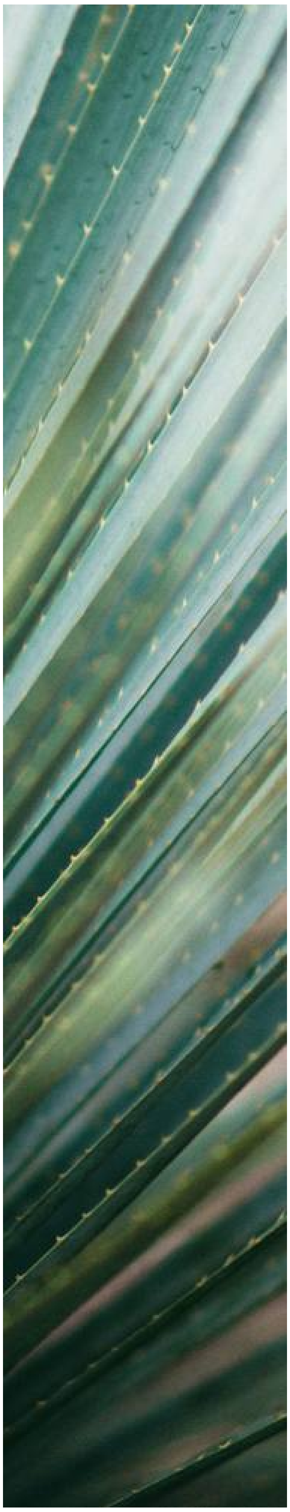

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AN IMPLEMENTING DECREE DATED SEPTEMBER 17, 2014 COMPLETES SOME ASPECTS OF THE FRENCH « HAMON ACT » IN B2C RELATIONSHIPS

IT and Data Protection Intellectual Property, Media, and Art Law Competition, Retail and Consumer Law Commercial and International Contracts | 01/10/14 | Mahasti Razavi

An implementing decree ("*décret d'application*") No. 2014-1061 dated September 17, 2014 completes some aspects of the French consumer law ("*Loi relative à la consommation*") dated March 17, 2014, also known as the "Hamon Act".

The decree of September 17, 2014 does not introduce any major change in the implementation of the Hamon Act but does clarify some obligations imposed to the professional sellers in B2C relationships.

The input of this decree relates to three areas:
1. **The decree details the content of the pre-contractual information** that any professional seller or service provider (hereinafter collectively "seller(s)") must provide to consumers, for both in-store and distance sales (see Articles L.111-1 and L.111-2 of the French Consumer code). In particular, in addition to the information already set forth by Article L.111-1 of the French Consumer code, the decree provides a new obligation to inform the consumer about the seller's complaint handling procedure.

The decree also clarifies to some extent the information relating to digital content and specifies that the seller must provide information concerning "*any relevant interoperability of digital content with hardware or software that the professional is aware of or is supposed to be aware of as well as the functionality of the content, including applicable technical protection measures"*. Hence, the content of this specific requirement regarding consumer's information is more precise, but still leaves some level of legal uncertainty.

The "a*dditional information*" that service providers are required to provide under Article L.111-2 of the French Consumer code is also further detailed, but without any particular innovation as to the content of such information.

Furthermore, concerning specifically distance contracts relating to financial services, the decree of March 17, 2014 specifies the content of the pre-contractual information that the seller is required to provide to consumers. Particularly, the seller must provide "*consumers with the specific information documents relating to the products, financial instruments and services offered as required by applicable legal and regulatory provisions or, in the absence of such documents, a briefing note about each of the products, financial instruments and services offered indicating, if any, the specific risks that they may involve"*.

2. As regards distance selling or of-premises contracts, the **decree contains a model of withdrawal form** together with a model of information notice regarding the exercise by consumers of their withdrawal right (cooling off period). This model is basically the one that was already attached to the European Directive No. 2011/83/EU of October 25, 2011 on consumer rights transposed by the Hamon Act.

3. Finally, the decree of March 17, 2014 **repeals the provisions of the French Consumer code which set a minimum contract value under which the consumer cannot terminate the contract concluded with a seller who failed to comply with its delivery obligations** (Art. R. 114-1 of the French Consumer code). Hence, the possibility for the consumer to terminate a contract in the event the seller fails to comply with the delivery date will now apply to any contract regardless of its value.

The decree also **repeals the provisions of the French Consumer code that provide for exceptions to the principle of prohibition of sales with bonus ("*ventes avec prime"*)**. Accordingly, the principle is now "simple": such type of sales is authorized as long as it is "fair", regardless of the value or type of product offered. These adjustments are more than welcome given that the decree repeals provisions of earlier laws that were no longer consistent with the new regulations in force.
It shall be noted that Mrs. Carole Delga, Secretary of State in charge of consumption, stated in a release dated September 20, 2014 that the The French Competition, Consumer and Fraud Control Authority, the DGCCRF, will initiate investigations to ensure that sellers comply with such new measures which are immediately enforceable.

It seems that these investigations will first be intended to inform sellers of their obligations and to answer any questions they may have concerning the practical details of the implementation of this new regulatory framework.

Mahasti Razavi, partner

Chloé Minet, counsel