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The 2018-2022 French Programming Act for Justice recently adopted specific provisions relating to online arbitration, in an attempt to decongest French Courts facing increasing caseloads. This important step towards virtual dispute resolution provides valuable answers to many of the issues raised by the upcoming of LegalTech players in the realm of dispute resolution.

Three main points are worth noting: the prohibition of entirely automated decision-making (1.) ; the requirement for data protection and confidentiality (2.) ; and certification of online arbitration as a guarantee for litigants (3.).

## **1. Prohibition of entirely automated decision-making**

In response to the much debated issue of whether robots would ever replace judges, the French Programming Act provides an answer through the regulation of online arbitration: it forbids entirely automated decision-making, thus unsurprisingly endorsing the broader philosophical conception that justice can only be human-made. However, the Act remains unclear as regards the exact extent and role of artificial intelligence tools and use of algorithms in the arbitral process.

## **2. Data protection and confidentiality throughout the arbitration process**

The Programming Act makes clear that data protection must be ensured, which is evidently a reference to the General Data Protection Regulation (GDPR). In addition, unless litigants agree otherwise, confidentiality must be guaranteed, especially in light of the increased risk of hacking as the sharing of data is dematerialized. To that end, the Programming Act notes that criminal liability up to one year of imprisonment and a fine of €15,000 can be incurred for a breach of confidentiality, as per article 226-13 of the French Criminal Code.

## **3. Certification of online arbitration as a guarantee for litigants**

One of the most interesting features of the Programming Act is the certification of online arbitration, in order to provide litigants with guarantees at the outset of the arbitration. Although the specific conditions and circumstances for the grant and withdrawal of certification are expected to be issued on the 1st of September 2019, the Programming Act provides useful guidelines. Online arbitration centers must:

1. Comply with data protection and unless agreed otherwise, ensure confidentiality.
2. Provide detailed information on the conduct of the arbitration proceedings.
3. Ensure that the arbitration is not an entirely automated process and where an automated process is used, the Parties must expressly adhere to it.
4. Upon request, the Parties must be granted access to the main characteristics of the automated process.

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