal person who acquires or uses for the satisfaction of his or her non-professional needs products, goods or services that are intended for personal or family use”.

Article 6 of the “*Rome I*” regulation defines the consumer as the natural person who contracts for a foreigner usage to his professional activity, with another person, the professional, acting in the exercise of his professional activity. In principle, consumer contracts are governed by the country where the consumer has his habitual residence, provided that the consumer has his habitual residence or directs this activity, by any means, to that country or to several countries, including that country. The drafters of the regulation thus took care to update and extend the consumer protection regime. The new mechanisms introduced are, of course, aimed at electronic commerce (Haas & Aatier, 2012). This element is to be taken into account when drawing up the general terms and conditions of sale (GTCs), which cannot, therefore, derogate from the rules protecting a consumer in force in another country. It should be noted that, although Article 6(2) of the Regulation gives the parties the possibility of choosing the law applicable to a consumer contract under Article 3 (which in practice provides the trader with the choice to impose his standard contract),

“Such choice may not, however, have the result of depriving the consumer of the protection afforded to him by the provisions which cannot be derogated from by agreement under the law which would have been applicable, in the absence of choice, based on paragraph 1 i.e., the law of his habitual residence.”

The LCEN provides for an identical derogation (The law on trust and the digital economy n°2004-575 of June 21, 2004, abbreviated as LCEN, is a French law on Internet law, transposing the European directive 2000/31/EC of June 8, 2000).

Speaking of the LCEN, the Moroccan legislator has also set up an adequate penal mechanism. Aware of the development of information technologies and concerned about establishing a climate of digital confidence, the Moroccan legislator has modified and completed the Penal Code by adopting Law n°07-03, promulgated by law n°1-03-197 of 16 Ramadan 1424. BORM n°5184, February 5, 2004, which regulates offenses relating to automated data processing systems.

Moreover, and in the same vein, internet transactions are carried out between “*B to C*” companies and consumers from different jurisdictions in which the same rules may not govern

the main characteristics of electronic commerce and which may not have frameworks specifically applicable to the sale and purchase of goods and services online and means enabling them to fight against unreliable traders, whether at the national or international level (Information Economy Report, 2015).

In addition to this information, all the initiatives launched by the MCINET (Department of Digital Economy, Ministry of Industry, Trade and New Technologies, Morocco) at the national level have been aimed at developing the digital economy and establishing Morocco's position as an actor in the ICT industry development. E-commerce is gradually revolutionizing the usual sales channels and opening a path to new markets for Moroccan companies. Besides, it has considerably improved relations between the various actors, mainly through the facilitation and involvement of the processes of access and exchange of information through e-commerce, e-payment, and e-government (Ait & Mounia, 2018). However, the Covid-19 epidemic has led to travel restrictions and impacts on personal and professional activity in several regions globally, including Morocco. These changes are already having significant effects on distribution and e-commerce at the global level (Filser & Veronique, 2020).

Several challenges can be encountered when setting up and implementing an e-commerce platform. When setting up e-commerce portals, one of the main difficulties is creating a secure online (Ait & Mounia, 2018) payment platform (Storrer, 2014). These challenges are often technological (use of advanced encrypted technologies), social (educating consumers to use online transaction sites) and payment related (limited number of online credit card users) (Storrer, 2014). Besides, the United Nations Conference on Trade and Development (UNCTAD) provides us with information on all the factors that hinder the development of e-commerce, which are in the form of economic, socio-political, and cognitive barriers. For UNCTAD, the coronavirus's spread is first and foremost, a public health emergency and a significant economic threat.

The Prospects for E-Commerce Regulation in the Face of the Covid-19

“For e-commerce, we are only at the beginning of the beginning.”

The threat posed by Covid-19 has brought about a significant change in consumer lifestyles and habits, and e-commerce is therefore increasing. The coronavirus is completely changing the daily lives of consumers and businesses. Uncertainty continues to grow, as consumers see online shopping as a reliable means of supply. Does it remain to be seen how Morocco positions itself as an e-commerce player in the face of the pandemic? Otherwise, will e-commerce benefit from the spread of the coronavirus? We will (A) examine the e-commerce market, then (B) the avenues of development and prospects of the e-commerce market to overcome the shortcomings mentioned above.

Assessment of E-Commerce Market Opportunities and Distance Selling Contract

With more than 500 million people confined worldwide and 850 million children unable to go to school, the Internet is in great demand. Plunged into a period of unprecedented confinement and a curfew limiting people and services' movement, Moroccans have changed their behavior and is gradually turning to online shopping.

