

Benchmarking of existing national legal e-business practices

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Country report – France

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France

1. General information on the national legal system

France is a Republic. France is composed of mainland France, Corsica, the Overseas Departments (DOM) and the Overseas Territories (TOM). Depending on the purpose of a given law, it may or may not apply to the DOMs and TOMs. Mainland France, Corsica and DOMs are a member of the European Union¹.

The usual way to implement in France an EU Directive regulating a new legislative field is to promulgate a specific law implementing provisions of the Directive. However if a Directive concerns an already regulated field, the provisions are most often implemented through changes in the existing legislation.

The French legal system adheres to the civil law tradition. Legal principles are organised into a number of codes.

According to the French tradition of civil law, written legislation is the most important legal source. Court decisions are also considered important sources of law, but courts are not required to follow precedent even if it originates from a court placed higher in the judiciary system, although decisions of the Supreme Court are highly authoritative and only very rarely disregarded.

The administration of civil and commercial justice in France is mainly regulated by the Civil Procedure Code. There is a one-instance appeal system in France, *i.e.*, decisions from the courts of first instance may be appealed to the courts of appeals. Decisions from the courts of appeals may be appealed, only in the event that the appellant considers that the court of appeals erred in applying the law, to the Supreme Court. Since a decision may normally be appealed only once, courts of first instance cases rarely reach Supreme Court level.

Commercial disputes are typically dealt with by the commercial courts.

In Civil Law cases, there are two basic principles for dealing with evidence: 1) The parties to the dispute choose the evidence they wish to bring before the court, and 2) the court has discretion to assess the evidences. It is not bound by law and the purpose of the assessment is to determine the materially correct result.

Courts in France have the power to re-balance the contractual rights and obligations of the parties.

Parties to a commercial contract are also free to choose arbitration for settlement of a dispute.

In addition to direct complaints, consumers may bring matters to the attention of consumer, which themselves file complaints regarding consumer law issues.

It should be noted that consumer protection is not automatically available to small and medium sized enterprises (or to any enterprises).

¹ France has been a member of the European Community since March 25, 1957.

2. Electronic signatures

2.1 National legislation and administrative practices

France has implemented Directive 1999/93/EC regarding a Community framework for electronic signatures by the Electronic Signature Act (Law No. 2000-230 of May 13, 2000²). The law created new Sections 1316 through 1316-4 of the French Civil Code³.

The Electronic Signature Act is mainly supplemented by Decree 2001-272 dated March 30, 2001.

France's implementation of the Directive closely follows the text of Directive 1999/93/EC. France has not adopted specific rules governing the contractual relationship between the parties who use digital signatures.

There are three types of electronic signature: 1) electronic signature, 2) secured electronic signature, 3) secured signature generated by a secure signature creation device (SSCD) and based on a qualified certificate.

The French Electronic Signature Act only refers to electronic signature generally. In order to be valid, the signature must be reliable. The Decree provides that in order to benefit from a presumption of reliability, the signature must be secured (a secured signature corresponds to the advanced signature within the meaning of the Directive), generated by a secure signature creation device (SSCD) and be based on a qualified certificate.

The Electronic Signature Act has an exact transposition of Article 5.1, letter a) of Directive 1999/93/EC. It results that a qualified signature satisfies the requirements of a signature in electronic form, in the same manner as a traditionally written signature satisfies those same requirements in relation to paper documents.

There are no specific issues regarding the transposition of the Directive in France.

There are service providers issuing qualified certificates in France. The most reputable is Keynectis. It is the first CSP that declared delivery of qualified certificates with the DCSSI (Direction centrale de la sécurité des systèmes d'information).

The Ministry the Economy has not reported concrete legal problems concerning use of electronic signatures. This might be due to a very limited use of electronic signatures in business so far.

The reason for the very limited use of e-signatures in businesses might be the efficient functioning of the rules of evidence in the commercial area, thus resulting in low incentive for investment in signature technology. In particular, the courts are free to determine if a contract in a business relationship has been entered into and electronic signature is not a precondition for the validity or authenticity of an electronic contract.

² Loi n°2000-230 du 13 mars 2000 portant adaptation du droit de la preuve aux technologies de l'information et relative à la signature électronique
<http://www.ssi.gouv.fr/fr/reglementation/loi2000-230.pdf>

³ <http://195.83.177.9/code/liste.phtml?lang=uk&c=22&r=478>

Alternative and widely used technologies such as Electronic Data Interchange ("EDI"), are still effective and prevalent among businesses. This minimises the requirement and demand for electronic signatures.

