

## Publication of the law on the post and the electronic communications and the e-commerce law

Following their adoption by the Algerian Parliament on 19 April 2018, the law on the post and electronic communications and the law on the e-commerce were published in the Official Gazette on 7 June 2018.

### 1. Publication of the law No. 18-04 of 10 May 2018 setting out the general rules applicable to the post and the electronic communications (“Law 18-04”)

It is worth noting that the term “electronic communications” replaced the term “telecommunications” provided in the former law. This change in terminology suggests an extension of the law to value-added services.

The salient points of Law 18-04 can be summarized as follows:

#### (i) Institution of the Universal Electronic Communications Service

Law 18-04 establishes the universal electronic communications service to be provided on a permanent basis for the benefit of all throughout the national territory. A support fund is dedicated to its funding.

#### (ii) End of the monopoly of Algérie Télécom over the local loop

The incumbent operator holding a licence to establish and operate a fixed public electronic communications network, is required to respond to requests for unbundling of its local loop made by the service operators of electronic communications holding general authorizations, in consideration of a compensation.

The incumbent operator is also required to take all necessary measures to develop its infrastructure and its existing technical premises in order to enable the unbundling applicants to co-locate their facilities necessary for the provision of their services, in consideration of a compensation.

However, licensed electronic communications operators and their subsidiaries do not qualify for unbundling of the local loop.

#### (iii) Monopoly of Algérie Télécom over the international traffic

International traffic originating in or destined for electronic communications networks open to the public other than satellite, must be transported in full through the international infrastructure established or operated by the incumbent operator holder of the licence to establish and operate a fixed public electronic communications network.

#### (iv) Pooling of infrastructure and optimization of investments

Each operator benefiting from the unbundling of the local loop must share within the limits of its objective capabilities its passive infrastructure (conduits, sheaths, pylons, etc.).

Operators of electronic communications networks open to the public are required to focus on sharing existing passive infrastructure before considering the deployment of a new clean infrastructure. In the event of a new infrastructure being deployed, they must foresee the conditions to make possible their subsequent sharing by operators.

The regulatory authority may impose infrastructure-sharing obligations (passive or active) because of the general interest or to meet the objectives of land-use planning or environmental protection.

#### (v) Regulation of competition

Law 18-04 states that the Algerian State shall ensure compliance with the rules of fair competition between operators and towards subscribers, users and customers.

The new law introduces the concept of “*relevant market in the electronic communications sector*” and the regulatory authority imposes a number of additional obligations on “*dominant operators*” in that market.

It prohibits operators from subsidizing, from an activity for which they are in a dominant position, other activities.

Law 18-04 lays down a principle of banning a number of practices such as:

- The refusal to make available to other operators, in a timely manner, the technical information on the essential facilities necessary for the exercise of their activity;
- The fact of imposing the bundled sale of a competitive sector service and a non-competitive service.

#### (vi) Other relevant provisions

- *Number Portability*

Operators are required to guarantee the portability of numbers for all subscribers.

- *State pre-emption right*

In the event of the transfer of the licence for the operation of electronic communications, the sale of equipment and infrastructure set up in connection with the operation of this licence, bankruptcy, early dissolution or cessation of activity of the operator, the State benefits from a pre-emption right in order to acquire the operator's assets.

- *Protection of personal data*

Law 18-04 requires operators to take measures to ensure the confidentiality of the information they hold over subscribers and the confidentiality of their communications.

#### (vii) Transitional provisions

The provisions of Law No. 2000-03 of 5 August 2000, as amended, laying down general rules on postal and telecommunications are repealed (the "Law 2000-03"). On the other hand, the implementing texts of Law 2000-03 remain applicable until the publication of the implementing texts of Law 18-04.

## 2. Publication of the law No. 18-05 of 10 May 2018 on the electronic commerce ("Law 18-05")

### (i) Scope of application

Law 18-05 is intended to lay down the general rules on electronic commerce and applies to electronic commerce transactions where one of the parties to the electronic contract is:

- of Algerian nationality;
- a resident of Algeria; or
- a legal entity under Algerian law.

Law 18-05 also applies when the electronic contract is entered into or performed in Algeria.

### (ii) Prohibited e-commerce transactions

The following transactions using electronic communications means are prohibited:

- gambling, betting and lotteries;
- alcoholic beverages and tobacco;
- pharmaceutical products;
- products infringing intellectual, industrial or commercial property rights;
- any property or service prohibited by the legislation;
- any good or service that requires an authentic deed.

### (iii) Cross-border electronic transactions

The sale or purchase by means of electronic communications of a digital property or service to a foreign country or from Algeria shall be exempted from the formalities of foreign trade within the limits of a threshold to be fixed by the regulation.

The proceeds of the sale made by a resident e-supplier to a non-resident e-consumer is carried on the account of the e-supplier domiciled in Algeria with a local bank approved by the Bank of Algeria or with Algérie Poste.

The payment for a purchase by a resident e-consumer to a non-resident e-supplier is made through the currency account "natural person" of the e-consumer domiciled in Algeria.

### (iv) Requirements applicable to electronic trade transactions

Any electronic commerce transaction must be preceded by an electronic commercial offer and formalized by an electronic contract approved by the e-consumer.

Law 18-05 specifies the characteristics of the commercial offer, as well as the mandatory statements of the electronic contract.

## (v) Obligations and responsibilities

Law 18-05 defines the respective obligations of the e-consumer and the e-supplier.

Among the obligations of the e-supplier is the guarantee of the security of the information systems and the confidentiality of the personal data collected in the context of the conclusion of the commercial transactions.

## (vi) Other relevant provisions

- *Electronic payment*

The electronic payment is made through dedicated payment platforms, implemented and operated exclusively by banks approved by the Bank of Algeria and Algérie Poste, and connected to any type of electronic payment terminal via the network of Algérie Télécom.

The payment of cross-border trade transactions is carried out exclusively by means of electronic communications.

- *Electronic advertising*

Law 18-05 defines the requirements applicable to electronic advertising.

It also requires the e-supplier to implement an electronic process that allows anyone to express their willingness not to receive electronic advertisements from the e-supplier.

## (vii) Transitional provisions

Natural and legal persons carrying out electronic commerce activities on the date of publication of Law 18-05 are required to comply with its provisions within a period not exceeding 6 months.

## Upcoming reforms ...

Significant changes to the Algerian legal landscape are coming within the next months since **important bills** have recently been adopted by the Algerian Parliament, namely:

- adoption on 30 May 2018 of the health bill;
- adoption on 13 May 2018 of the bill on the conditions of commercial activities;
- adoption on 13 May 2018 of the bill on the protection of natural persons in the processing of personal data;
- adoption on 13 May 2018 of the bill on consumer protection and the removal of fraud.



Rym Loucif

Partner

T : + 213 552 58 28 93  
Mail : rloucif@lpalaw.com



Alain Gauvin

Partner

T : + 213 661 55 28 12  
Mail : agauvin@lpalaw.com