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Digital platforms: New provisions on the obligation to provide information to consumers

With a view to tightening digital platforms' transparency and loyalty towards consumers, three Decrees published on September 29, 2017 have clarified the information requirements imposed on the operators of such platforms.

Some of the measures introduced by the Decrees must be implemented by January 1, 2018.

Adopted in furtherance of the provisions on the transparency of digital platforms and consumer information set forth in Law n°2016-1321 for a digital Republic dated October 7, 2016, three Decrees published on September 29, 2017^[1] are aimed, according to the French Minister for Economic Affairs and Finance, at giving consumers access to *"clear, objective and transparent information, in order to strengthen confidence in the information displayed on these platforms"*^[2].

Some of the measures introduced by the Decrees must be implemented as of January 1, 2018 by the operators of digital platforms, i.e. any natural person or legal entity whose activity is based on either (i) the ranking or referencing, through the use of computerized algorithms, of contents, goods or services offered or uploaded by third parties, or (ii) the bringing together, by electronic means, of several parties for the sale of goods, the provision of services or the exchange or sharing of contents, goods or services.

As such, the new provisions define *inter alia* the content as well as the terms and conditions for the application of Article L. 111-7 of the French Consumer Code that imposes on all operators of online platforms a general

duty to deliver fair, clear and transparent information on the general terms and conditions of use of the intermediation service they offer, as well as on the methods of referencing, classification and dereferencing of the contents, goods and services to which this service provides access^[3].

For example, these platforms must specify in a section directly and easily accessible from each web page the rules applied for being referenced and the obligations, the breach of which will lead to dereferencing, as well as, as the case may be, the existence of a capitalistic link or remuneration between the platform operator and the referenced suppliers insofar as this capitalistic link or remuneration influences the referencing or the ranking of the contents, goods or services available on the platform.

In addition, the content and the terms of implementation of the information provided for by Article L. 111-7-2 of the French Consumer Code are further specified. This Article imposes on any natural person or legal entity whose primary or secondary activity consists in the collection, moderation or broadcasting of consumer online reviews the obligation to provide fair, clear and transparent information on the procedures governing the publication and processing of these online reviews^[4].

In particular, the concept of online review is defined as follows *“the expression of the opinion of a consumer on his/her consumption experience thanks to any quantitative or qualitative elements of evaluation. Consumption experience is irrespective of whether or not the consumer has bought the product or service on which he/she writes a review. Are not considered as online reviews (...) sponsored user sessions, the recommendations of online reviews by users, as well as experts’ opinions”*.

The relevant persons must also provide *inter alia* specific information on the terms and conditions governing the operation of the online review service and the monitoring of the reviews, as well as the conditions in which consumers are informed of the fact that the publication of their review has been refused.

If the online reviews are monitored, it must be ensured that the processing of related personal data complies with the provisions of the Law 78-17 of January 6, 1978 on information technologies, data files and civil liberties. Specific information must be displayed in this respect in an easily accessible section of the website.

Lastly, effective as from January 1, 2019, platforms with a monthly number of connections above 5 million unique users must establish and make available online good practices with respect to clarity, transparency and fairness^[5].

^[1] Decree n°2017-1434 of September 29, 2017 *“on the information requirements applicable to operators of digital platforms”*; Decree n°2017-1435 of September 29, 2017 *“on the determination of the connection threshold above which the operators of digital platforms must establish and make available to consumers good practices guidelines aimed at strengthening the fairness, clarity and transparency of the information provided to consumers”*; Decree n°2017-1436 of September 29, 2017 *“on information requirements relating to online customer reviews”*

^[2] Press release issued on October 5, 2017 by Bruno Le Maire, Minister for Economic Affairs and Finance, and Mounir Mahjoubi, Minister of State for Digital Affairs

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[3] Decree n°2017-1434 of September 29, 2017 *“on the information requirements applicable to operators of digital platforms”*

[4] Decree n°2017-1435 of September 29, 2017 *“on the determination of the connection threshold above which the operators of digital platforms must establish and make available to consumers good practices guidelines aimed at strengthening the fairness, clarity and transparency of the information provided to consumers”*

[5] Decree n°2017-1436 of September 29, 2017 *“on information requirements relating to online customer reviews”*

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