In contrast to the very modest use of electronic signatures in business relationships, electronic signatures are frequently used as an identification mechanism in business-to-government relations, in the context of bids. Calls for bids, issued by public authorities may be in electronic form and be certified by an electronic signature. The public authorities encourage businesses to submit bids in electronic form and to make use of electronic signature, through electronic certificates delivered by a service provider compliant with the requirements published by the French ministry of economy, finance and industry⁴.

The French government has called for more widespread use of electronic signatures in both business-to-business and business-to-government relations. A driver for use in businesses may be a mandatory government requirement for use of signatures when communicating with the public sector or when providing services to the public sector. However, no mandatory use of electronic signature has been included in French law.

Regarding identity cards, the adoption of an electronic identity card with embedded electronic signature is still being discussed and the Ministry of the Interior has indicated to us that no exact date has yet been set for its implementation, which could take place in 2008 or 2009.

2.2 Cross border regulatory issues

Qualified certificates have the same validity and legal recognition, regardless of their country of origin. In principle, qualified signatures from other Member States are therefore treated in the same way as qualified signatures originating from France.

On a more practical level, merchant websites only accept use of specific approved types of signatures. This is due to both technological and financial issues. To accept a specific type of signature and to correctly read and interpret the contents of the certificate, the receiving system has to be specifically configured. When accepting an electronic signature, validity must be checked with the issuing service provider. This may involve financial and contractual issues that have to be dealt with, if a clearing arrangement is not in place.

3. General elements of electronic contract law

Directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contracts has been implemented through Legislative Order No. 2001-741 of August 23, 2001.

Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees has been implemented in national law through Legislative Order No. 2005-136 of February 17, 2005. French law provides protection in line with the requirements of Article 2 of the Directive. French law contains a 2-year limitation period in which a professional seller, vis-à-vis a buyer acting as consumer, can be held liable for the non-conformity. But France has not transposed Article 5, section 2 of the Directive which provides that the buyer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such a lack of conformity.

⁴ www.finances.gouv.fr/dematerialisation_icp/dematerialisation_declar.htm

The obligations of Directive 1998/6/EC on Price Indications concerning correct and complete indication of selling price are met by French law and did not require specific implementation.

Directive 2000/31/EC on information society services, in particular electronic commerce, has been implemented into French law through the Trust in Digital Economy Act (Law No. 2004-575 of June 21, 2004), amplified by Legislative Order No. 2005-674 of June 16, 2005. Art. 5 and 6 of the Directive concerning information to be given prior to the completion of a contract was correctly implemented.

3.1 National legal and administrative practices

The regulatory framework for all contracts (including electronic ones) is based on Title III of the French Civil Code, which contains the basic principles of French contract law.

It can be derived from contract law that entering into a contract is not subject to formal requirements unless directly stated in a specific law. This principle has been recognised and accepted in numerous court decisions. A written document is not required, as such, to form a contract, which also means that electronic contracts are considered to be just as valid as a traditional paper contract.

There are no formal definitions of the concepts of offer/acceptance and contracts in French contract law. Both offers and acceptances are considered valid and binding for the submitting party if they "manifest" a will to be bound in accordance with the content of the manifestation and the manifestation creates an expectation by the receiver of the manifestation that the obligation is established. The requirement regarding the certainty of the manifested intent will vary according to a number of factors including, for instance, the contents of the expressed intent, custom, the status of the parties (consumer/business), etc.

A contractual obligation will, however, only be enforced by the courts if the party claiming the existence of the obligation can prove before the courts that the parties have actually entered into a valid agreement. The practical question of documentation (evidence) of what really is agreed is, accordingly, very important. The normal signature on a piece of paper is according to French case law considered a "seal" of the agreement reached between the contracting parties during previous negotiations. As such, the signed contract is "proof" of the contractual obligation.

If it can be shown before the court that a contract exists between the parties, it should be noted that the courts are free to interpret the contract and that the courts may "fill in" obligations if the contract is silent on the disputed point.

