

THE CONSUMER RIGHTS BILL

The government bill on consumer rights – introduced by Mr. Benoit HAMON, Junior Minister at the Ministry for the Economy and Finance– was adopted by both the Senate and National Assembly in mid-February 2014.

As the Constitutional Council has been asked to rule on whether the bill conforms with the Constitution, the bill will not be enacted before the end of March / beginning of April.

The proposed legislation will have major consequences for individuals and companies. The purpose of the bill is to adjust the balance of power between economic players by introducing a class-action procedure under French law; ensuring more balanced relations between retailers and suppliers; reinforcing consumer protection and extending the powers of the French Competition and Consumer Protection Authority (DGCCRF).

Introduction of a new class-action procedure under French law

The new class-action procedure will be available to consumers who have been placed in a similar or identical situation by a professional's (as opposed to a consumer) breach of its legal or contractual obligations. The provisions cover losses incurred by consumers in the context of sale of goods, provision of services or infringement of competition law.

However, there are some important restrictions to this new legislation: claims for compensation of non-

pecuniary losses, physical injury, or health or environment related damage or loss fall outside the scope of the law. Moreover, a class action can only be introduced by one of the few consumer protection associations accredited at a national level. **(Client briefing regarding the introduction of class actions in France).**

Enforcement of consumer protection

The new bill introduces a definition of the term "consumer" and several protective measures applying to business-to-consumer contracts:

- The period during which any fault is presumed to exist since delivery is extended from 6 to 24 months (unless otherwise proven and excluding second-hand goods). This extension will enter into force 2 years after the law is enacted.

Key issues

- Enforcement of consumer protection
 - Unfair terms in consumer contracts
 - Adjusting the balance of power between retailers and suppliers
 - Regulation of insurance contracts
 - Regulation of consumer credit
 - Reinforcement of the DGCCRF's powers
 - Regulation of lottery and sweepstake advertising
 - Impact on the medical devices sector
-
- A general obligation to provide pre-contractual information is imposed for all consumer contracts, in relation to price,

product or service features, date of delivery, information about the professional's identity, any guarantees etc.

- The right of withdrawal is reformed and strengthened:
 - For distance and off-premises contracts, as well as for contracts concluded following telemarketing, the withdrawal period is extended from 7 to 14 days. Moreover, in the event that the professional has not adequately informed the consumer about his right of withdrawal, the withdrawal period is extended to 12 months and the professional may incur an administrative penalty.
 - An exception to the right of withdrawal will exist where a product opened by the consumer cannot be returned for hygienic and health protection reasons (e.g. beauty products).
- The bill also regulates telemarketing:
 - The professional must send written confirmation of the offer made, containing all of the abovementioned information (i.e. information in relation to price, product or service features, date of delivery, information about the professional's identity, any guarantees etc.), which is legally binding from the date of signature by the consumer;
 - Any consumer can register for free to opt-out of telemarketing and the use of hidden numbers for telemarketing is prohibited.

Unfair terms in consumer contracts

- Following the reform, a court is bound to pronounce, of its own accord, the "unfairness" of a term if this is apparent from the information before the court. A term that is declared "unfair" by a judge and removed from a contract is considered to be also removed from all identical contracts.

The DGCCRF has the power to pronounce an administrative penalty, publish its decision and may even initiate proceedings before a court to have a term declared unfair and removed from a contract.

Adjusting the balance of power between retailers and suppliers

- A single document or framework contract should contain the terms of the negotiation between retailers and suppliers, and indicate certain information required by law.
- Finally, the bill imposes an obligation to renegotiate the contract price in the event of fluctuating agricultural raw material prices, and sets out the framework and conditions of this new obligation.

Regulation of insurance contracts

- In order to avoid being covered by several insurance policies, the insured person has the right to revoke a new contract that covers the same risks as an existing contract, within 14 days of the conclusion of the contract and as long as the contract was not fully executed;

- Moreover, the new legislation allows the insured person to terminate a tacitly renewable contract at any time, provided that one year has elapsed since the conclusion of the contract.

Regulation of consumer credit

- A national consumer credit rating register (RNCP) is established, recording all loans granted to individuals and all payment defaults. The consultation of this register by credit institutions and finance companies is mandatory before the grant of consumer loans.
- Revolving credits exceeding a certain sum must be accompanied by an offer of a fixed-term loan, repayable by installments.

Reinforcement of the DGCCRF's powers

The bill increases the powers of DGCCRF agents:

- They may conduct surprise inspections or quality controls for product safety and compliance;
- They have the power to pronounce administrative penalties, and to ask a judge to pronounce any relevant and appropriate measures to prevent loss or damage caused by online public communication services.

Regulation of lottery and sweepstake advertising

The regulations now include all sweepstakes and not just those that create the hope of a gain for all participants. Furthermore, the bill introduces an obligation to provide information regarding any such promotional campaigns.

Impact on the medical devices sector

This reform encompasses important changes for the health care sector, e.g. glasses and contact lenses can be sold via the internet, and the sale of pregnancy and ovulation tests is no longer restricted to pharmacies.

[Bill on consumer rights](#) (*Projet de loi relatif à la consommation*), French text as adopted by the two Chambers of Parliament.

Authors



Dessislava Savova
Partner

Dessislava.Savova@cliffordchance.com



Olivier Gaillard
Counsel

Olivier.Gaillard@cliffordchance.com



Simonetta Giordano
Counsel

Simonetta.Giordano@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Clifford Chance, 9 Place Vendôme, CS 50018, 75038 Paris Cedex 01, France

© Clifford Chance 2014

Clifford Chance Europe LLP est un cabinet de sollicitors inscrit au barreau de Paris en application de la directive 98/5/CE, et un limited liability partnership enregistré en Angleterre et au pays de Galles sous le numéro OC312404, dont l'adresse du siège social est 10 Upper Bank Street, London, E14 5JJ.

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.