

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for February 2024.

Please note that French legal concepts are translated into English for information only and not as legal advice. The concepts expressed in English may not exactly reflect or correspond to similar concepts existing under the laws of the jurisdictions of the readers.

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- **Audio-visual**

France – Publication of the law guaranteeing children's image rights

On February 20, 2024, the [regulation n°2024-120 on children's image rights](#) has been published. Following the "Child Influencer" regulation adopted in 2020, this law completes the provisions of the French Civil Code to reinforce the protection of children's image rights on the Internet. In particular, it implements new protection mechanisms when the publication of children's images violates their dignity.

The main measures are:

- Introduction of the notion of the child's privacy into the definition of parental authority (Article 371-1 of the French Civil Code);
- Insertion of the principle of joint exercise of children's image rights by parents. The law also integrates children into the exercise of their right to image, in that parents get involved with children, according to their age and degree of maturity, in exercising their right to image (Article 372-1 of the French Civil Code);
- Enshrinement of the family court's right to prohibit a parent from disseminating child-related content without the other parent's consent (Article 373-2-6 of the French Civil Code).;
- The possibility for a private individual; a family member; or an institution or departmental child welfare service that has taken in a child, to apply to the family court judge for delegation of the right to the child's image (Article 377 of the French Civil Code);
- The possibility for the Commission Nationale de l'informatique et des libertés (CNIL) to apply to the interim relief judge for any useful measure in the event of failure to comply with or respond to a request for the deletion of personal data (Article 21 of law no. 78-17 of January 6, 1978 on data processing, data files and individual liberties).

France - Bill to support the film industry in France

On February 14, 2024, the Senate passed the first reading of a [bill designed to bolster the French film industry](#). The legislator wants to simplify certain measures to enable cinemas to adapt to new ways of consuming cultural products.

At this stage of the discussions, the Senate has adopted the proposal to simplify the approval procedures for unlimited cinema passes, which are currently subject to the systematic approval by the Centre National du Cinéma (CNC). The senators also agreed to allow cinemas to offer promotional rates to exhibitors, notably on online ticket prices. However, the benefit of these provisions would be conditional on producers respecting a minimum remuneration for authors, to ensure a balance between all players in the sector.

In the coming weeks, the French National Assembly will examine the text.

Authored by Iris Accary and Anaïs Le Coq

- **Commercial**

European Union – Entry into force of the Digital Services Act for all regulated entities

On 17 February 2024, the Digital Services Act (hereinafter "**DSA**") came into force for all “intermediary service providers” accessible within the EU. The text has already been applicable since 25 August 2023 for very large online platforms (hereinafter “**VLOPs**”) and very large online search engines (hereinafter “**VLOSEs**”), which have more than 45 million monthly active users in the EU and that have been designated by the Commission. From now on, all regulated entities must comply with the text.

The DSA, amending Directive 2000/31/CE of 8 June 2000 on electronic commerce, pursues several objectives. The text aims to establish a secure and transparent online environment that safeguards fundamental rights and to define more clearly the responsibility for intermediaries .

The main provisions of the text are as follows:

- **Liability of intermediaries:** the absence of a general obligation to monitor is maintained, but the conditions under which intermediaries become liable for illegal content are specified.
- **Due diligence obligations for all intermediaries:** all intermediaries are subject to common due diligence obligations under the DSA (designation of a point of contact and a legal representative, transparency in the general terms and conditions, publishing of annual transparency reports).

- **Additional obligations for hosting service providers:** hosting service providers must put in place an easy-to-access and easy-to-use mechanism enabling users to electronically notify illegal content and report suspected criminal offences to the competent authorities.
- **Additional obligations for online platforms:** the new rules for online platforms include implementing an internal complaint handling system, the prohibition of dark patterns, ensuring advertising transparency and protection of minors online. Online marketplaces must also oversee the professionals offering their services via their interface.
- **Additional obligations for VLOPs and VLOSEs:** VLOPs and VLOSEs are required to assess and mitigate systemic risks. They must also offer a non-profiling option for their recommendation system, provide users with an advertising repository, undergo independent audits at their own expense and set up an independent compliance monitoring functions.