A contractual obligation may arise when the intent to be bound has been expressed, even though the parties to the contract have only agreed orally on the most essential elements of the contractual obligations. The same applies for if the contract is in an electronic format that carries the intent to be bound. In particular, a contract for sale (other than for real property) is valid and enforceable as soon as there is offer and acceptance on the thing to be sold and its price.

There has been no specific transposition of Art 9 (2) of Directive 2000/31/EC that excludes specific types of contracts to be entered into electronically. However, provisions of the French Civil Code within the field covered by Article 9

(2) require the use of written documents. For example, wills and testaments, as well as contracts for the sale of real property must be in writing.

3.1.1 Electronic invitation to make an offer and submission of an offer

As there are generally no formal requirements needed for the assumption of a contractual obligation, there is, similarly no legal requirement to use electronic signatures in the context of the conclusion of contracts. Some service providers use electronic signatures, however, as an extra security mechanism to prove that the contract has been accepted and entered into by the customer.

One of the core elements of French contract law is, as described above, that contractual obligations arise from the manifestation of an intent to be bound. This means, however, that it is difficult to determine if the goods and services that are offered by an enterprise (or private person) to the public through a homepage actually represent the necessary will to constitute binding offers. The determination of whether the goods or services presented on a webpage constitute an offer is governed by general principles of French contract law, derived from case law and not specific to electronic commerce.

But when an offer exists, Section 1369-4 of the French Civil Code provides that in the case of an offer made by a professional seller by way of electronic means, remains bound by said offer for as long as the offer is intentionally available in electronic format.

As early as 1999, French case law recognized that an offer of products for sale on a webpage could constitute an actual offer.⁵

⁵ CA Paris December 3, 1999 *Fragrance Counter v. Estee Lauder*, No. 1999/12186

3.1.2 *Electronic acceptance*

As a general principle, a contract is deemed to be entered into under French law once an offer to contract has been accepted by its recipient under the same terms and conditions as those of the offer.

The main problem pertaining to electronic acceptances under French law has been the question of when contracts are actually entered into. This problem has been quite often debated by French courts⁶, but it has now been solved with the implementation of Article 11 (2) of Directive 2000/31 in the French Trust in Digital Economy Act. The acceptance is considered to have reached the offeror when he or she has access to the acceptance.

Regarding the method for expressing acceptance, the French Civil Code provides that the offeree must issue its order and confirm it after having verified the details of such order.

3.1.2.1 Information obligations in relation to electronic contract conclusion

The legislation in France complies with the requirements laid down in Article 5 of Directive 2000/31/EC on electronic commerce, Articles 4 and 5 of Directive 97/7/EC on distance contracts, and Arts. 3, 4 and 5 of Directive 2002/65/EC on distance marketing of consumer financial services, regarding the information that must be given to the consumer before and after the order is placed. The French legislation does not specify stricter rules.

The French Consumer Protection Authority has indicated to us that enterprises are having problems with compliance with the information requirements. The requirement for extensive information to be given appears to overwhelm and distract the service providers, which results in a lack of compliance with applicable law. The French Consumer Protection Authority regularly observes violations of the law and sends violators reminders regarding applicable rules, which are generally effective for large companies, but remain mostly ineffective on smaller companies.

Since the enactment the French legislation transposing Directive 97/7/EC on distance contracts, websites have been required to inform online purchasers of their cooling-off rights. The French legislation does not require that the length of the cooling-off right be indicated, but legal scholars consider that since an obligation to inform purchasers of their right, it is not sufficient to indicate that such right exists without specifying the length during which the purchaser may cool off to possibly withdraw from the transaction.

France transposed the country of origin principle in Article 3(1) of Directive 2000/31. Section L. 211-18 of the French Consumer Code specifically states that:

⁶ See e.g., Cass. Civ. 1ere December 21, 1960, D. 1960, p. 417

“Regardless of the law applicable to the contract, a buyer having his habitual residence in a European community Member State cannot be deprived of the protection afforded him by the provisions introduced by that State pursuant to Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999, which have mandatory force:

- if the contract was entered into in the buyer's State of habitual residence;
- if the contract was preceded in that State by a special offer or advertising and acts carried out by the buyer which were necessary for the entering into of said contract;
- or if the contract was entered into in a State which the buyer had travelled to or visited in response to a proposal made directly or indirectly by the seller to encourage him to enter into such a contract.

Therefore, suppliers must comply with French legislation regardless of whether the services of the supplier are aimed towards France or other Member States.

