

The implementation of Regulation (EU) No 1169/2011 in France: some remarks

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1.- The general framework

Dealing with the question of the implementation of Regulation (EU) No 1169/2011 in France needs, as a pre-requisite, to give a few historical explanations about the development of the consumption law field through the years.

If it is true to say that consumption law has silently become a very important field of law during the 20th century in France, we have to add that this development has not been equal and linear.

During the two first third of said century, the French law dated 1 August 1905 dealing with frauds and falsifications has been the quasi-unique text dealing with consumption law. The scope of this law was very large, from frauds and falsifications to labelling and regulation of many products.

Then, starting from 1970, many new texts came into the field of consumption law, so that in the early 1990's, consumption law had become a very abrupt matter with many texts and case law. That is the reason why, in 1993, the first Consumption Code (*Code de la Consommation*) was enacted.

This code gathered and codified all existing texts, and continues to develop today with new European standards.

Everyone will have understood that the consumption code was the legal framework for the application and implementation of 1169/2011 regulation in France.

Let's deal with the implementation in France (I), then with the sanctions (II).

2.- The implementation in France

Book 4 Title 1 of the French consumption code concerning conformity of products and services is the legal framework of the implementation.

Article L411-1 al 1 states in substance that from their initial market launch, products shall meet the regulations in force relating to the health and safety of the persons, and that the persons responsible for such launching are therefore required to ensure that the product complies with said regulation in force.

As usual in France, this is a framework.

From a French institutional point of view, law, enacted by the legislative power, states for the principles, and decrees, enacted by the government, provide for application measures of the law. This is the case in our topic.

Article L412-1 of French consumption code states the Council of State Decrees shall determine the measures to which the product shall complain, provide for a list of 11 domains that shall give rise to a decree, as, for instance, their importation or exportation, their traceability, labelling, and/or information due to the consumer, ...)

And article L412-2 states that "*Where a EU Regulation contains provisions which come under the field of application of Title 1 (i.e.: Conformity), a Council State Decree ascertains whether these provisions, as well as those of EU regulations that may amend them or that may be adopted for their application constitutes the implementation measures provided for in article L412-1*"

Concerning EU Regulation No 1169/2011, said decree was adopted on 11 December 2014.

The reader will wonder why a decree is necessary to implement a EU regulation which is, by itself, directly applicable into Member States Legislation, and it definitely is a good question.

French Criminal Chamber of the Supreme Court (*Cour de Cassation*) ruled on 10. October 2006 that the decree provided for in article L412-2 is not a condition of the implementation in France of an EU Regulation¹.

Thus, as far as conformity obligations provided for

(¹) Crim 10 octobre 2006 – n° 06-80170.

in French law may give rise to specific offenses and sanctions, it is necessary to classify the provisions of the EU Regulation into the framework of conformity.

3.- Sanctions

Three (3) questions shall be examined:

- Who may control?
- Who may sentence?
- What are the risks?

Who may control?

The main persons habilitated to investigate and establish the violations of Book 4 of the French consumption Code are the public servants of the Directorate General for Competition, Consumer and Fraud Prevention (Direction Générale de la Concurrence, de la consommation et de la Répression des Fraudes – DGCCRF)

Their field of investigation is very wide and is not limited to frauds and falsifications, and they may investigate throughout the territory.

When they consider that a fraud is effective, they shall first inform the responsible party and ask her, or give injunction to comply with the regulation.

If the compliance is not met, they shall issue a report to the prosecutor who is empowered to decide to sue or not.

Who may sentence?

In 2014, public servants were allowed to inflict administrative fines in certain circumstances, but this empowerment does not concern conformity and security of products rules of Book 4 of the French Consumption Code.

Thus, the only possible penalties will result of a trial, which implies the intervention of a criminal court or judge.

What are the risks?

Book 4 of the French Consumption Code provi-

des for specific penalties.

Article R451-1 states that any breach to a decree adopted in consideration of article L412-1 may be sentenced of a 5th category minor offense, which means a simple fine which amount is at most, 1500 € when it is the first time.

But article L441-1 of the same code states that deceit is a major offence.

Deceit implies that the responsible person mislead the other party to a contract which object is a product.

The risk is a two (2) years imprisonment penalty and/or a 300.000 € fine at most, when it is the first time.

Then comes falsification of article L413-1.

Falsification is the more severe offence of Book 4 with regard to the facts, and implies that the responsible person violated an official process the product shall comply with.

The risk is the same than in the case of deceit, but may reach a 7 years of imprisonment and a 750.000 € fine if the product constitutes a danger for human or animal health, or if the acts were committed as a group.

And despite the three (3) specific offenses of Book 4, the judge may sometime choose another ground for sentence.

For instance, in a case where a product does not comply with the labelling regulation applicable to it, (Art 7 of the Regulation 1169/2011/EU) the prosecution preferred the ground of the 2005/29/CE Directive concerning unfair business to consumer, through the qualification of misleading commercial advertising.

This is an example to evidence that the scope of sentences available may finally be very large, and depends on the acts committed and the legal qualification they receive.

ABSTRACT

The implementation of Regulation EU 1169/2011 in France could not be dissociated from French

law history.

In 1905, a very large text on frauds and falsifications appeared in France, which will be the backbone of consumer law until the appearance the French consumer code in 1993.

This code was, therefore, the ideal framework for the implementation of the regulation in France, since it sets general obligations, and designates actors and sanctions.

L'attuazione in Francia del Regolamento UE n.

1169/2011 si colloca all'interno della storia del diritto francese.

Nel 1905 è stato introdotto in Francia un testo molto ampio su frodi e falsificazioni, che costituirà la spina dorsale del diritto dei consumatori fino alla comparsa del codice del consumo francese nel 1993.

Questo codice è stato, quindi, il quadro ideale per l'attuazione del regolamento in Francia, poiché stabilisce obblighi generali e designa attori e sanzioni.