Supervision of the DSA is divided between digital service coordinators, responsible for supervising intermediaries in each Member State, and the Commission, responsible for supervising VLOPs and VLOSEs. Failure to comply with the DSA may result in fines of up to 6% of worldwide annual turnover for the previous financial year. In addition to these penalties, VLOPs and VLOSEs may be ordered to pay periodic penalty payment and, in the most serious cases, users' access to the service may be suspended.

Authored by Sihem Hassani and Camille Schu

- **Corporate**

European Union – CS3D: an EU Council vote to endorse the text after some compromise

On [15 March 2024](#), the EU Council eventually voted to endorse the proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence (CS3D), aiming to impose on certain companies operating in the EU the incorporation of human rights and environmental due diligence into their management system. This was the culmination of more than two years of highly controversial discussions starting with two negative opinions from the EU Regulatory Scrutiny Board.

The most significant concession made concerns the scope of the CS3D and a number of changes (see *art. 2, 3 recitals (a) and (g), 15, 22 and 29(1)*) were made to achieve this consensus:

- An increase in the thresholds and a broadening of the exclusions: European companies with more than 1,000 employees (instead of 500) and a worldwide net turnover of more than €450 million (instead of €150 million), as well as companies from third countries with a net turnover in the European Union of more than €450 million;
- The removal of the category of high-risk business sectors;

- The exemption of the parent company where its main activity is the holding of shares in its operating subsidiaries, provided that it does not take part in management, operational or financial decisions concerning the group or its subsidiaries;
- The limitation of the downstream part of the definition of “Chain of Activities” by deleting the references to the disposal of the product, and by limiting it to business partners who carry out activities for the company or on behalf of the company;
- The removal of the obligation for companies above a certain threshold to promote the implementation of the plan including through financial incentives ;
- Regarding the civil liability of companies, the main elements have been maintained as regards the conditions that have to be met for a company to be held liable. Several elements on access to justice have been included;
- The introduction of a staged approach based on the size of the company, allowing a progressive application of the Directive;
- The removal of directors' duty of care.

The new compromise text was voted today, 19 March, by the JURI Committee so that it can be adopted at the last plenary session of the European Parliament scheduled in April 2024, i.e. before the European parliamentary elections in June.

See also: [Last but not least, the EU Council voted to endorse the CS3D](#)

Authored by L.-N. Ricard

- **Environment**

France – Order approving decision no. 2023-DC-0770 of the Nuclear Safety Authority of November 7, 2023 amending decision no. 2017-DC-0616 of the Nuclear Safety Authority of November 30, 2017 on significant modifications to basic nuclear installations.

The ministerial [order of February 9, 2024](#) approving decision no. 2023-DC-0770 of the Nuclear Safety Authority (*Autorité de sûreté nucléaire*) of November 9, 2023 amending decision no. 2017-DC-0616 of the Nuclear Safety Authority of November 30, 2017 on significant modifications to basic nuclear installations was published in the Official Journal on February 25, 2024 (the “**Order**”).

As a reminder, by decision no. 2017-DC-0616 of November 30, 2017, the Nuclear Safety Authority (the “**ASN**”) clarified the general rules applicable to significant modifications to basic nuclear installations (the “**INB**”) implemented after the authorisation for commissioning and set the list of significant modifications subject to declaration to the ASN.

By decision no. 2023-DC-0770 of November 7, 2023 (the “**Decision**”), the ASN amended certain criteria of this decision, in particular to take into account feedback from its implementation. Specifically, the modifications made by the Decision (and approved at ministerial level by the Order) are as follows:

- an adjustment of the declaration criteria applicable to commissioned INBs;
- a definition of the provisions applicable to modifications to INBs under construction as well as those relating to modifications subject to declaration during construction;
- an improvement of traceability of modifications subject to declaration prior to commissioning of an INB;
- a distinction between modifications to INBs under construction, which require authorisation from the ASN before implementation, and those impacting protected interests only after full or partial commissioning of the INB, which may be subject to declaration and examination by the ASN as part of the review of the authorisation application.

