The Conflict-of-Laws Provision in the French Influencer Legislation

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Certain EU Member States have enacted special rules governing the activities of content creators and influencers. In this context, the French legislature passed Law No. 2023-451 on June 9, 2023, aimed at regulating influencer marketing and addressing potential misconduct by influencers on social media platforms (1). Article 8, I, of Law No. 2023-451 requires that contracts between influencers and (influencer marketing) agents or advertisers, or their representatives, must be made in writing and include a specified set of clauses; failure to comply results in the contract being null.

One such clause mandates '[t]he submission of the contract to French law, notably to the Consumer Code, the Intellectual Property Code, and the present Law, when said contract has as its object or effect the implementation of influencer marketing activities through electronic means targeting notably an audience established on French territory' (Article 8, I, 5°, Law No. 2023-451). Scholars have highlighted the 'innovative' nature of the mechanism set forth in Article 8, I, 5°, Law No. 2023-451 and its resemblance to the (more established) concept of overriding mandatory provisions (2).

(1) LOI n° 2023-451 du 9 juin 2023 visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux

(2) See Sandrine Clavel, Fabienne Jault-Seseke, Droit international privé, Recueil Dalloz 2024, 987, accessed online at Dalloz.fr; see also Ermanno Calzolaio, L'attività pubblicitaria dell'influencer nel diritto francese (Loi n. 451 del 9 giugno 2023), Il Diritto dell'Informazione e dell'Informatica, 2023, no. 6, p. 909, accessed online at Dejure.it).