The digital revolution now presents itself as a real opportunity for developing countries as it offers them unprecedented prospects for economic growth and development. Aware of the options for development provided by NICTs, Morocco has decided to use these new technologies as an instrument of competitiveness of the national economy through awareness and promotion of information (Ngassi, 2010). The Covid-19 crisis has led to an explosion of internet traffic. Several sectors have taken advantage of the current situation and have increased their online sales. Online merchants are adopting e-commerce strategies against the coronavirus and thus carry out a multitude of promotional campaigns and discounts to recover customers and attract new users. Also, to get closer to customers who cannot trust e-payment, Morocco is adopting a strategy of online ordering and payment on delivery. The customer relationship is essential. In e-commerce, the customer relationship uses different channels and can be optimized through customer knowledge. The e-commerce site is the starting point; it will follow precise rules of the organization, promotion, and merchandising of a virtual business unit. However, it cannot function alone without customer service (Ngassi, 2010).

Speaking of the regulatory framework, since Morocco has adopted Law No. 31-08 enacting consumer protection measures, a legal formulation has been added to the list of distribution activities known to commercial law. We are talking about distance selling. This is a distance selling contract that will bring together, on the one hand, a supplier who is a trader and, on the other hand, a consumer whose act of purchase may not constitute an act of commerce although he may be a trader by profession (Benotmane, 2018). Thus, Article 25 of Law 31-08 (Law n°31-08 enacting consumer protection measures promulgated by Law n°1-11-03) considers the distance selling contract as the agreement established by

“A means of distance communication”, i.e., by “any means used to conclude a contract between a supplier and a consumer without the simultaneous presence of the parties”.

The general wording of the legislator allows a broad interpretation of “*any means*” used for the conclusion of this type of contract. These may be electronic communication techniques governed by Law No. 53-05 on the electronic exchange of legal data or any other means of communication such as telephone, radio, television, post, etc., provided that the parties are physically distant at the time of the formation of the contract. We take the liberty of saying that the Moroccan legislator has taken the necessary measures to regulate online transactions between electronic businesses and cyber-consumers carefully.

Coronavirus has been beneficial for online sales because of consumer preference for online purchases. E-commerce companies see an opportunity as buyers are currently looking for alternatives in their purchases of specific products, and e-merchants are paying attention to advertising campaigns.

Avenues of Development

Inevitably, questions arise as to how best to deal with current business conditions and adapt corporate strategies. The Coronavirus pandemic is novel; circumstances are changing rapidly daily. The pandemic is already having an impact on consumer behavior as consumers move from offline to online shopping. E-commerce is characterized by its speed, because of which, despite the laws governing this area, new problems arise before the legal framework

catches up with them. For this reason, and drawing on the OECD recommendations on consumer protection in electronic commerce, we encourage businesses to protect consumer privacy by using a set of control, security, transparency, and consent mechanisms for the collection and use of their data, against fraud and abuse.

Progress made in the digitization of the public sector is welcome. The gradual integration of digital technologies makes of the public sector more agile and functional, thus improving the delivery of public services. The report of the Industrial Acceleration Plan recognizes the importance of integrating digital technologies more coherently and sustainably to meet the requirements of citizens and businesses in terms of simplicity, efficiency, and openness in their interaction with the public sector (Ministry of Industry, 2020). Fostering digital consumer confidence has always been a central element in the debate on e-commerce in international forums. Furthermore, according to the responses to a UNCTAD questionnaire on the protection of e-consumers, the main measures that can promote confidence are the establishment and enforcement of an appropriate legal framework, including laws on credit card transactions, competition, distance selling, telecommunications, and unfair competition. An important additional element is that of “consumer education”. The education of online consumers should go beyond merely raising awareness of their rights and obligations to prevent harmful practices such as frauds and scams, and appropriate strategies should be developed to do so (Information Economy Report, 2015).

CONCLUSION

In this paper, we reviewed the literature on Covid-19, e-commerce, and legal frameworks in Morocco. First, we explain the negative impact of Covid-19 on many aspects of our lives. Second, we explore the e-commerce industry. Third, we link the Covid-19 negative impact and e-commerce industry to the legal frameworks in Morocco.