In addition, it should be noted that the seller must provide the consumer with information about the language in which the contract is to be entered into.

3.1.2.2 Standard terms and unfair clauses

The uses of standard terms have given rise to different important questions in France. Firstly, the issue of whether standard terms can be considered an agreed part of the contract, and secondly, that of whether individual clauses of an unfair or otherwise burdensome nature in the standard terms are valid.

Standard terms are only considered a part of the contractual agreement, when they are (i) communicated to the buyer, upon the entering into the agreement, (ii) in an apparent and legible writing in order to draw the buyer's attention thereto and (iii) accepted by the buyer prior to entering into the agreement. Although acceptance is generally not inferred from silence, silence may constitute acceptance if the buyer knows the conditions because of prior dealings with the seller or because the buyer is in the same business as the seller. Under more frequent circumstances, the buyer is deemed to have accepted the seller's conditions when the buyer, having received the conditions, performs its obligations under the agreement without objecting to any of said conditions.

Standard terms sent with an invoice or order confirmation or made generally available on the webpage of the seller with direct connection to the actual sale will, as a general rule, not be considered part of the contractual agreement regardless of whether the contract is a business or a consumer contract. If the party purportedly bound by the standard terms knows that the terms will be applied (for instance from previous contracts) it is, however, likely that such previously agreed standard terms will be considered agreed. This would be true at least for B2B contracts.

Standard terms accepted by a point-and-click acceptance are generally considered agreed between the parties.

Regarding unclear clauses, the French Civil Code law provides that they are interpreted against the seller.

Abusive clauses are frequently identified and nullified in general terms and conditions. Recently, the Paris Civil Court found that 32 clauses included in the

general terms and conditions of an internet and unlimited telephone service provider were abusive and therefore invalid.⁷

3.1.3 Choice of law and forum

On June 19, 1980, France signed the Rome Convention on the law applicable to contractual obligations⁸.

France also signed the Brussels⁹ and Lugano Conventions¹⁰ on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters; Council Regulation (EC) No 44/2001¹¹, which replaces the Brussels and Lugano Conventions is applicable to France.

On August 27, 1981, France signed the United Nations Convention on the International Sale of Goods (CISG)¹²¹³.

Choice-of-law/forum selection is not considered as being a specific barrier for e-business in B2B transactions in France. The challenge for e-business in this area is the same as for traditional business relations.

According to Regulation No. 44/2001, defendants domiciled on the territory of a Member State must be sued before the courts of such state. However, when a defendant is not domiciled in a member state, the plaintiff may request that he or she benefit from a jurisdictional privilege.

Directive 2000/31/EC on electronic commerce is based on a country of origin principle, which provides that information society services are only required to comply with the requirements of the Member State in which the service provider is located.

For criminal and tortious liability, no international conventions are applicable. National French law must therefore be used in order to determine what law is applicable. The French Supreme Court uses the *lex loci delicti* principle to consider that applicable law is the law of the country where the criminal or tortious action took place.

3.2 Cross border regulatory issues

We have not located any specific court rulings on the use of electronic contracts in cross-border trade between enterprises. However, small-and medium-sized enterprises especially are more likely to be unaware of the specific legal status of electronic contracts agreed with trade partners from another Member State. This could be an obstacle to effective cross-border use of electronic contracts.

⁷ TGI Paris February 21, 2006 Association Familles de France v. SAS Free.

⁸ 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

⁹ 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters

¹⁰ 16 September 1988 Convention on jurisdiction and the enforcement of judgments in civil and commercial matters

¹¹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

¹² The Convention was implemented through Act no. 733 of 7 December 1988 on international sale of goods. The Act entered into force on 1 March 1990.

4. Electronic invoicing, payment and other matters related to performance of electronic contracts

4.1 National legislation and administrative practices

The legal and administrative framework for electronic invoices

Directive 2001/115 was implemented under French law by Decree No. 2003-659 relating to invoicing obligations with respect to VAT and amending Schedule III to the General Tax Code and Part 2 of the Tax Procedure Code. The legal treatment of electronic invoices in France resides in the tax rules provided for the purpose of taking into account the dematerialization of invoices. The French General Tax Code allows companies to exchange invoices in electronic format, and these invoices have the same evidentiary value as traditional paper invoices, including for purposes of the right to deduct VAT. The following electronic invoices are recognized as a matter of French tax law.

