

Handbook on the new transparency and fairness requirements imposed on operators of digital platforms since January 1, 2018

Two of the three Decrees adopted on September 29, 2017 in furtherance of the Law for a digital Republic came into force on January 1, 2018.

This provides the opportunity to recall the new transparency and fairness requirements imposed on operators of digital platforms.

Since January 1, 2018 new requirements apply to some websites, as a result of the entry into force of:

- Decree n°2017-1434 of September 29, 2017 on information requirements applicable to operators of digital platforms[1];
- Decree n°2017-1436 of September 29, 2017 on information requirements relating to online consumer reviews[2].

In a previous article[3], we provided a broad outline of these Decrees. As they have now become applicable, we have set out, in the form of a practical handbook, a detailed overview of their terms and of the actions that need to be taken to comply with the new rules.

1. The new information requirements imposed on operators of digital platforms since January 1, 2018

1.1 What is an online platform operator?

The Law for a digital Republic dated October 7, 2016 provides a legal definition of online platform and stipulates that *“is considered a digital platform operator any natural person or legal entity offering, on a professional basis, free of charge or against payment, an online communication service to the public, based on either:*

1° ***the ranking or referencing***, through the use of computerized algorithms, of contents, goods or services offered or uploaded by third-parties; or

2° ***the bringing together of several parties*** for the sale of goods, the provision of services or the exchange or sharing of contents, goods or services.”^[4]

As such, the digital platform status covers search engines, marketplaces, product/service comparison websites, social networks or collaborative economy websites.

In today’s digital society, online platforms allow for the exchange of goods and services, multiple social interactions, the sharing of information and knowledge, the mobilization around a common project or cause, etc. They have become a key player of the digital economy and serve many multifaceted and increasingly innovative purposes.

As such, the websites *Amazon, Expedia, Airbnb, Facebook, Google, BlaBlaCar, LeLynx* are considered as online platforms within the meaning of the Law for a digital Republic dated October 7, 2016.

1.2 What are the new information requirements imposed on online platforms since January 1, 2018?

a. The methods used for referencing, dereferencing and ranking contents^[5]:

- **Who is subject to these new information requirements:**

Any and all digital platform operators (cf. above definition).

- **Information that must be made available:**

- **The methods used for referencing and dereferencing** contents and product and service offerings, including:

- + the rules applied for the referencing, and

- + the obligations, the breach of which will lead to dereferencing.

- **The default criteria used for ranking** contents and product and service offerings, as well as their main parameters.

- **Where and how should this information be made available:**

The above information must be published:

- in a **specific section** of the website;
- **easily** accessible;
- from **all web pages**.

b. The existence of a capitalistic link or remuneration between the platform operator and the referenced provider^[6]

- **Who is subject to these new information requirements:**

Any and all digital platform operators (cf. above definition).

- **Information that must be made available:**

The operator of an online platform has the obligation to disclose the existence of a **capitalistic link or remuneration** between itself and the referenced providers insofar as this capitalistic link or remuneration **influences** the referencing or the ranking of the contents, goods or services available on the platform.

- **Where and how should this information be made available:**

For each ranking result, the information must be made available:

- **by any means;**
- **Near** the ranked offer or content.

c. New obligations imposed of online platform operators whose activity falls within the scope of Article L111-7 I 2° of the French Consumer Code^[7]

- **Who is subject to these new information requirements:**

- (i) **Are subject to these new requirements:**

Platforms whose activity falls within the scope of application of Article **L111-7 I 2°** of the French Consumer Code, i.e. platforms that brings together several parties for the sale of goods, the provision of services or the exchange or sharing of contents, goods or services. These include in particular **websites operating as “marketplaces”** such as for example *Le Bon Coin*.

- (ii) **Are not subject to these new requirements:**

Platforms whose activity falls exclusively within the scope of application of Article **L111-7 I 1°** of the French Consumer Code, i.e. platforms that exclusively offer a service for the ranking or referencing, through the use of computerized algorithms, of contents, goods or services offered or uploaded by third-parties.

- **Information that must be made available:**

- The capacity of the persons authorized to submit an offer of goods and services, including in particular their **status as a professional or a consumer**;
- A description of the contact/intermediation service, as well as **the nature and purpose of the contracts** that can be concluded under this service;
- Where applicable, the **price of the contact/intermediation service** or the method used to calculate this price, as well as the price of any additional paid services, wherever the costs of these services are borne by the consumer;
- Where applicable, the **payment procedure** for the financial transaction and the **way it is managed**, whether directly or by a third party;
- Where applicable, the **insurance** and **warranties** offered by the platform operator;
- The **dispute resolution process** and, where applicable, the role of the platform operator in such process.

- **Where and how should this information be made available:**

The above information must be published:

- in a **section** of the website;
- **directly and easily** accessible **from all web pages**;
- **without the need for the user to identify himself/herself**.

2. **The new information requirements relating to online consumer reviews applicable since January 1, 2018**

• **Who is subject to these new information requirements:**

Any natural person or legal entity whose primary or secondary activity consists in the **collection, moderation or publication of consumer online reviews**^[8].

What is a consumer online review?

An online review is defined as 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, recommendations of online reviews by users, as well as experts' opinions**^[9].

For example, *TripAdvisor* not only provides ranking services but also collects and publishes online reviews by consumers who wish to share a food or hotel experience.

• **Information that must be made available near the reviews:**

- The existence or the absence of a **procedure to monitor** the reviews;
- The **date of publication** of each review as well as the date of the consumer's experience described in the review;

- The **criteria used for classifying** the reviews, including the criterion to display the reviews in a chronological order^[10].

• **Information that must be made available in a specific easily accessible section of the website:**

Irrespective of whether the reviews are monitored:

- The existence or the absence of a **compensation in exchange for** the review;
- The maximum period of time within which the review is published and will stay on line^[11].

If the reviews are monitored by the platform operator:

- The main features of the monitoring process at the time the reviews are collected, moderated or published;
- Where applicable, the possibility to contact the consumer who wrote the review;
- The possibility or impossibility to amend a review and ,where applicable, the procedure for amendment the review;
- The reasons why the publication of a review can be refused^[12].

• **Refusal to publish a consumer's review:**

If the publication of a review is refused, the operator must inform the consumer of the reasons for such refusal by any appropriate means^[13].

3. **Penalties for non-compliance with these new requirements**

Failure to comply with the new requirements is punishable by an administrative fine of up to 75,000 euros for natural persons and 375,000 euros for legal entities^[14].

In this context, operators of digital platforms should make sure that appropriate actions are taken - if not already done - to ensure compliance with the new applicable requirements.

[1] <https://www.legifrance.gouv.fr/eli/decret/2017/9/29/ECOC1716647D/jo/texte> (in French only)

[2] <https://www.legifrance.gouv.fr/eli/decret/2017/9/29/ECOC1716649D/jo/texte> (in French only)

[3]

<https://www.soulier-avocats.com/en/digital-platforms-new-provisions-on-the-obligation-to-provide-information-to-consumers/>

[4] Article L111-7 of the French Consumer Code

[5] Article D111-7 I of the French Consumer Code

[6] Article D111-7 3° and II of the French Consumer Code

[7] Article D111-8 I of the French Consumer Code

[8] Article L111-7-2 of the French Consumer Code

[9] Article D111-16 of the French Consumer Code

[10] Article D111-17 1° of the French Consumer Code

[11] Article D111-17 2° of the French Consumer Code

[12] Article D111-18 of the French Consumer Code

[13] Article D111-19 of the French Consumer Code

[14] Article L131-4 of the French Consumer Code

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