Morocco is experiencing a new labor revolution. After the one called industrial, we are entering the digital one allowing tools to interact with us to process and exchange information, manipulate media, make virtual objects, create intelligent robots, and tomorrow, who knows? We are moving towards a new era where being able to work at a distance, thanks to information technologies (Alkhudary, 2020), will profoundly change the way we understand our living conditions. From now on, thanks to information and communication technologies (ICTs), work behind a screen can be done anywhere, and dematerialization is the new name of computing today. We bear witness to the automated processing of information. Dematerialization encompasses e-commerce, e-administration, social networks, online contractualization, the fluidity of exchanges, and knowledge sharing. It is an essential tool for individuals, administrations, and companies. As a result, and with the current health crisis, e-commerce in Morocco is experiencing a real explosion. Research on the Internet reflects human behavior. Covid-19 coronavirus affects each industry differently, including e-commerce. The health crisis has accelerated the adoption of digital solutions, tools, and services; however, the overall impact on the value of e-commerce is still challenging to predict. What about e-commerce in Morocco after Covid-19?

“Systematic innovation requires the will to consider change as an opportunity.”

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REFERENCES

- Ait S.J., & Mounia, B. (2018). *The challenges of e-commerce: Analysis of the Moroccan context*. Mohammed V University, Faculty of Legal, Economic and Social Sciences, Agdal, Rabat-Morocco.
- Alkhudary, R. (2020). *Blockchain technology between nakamoto and supply chain management: Insights from academia and practice*. SSRN Electronic Journal.
- Alkhudary, R. (2020). Will blockchain become the norm in supply chain management? *Presented at the Trustless Ecosystems 2030, London/WEBINAR*.
- Alkhudary, R., Brusset, X., & Fenies, P. (2020). Blockchain and risk in supply chain management. In M. Freitag, H.D. Haasis, H. Kotzab, & J. Pannek, (Eds.), *Dynamics in Logistics* (pp. 159–165) Springer International Publishing, Cham
- Alkhudary, R., Brusset, X., & Fenies, P. (2020). Blockchain in general management and economics: A systematic literature review. *European Business Review*, 32(4), 765-783.
- Benotmane, R. (2018). *The legal regime of distance selling in Moroccan law*. European academics.
- Chouk, I. (2018). *Trust and electronic commerce: A first assessment*. DMSP Research Center, Paris-Dauphine University.
- D'Auzon, O. (2004). *Electronic commerce law*. Du Puits Fleuri, Paris.
- Desreumaux, A., & Lecoq, X., & Warnier, V. (2009). *Strategy*. Pearson.
- Dridi, M. (2015). *The settlement of disputes relating to electronic commerce*. Law laboratory of international market relations and negotiations of the University of Tunis El Manar, Ed., Maison du livre.
- Duong, L. (2010). *The sources of Internet law: From the pyramid model to the network model*. Recueil DALLOZ.
- El-Khalkhali, I., & El-Ghazouli, S. (2017). Proposal of a conceptual model of the factors of adoption and use of e-commerce in Morocco. *Moroccan Journal of Logistics and Transport Management*, 2(1), 140-152.
- Feral-Schuhl, C. (2016). *Cyber right, law put to the test of the Internet*. Dalloz, Paris.
- Filser M.G., & Veronique P.G. (2020). *Distribution: Organization and strategy*. EMS Editions, Paris.
- Guimonde, A. (2008). The notion of trust and the law of electronic commerce. *Lex Electronica*, 12(3), 8-14.
- Haas, G., & Aatier, S. (2012). *Legal guide to e-commerce*.
- Information Economy Report. (2015): *Unlocking the potential of e-commerce for developing countries*. United Nations publication, Sales No. E.15.II.D.1, New York and Geneva.
- Kierzek, G., & Bernardon, F. (2020). *Coronavirus, how to protect yourself? 50 questions and answers*. Archipoch, Paris.
- Knack, S., & Keefer, P. (1997). Does social capital have an economic payoff? A cross-country investigation. *The Quarterly Journal of Economics*, 112(4), 1251-1288.
- Malka, M. (2002). *Distribution contracts and the Internet*. DEA and Business Law thesis, University of Social Sciences-Toulouse I, France.
- Ministry of Industry. (2020). *Presentation of the OECD report on digital administration in Morocco*. Industrial Acceleration Plan.
- Ngassi, N.G. (2010). *Impact of information and communication technologies ICT on the productive fabric of goods and services in Morocco*. End of studies project for obtaining the State Engineer diploma, National Institute of Statistics and Applied Economics.
- Pahl, N., & Richter, A. (2007). *Analysis-idea, methodology and a practical approach*. Grin Velag.
- Storrer, P. (2014). *Electronic money law*. Paris.
- Valle, P.H., & Mackayy, E. (2006). Confidence: Its nature and role in electronic commerce. In *Lex Electronica*, Montreal, Canada.