- Invoices sent by EDI or XML: when the invoice is in a structured format agreed upon between the parties, French tax law recognizes the electronic invoice, subject to:
 - the sending of a paper invoice in addition to the electronic transmission or
 - compliance with the following three conditions:
 - The seller and the recipient must keep the original electronic invoice in an electronic vault (in untamperable form), and
 - A daily list of invoices exchanged must be kept, and
 - A list of all parties with whom invoices are exchanged must be kept.
- Invoices that are sent in any format (e.g., Word, Excel, PDF, TIFF, JPEG...) and that are signed electronically through an advanced electronic signature as defined in Decree No. 2003-659 of July 18, 2003.

The obligation to pay for goods and services in B2B and B2C transactions does not differ from the obligation to pay in traditional off-line business relationships. According to French case law, unless provided otherwise, the buyer's obligation to pay the price results from the full performance of seller's obligation to deliver the goods or services purchased.¹⁴

Directive 2000/31/EC on electronic commerce allows prepayment of goods not yet delivered. French law applicable to e-commerce does not set forth any rules more protective of buyers. Prepayments are therefore allowed. It is, however, important in practice to have merchant sites effectively refund the prepaid amount in the event of impossibility to deliver or in the event that the buyer uses decides to withdraw from the transaction, for example during the cooling-off period. *Trusted Shops* offers buyers a warranty that their payment will be refunded upon exercise of their cooling-off related prerogatives.¹⁵

There has been no transposition of the non-exhaustive list of terms which may be regarded as unfair in the Annex to Directive 93/13/EC. Unfair terms, including unfair terms pertaining to payment, are covered by the general clauses on unfair terms in Section L. 132-1 *et seq.* of the French Consumer Code. The courts

¹⁴ Cass. Civ. 1ere November 19, 1996, JCP 1997 II 22862

¹⁵ <http://www.trustedshops.com>

may, as indicated under Section 1 above, modify or set aside a contract, in whole or in part, if it would be unreasonable or at variance with the principles of good faith to enforce it.

Means of payment and the obligation of the parties regarding the use of certain payment instruments

Section L. 132-4 of the French Monetary and Financial Code implemented Article 8 of Directive 1997/7/EC on distance contracts and Articles 7 and 8 of Directive 2002/65/EC concerning payment.

French law gives the consumer a high degree of safety in relation to online payment. The consumer is entitled to a full compensation if his payment card has been misused in an online purchase. This provision is in accordance with Article 8 of Directive 97/7/EC (for B2C contracts on goods) and Articles 7 and 8 of Directive 2002/65/EC (for contracts on financial services).

If a consumer uses a traditional bank transfer when ordering goods or services online, the consumer is not entitled to a refund from the payment issuer if the payee (e.g., the online vendor enterprise) fails to deliver as agreed.

No major practical problems in relation to online payment have been reported. In spite of clear legislative protection, some consumers however still feel reluctant to use their payment card online due to fear of misuse (particularly hacking).

4.1.1 Delivery of the good or provision of services ordered electronically and withdrawal period

4.1.1.1 Non-performance of the obligation to deliver and late delivery

The general non-performance and late delivery rules are contained in the French Civil Code. The regulation of B2B and B2C are, however, not identical.

In B2C transactions, where the price of the goods or services sold is at least 500 euros, Section L. 114-1 of the French Consumer Code provides that the seller must indicate the expected delivery date. The consumer may, within 60 days from the agreed delivery date, rescind a contract for the sale of goods or services by registered letter with return receipt requested in case of delay in the delivery exceeding 7 days and not caused by a *force majeure* event.

The contract is then deemed to be terminated upon receipt by the seller or service provider of the letter whereby the consumer indicates his or her decision to terminate the agreement, except if the delivery was effected or the service provided between the date the letter was sent and the date the letter was received by the seller.

Unless otherwise provided in the agreement, the buyer may, prior to the performance of the seller's obligation, withdraw from the transaction by abandoning the prepaid amounts. The seller may do the same by restituting twice the amount received from the consumer.

In B2B transactions, remedies are determined by the provisions of the French Civil Code and by the provisions of the agreement.

