

FRANCE: NEW REQUIREMENTS CONCERNING THE SALE OF DIGITAL GOODS

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Data Protection, Privacy, and Security Alert

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On 29 June 2022, [Decree n° 2022-946](#) (the Decree) supplemented the regulatory framework resulting from the [Ordinance n° 2021-1247](#) of 29 September 2021 on the legal warranty of conformity for goods, digital content, and digital services (the Ordinance). Stakeholders have until 1 October 2022 to implement the following measures, aiming at protecting consumers of digital goods.

GENERAL INFORMATION ABOUT THE ORDINANCE

Implementing two 2019 European directives on certain aspects of contracts for the supply of digital content and digital services and contracts for the sale of goods (respectively [Directives \(EU\) 2019/770](#) and [2019/771](#) dated 20 May 2019), the Ordinance aimed to foster the safety of consumers when purchasing both physical and digital goods and, to a lesser extent, to reduce the environmental impact of digital goods.

This Ordinance amended the [French Consumer Code](#) in depth, notably by expanding the legal warranty of conformity, which now covers digital products and services but is also applicable to both business-to-consumer (B2C) as well as business-to-business contracts, when the latter are executed between professionals and non-professionals (i.e., legal entities acting outside of their direct professional activities).

DECREE SPECIFICATIONS

The Decree supplements the regulatory provisions already in force concerning the legal warranty of conformity for digital content and digital services.

It enshrines the general obligation of pre-contractual information for the professional seller to disclose to the consumer and the non-professional the existence of the legal warranty of conformity and its implementation.

For that purpose, standard boxes containing these warranties are to be inserted within the general terms and conditions. Similar to physical goods, the purchaser of a digital good, content, or service, which would not be compliant with the warranty of conformity has a two-step remedy:

- If the digital good can be brought into conformity, it will then need (i) to be repaired or replaced, (ii) free of charge, (iii) without causing major inconvenience for the purchaser, and (vi) within a reasonable period of time (within 30 days).
- If the previous conditions are not met, the purchaser can obtain a price reduction, or terminate the contract and obtain refund.

Will those additions of standard boxes lead to a more informed consumer? With the inability to ensure that terms and conditions are read, and by loading the consumers with an even more substantial set of compliance information, the objective seems unlikely to be achieved.

Moreover, the Decree also clarifies the requirements for informing the purchaser with regard to software updates for digital goods and services, including the period of availability of such updates.

The producer of such digital goods or services will be required to communicate to the seller all information concerning the compatibility of the updates with the functionalities of the digital goods or services. In addition, if the purchaser acquired a benefit instead of, or in addition to a price (e.g., free access to an option of a mobile application), the professional seller will now be compelled to indicate in their general terms and conditions how the professional seller benefits from it (e.g., use of personal data). If their personal data is used in this context, the professional seller is required to specify the methods of exploitation of the data processing for advertising or commercial purposes. Such position seems counterintuitive considering the trends of the European Union data protection authorities to dismiss the information lodged in the terms and conditions, and rather require a dedicated privacy policy.

Furthermore, the producer will be required to inform the seller (who will then need to convey such information to the purchaser) about the consequences of the updates necessary for the proper operation of the software supporting the digital good, both, in a generally intelligible manner and free of charge.

CONCLUSION

In order to comply with this new Decree, companies now have three months left to update their B2C terms and conditions. While the initial intent of this regulatory change was to protect consumers, we can nonetheless wonder whether these additional compliance requirements will effectively drive a meaningful positive impact on consumers or instead add yet another layer of complexity and contribute to information fatigue.

[Our Global Data Protection team](#), including each of our [European offices](#), remain available to assist you.

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