The Decision will come into force as of January the 1st, 2025. However, Article 3 of the Order stipulates that the operator may apply it earlier for all significant modifications, or possibly for a restricted category that it identifies, subject to informing the ASN seven days in advance.

Authored by Laure Nguyen, Julie Paladian and Dicle Yildirim.

- **Intellectual Property**

France – Signing of a memorandum between INPI and Qatar's Ministry of Commerce and Industry (MOCI).

On February 28, 2024, on the occasion of the France-Qatar Forum, the Institut Nationale de la Propriété Industrielle (INPI) and the Ministry of Commerce and Industry (MOCI) of Qatar signed a new [memorandum to provide a framework for cooperation between the two organizations in the field of intellectual property](#).

INPI is thus continuing to strengthen its cooperation with many Gulf countries, promoting economic relations and innovation between them. As a reminder, last January, the INPI had already signed an agreement with Saudi Arabia to accelerate patent prosecution (Patent Prosecution Highway).

Europe - Reduction in European patent filing fees for micro entities.

In two communications dated 25 and 31 January, the European Patent Office (EPO) issued two [press release](#) detailing new patent fee reduction measures for small entities.

From April 1st 2024, micro entities will be eligible for a 30% reduction on all major patent granting fees, provided they have filed fewer than five applications in the last five years. By proposing this type of measure, the EPO aims to support innovation by offering an incentive system to innovative micro entities.

EPO - Acceleration of opposition proceedings in the event of parallel action before a court.

The European Patent Office (EPO) has published a [news report](#) setting out the measures that will be applied to accelerate opposition proceedings when informed of parallel infringement or invalidity proceedings relating to the patent in opposition, before the Unified Patent Jurisdiction (JUB) or a national court.

In this way, the EPO wishes to ensure quality and unity in the European patent system, following on from the entry into force of the JUB. The acceleration of proceedings will depend on when the EPO is informed of a parallel action. Where appropriate, the parties will also have a shorter period in which to respond to the EPO's requests.

EUIPO - Amendment to the rules of procedure before the Board of Appeal

As of March 1, 2024, the [revised rules](#) of the Board of Appeal of the European Intellectual Property Office (EUIPO) will come into force. These amendments harmonize all the procedural rules currently in force and clarify the various procedures before the Board of Appeal. In particular, the new regulations modify the methods for calculating and extending procedural time limits, and include new rules on alternative dispute resolution. EUIPO is thus committed to promoting amicable settlements between parties.

Authored by Iris Accary and Anaïs Le Coq

- **Public Law**

France – Public procurement: new decree on goods made from reuse, from reemployment or incorporating recycled materials

[Decree n°2024-134](#) of 21 February 2024 regarding the obligation for public authorities to purchase goods made from reused or recycled materials and the ban on the purchase by the State of single-use plastic products, published in the OJRF dated 23 February 2024, replaces the existing decree on these subjects (decree n°2021-254). The decree was issued in application of article 58 of the anti-waste law for a circular economy, which, as a reminder, requires that, from 2021 onwards, a certain proportion (between 20% and 100%) of goods purchased by the State, and local authorities and their groupings must be reused or made from recycled materials.

The appendix to the decree amends the list of product categories covered and, for each of them, the minimum proportions that must be purchased, as a percentage of the annual amount (excluding taxes) of the expenditure devoted to the purchase of each product category per calendar year.

It specifies that these goods may be acquired by means of public procurement contracts or donations offered on the platform donations of movable property of public bodies. It also sets out a multi-year progression of these percentages up to 2030.

These purchases must be declared on the national open data portal.

In addition, the decree adds a possible exemption to the ban on the purchase of single-use plastic products by the State, namely when their use is necessary for health or safety reasons.

Two decrees dated 29 February 2024, published in the OJRF dated 7 March 2024, set out these obligations: [one](#) sets out the list of products concerned in each category, specifying which have been added compared with 2021, and [the other](#) sets out the flat-rate value scale for counting purchases of donations.

The decree will come into force on 1st July 2024.

Authored by Bruno Cantier and Astrid Layrisse

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