4.1.1.2 Right of withdrawal from the contract in B2C transactions and return of

the goods

See Section 4.1.1.1. above

4.1.1.3 Delivery of a good not in conformity with the contract

In accordance with the French Consumer Code, in which Directive 1999/44/EC was transposed, the seller must deliver goods to the consumer which are in conformity with the contract of sale.

In case of lack of conformity, the consumer is entitled to either have the goods brought into conformity free of charge, have the goods replaced (delivery of substitute goods), have an appropriate reduction made in the price or have the contract rescinded.

The consumer's rights as described above must be asserted within a 2-year period.

The French Consumer Protection Authority is empowered to investigate non-compliance cases but may not hear complaints.

If a dispute arises in connection with a cross-border transaction, the consumer is able to contact the French contact point of the Consumer Europe network¹⁶. Consumer Europe has a list of other contact points in Europe and a step-by-step guide on how to try and solve a dispute through mediation.

The procedure for complaints in cases of cross-border transactions is considered to be inadequate and ineffective. This is both due to lack of awareness of the possibilities for complaints, and the mental and practical barriers that exist when a consumer has to lodge a complaint with a foreign vendor in an unfamiliar language. There is no report on how the complaint system actually works.

4.2 Cross border regulatory issues

We found no court rulings on electronic invoicing or payment related to the enforcement of cross-border electronic contracts

It is difficult to make an assessment of the awareness in France regarding the enforcement options under Regulation 2560/2001, which provides that a money transfer from a French bank account to a bank account in another Member State benefits from the principle of equal charges between cross-border transactions and a strictly domestic transaction.

5. General assessment of national legislation and administrative practices in the fields of e-signatures, e-contracts and e-invoicing

5.1 Main legal and administrative barriers to e-business

The following main legal and administrative barriers to e-business in France have been identified:

¹⁶ <http://www.euroinfo-kehl.com/>

Uncertainty as to the legal effectiveness and recognition of e-business documents in domestic transactions

The French civil law tradition means that written legislation forms the most important source of law. The specific legal effectiveness and recognition of e-business documents in domestic transactions are regulated by a general rule in the French Civil Procedure Code, which provides that French courts are free in their assessment of evidence. Thus, court decisions represent an important source of law in the field of e-business. However, no court cases from Supreme Court or High Court have been identified in the field of e-signatures, e-contract conclusion and e-invoicing. This means that administrative bodies and enterprises are left uncertain about the exact legal status of electronic business documents.

Legal and administrative barriers to cross-border exchange of electronic signatures, electronic contracts and electronic invoices

The lack of an international standard in the area means that French public institutions only recognize certain issuers of electronic signature certificates. In order to receive an electronic signature certificate through several of such issuers, a corporate registration in France is required, which makes it impossible for an enterprise not registered in France to obtain a certificate recognized by French public institutions. A company intending to receive an electronic signature certificate will therefore have to obtain it from an issuer that does not require a corporate registration in France.

As regards electronic contracts, it seems reasonable to assume that small- and medium-sized enterprises are unaware of the specific legal status of electronic contracts agreed with trade partners from another Member State. This could be an obstacle to cross-border use of electronic contracts.

Compliance problems for online shops

The French Consumer Protection Authority indicates there are significant compliance problems in relation to online shops and online auctions, especially in connection with the requirements of Directive 2000/31/EC on Electronic Commerce and Directive 97/7/EC on Distance Contracts.

In the survey on online shops the Consumer Ombudsman cited a general lack of awareness among enterprises about the rules as a main cause of problems.

The legislation offers limited protection for smaller businesses in electronic commerce

While consumers are relatively well protected by the French legislation enterprises are offered a very low level of protection by the legislation based on the rationale that commerce between two companies is a transaction between equal partners. However, this may not be true in the case of small companies buying online.

5.2 Awareness of national authorities in charge of solving legal problems in e-business

The French Consumer Protection Authority (Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes)¹⁷ has indicated to us a lack of awareness among businesses in relation to the general

¹⁷ <http://www.minefi.gouv.fr/DGCCRF/>

legislation. This implies, in turn, that there could be a lack of awareness about national authorities in charge of solving legal problems in e-business.

In relation to consumer awareness, it could be supposed that the fact that many consumers remain reluctant to use credit cards for payment over the Internet despite the safeguards offered to them, can be taken as a sign of lack of awareness about national authorities in charge of solving legal problems in e-business.

5.3 Legal and administrative best practices in e-business

The following legal and administrative best practices in France are:

Committee on the legal aspects of electronic signatures

The French Information System Safety Authority has established two committees: a temporary Committee on protection profiles regarding applications for the creation of electronic signatures and for the creation of electronic signatures. However, the committees thus established are not assigned any reflection on the legal aspects of electronic signatures.

The legal and administrative framework for electronic invoices

The legal treatment of electronic invoices in France resides in the tax rules provided for the purpose of taking into account the dematerialization of invoices. The French General Tax Code allows companies to exchange invoices in electronic format—and these invoices have the same evidentiary value as traditional paper invoices, including for purposes of the right to deduct VAT. The following electronic invoices are recognized as a matter of French tax law.

- Invoices sent by EDI or XML: when the invoice is in a structured format agreed upon between the parties, French tax law recognizes the electronic invoice, subject to:
 - the sending of a paper invoice in addition to the electronic transmission or
 - compliance with the following three conditions:
 - The seller and the recipient must keep the original electronic invoice in an electronic vault (in untamperable form), and
 - A daily list of invoices exchanged must be kept, and
 - A list of all parties with whom invoices are exchanged must be kept.
- Invoices that are sent in any format (e.g., Word, Excel, PDF, TIFF, JPEG...) and that are signed electronically through an advanced electronic signature as defined in Decree No. 2003-659 of July 18, 2003.

ANNEX 1: E-business national legislation

Law No. 2000-230 dated March 13, 2000¹⁸ regarding the adapting of evidence law to information technologies and related to electronic signature

Legislative Order No. 2001-741 dated August 23, 2001¹⁹

Law No. 2004-575 dated June 21, 2004²⁰ regarding trust in digital economy

Law No. 2004-801 dated August 6, 2004²¹ related to the protection of individuals from personal data treatment and amending law No. 78-17 of January 6, 1978 related to information technology, files and liberties

Legislative Order No. 2005-136 dated February 17, 2005²² regarding the warranty of conformity of goods

Legislative Order No. 2005-674 dated June 16, 2005 regarding the accomplishment of certain contractual formalities by electronic means

Decree No. 2001-272 dated March 30, 2001²³ regarding the implementation of Section 1316-4 of the Civil Code and related to electronic signature

Decree No. 2002-535 dated April 18, 2002²⁴ regarding the evaluation and the certification of the safety offered by products and information technology systems

Decree n°2003-659 dated July 18, 2003²⁵

Departmental order dated July 26, 2004²⁶ regarding the recognition of the qualification of electronic certification service providers and the accreditation of the organizations evaluating said service providers

¹⁸ Loi portant adaptation du droit de la preuve aux technologies de l'information et relative à la signature électronique

<http://www.ssi.gouv.fr/fr/reglementation/loi2000-230.pdf>

¹⁹ Ordonnance portant transposition de directives communautaires et adaptation au droit communautaire en matière de droit de la consommation

<http://admi.net/jo/20010825/ECOX0100083R.html>

²⁰ Loi pour la confiance dans l'économie numérique

<http://www.ssi.gouv.fr/fr/reglementation/loi2004-575.pdf>

²¹ Loi relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel et modifiant la loi n°78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés

<http://www.ssi.gouv.fr/fr/reglementation/loi2004-801.pdf>

²² Ordonnance relative à la garantie de la conformité du bien au contrat due par le vendeur au consommateur

<http://admi.net/jo/20050218/JUSX0500005R.html>

²³ Décret pris pour l'application de l'article 1316-4 du code civil et relatif à la signature électronique

<http://www.ssi.gouv.fr/fr/reglementation/decret2001-272.html>

²⁴ Décret relatif à l'évaluation et à la certification de la sécurité offerte par les produits et les systèmes des technologies de l'information

<http://www.ssi.gouv.fr/fr/reglementation/decret2002-535.html>

²⁵ Décret n°2003-659 du 18 juillet 2003 relatif aux obligations de facturation en matière de taxe sur la valeur ajoutée et modifiant l'annexe III au code général des impôts et la deuxième partie du livre des procédures fiscales.

²⁶ Arrêté du 26 juillet 2004 relatif à la reconnaissance de la qualification des prestataires de services de certification électronique et à l'accréditation des organismes qui procèdent à leur évaluation

<http://www.ssi.gouv.fr/fr/reglementation/arr26072004.pdf>