

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 October 2023.

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– Corporate

France – 2024 Finance Bill: new measures to support start-ups

Echoing the French President's announcement to extend the Jeunes Entreprises Innovantes (JEI) scheme (or Young Innovative Company status) [created in 2004](#), a number of amendments submitted as part of the Finance Bill for 2024 adopted by the National Assembly on 9 November have been included to help start-ups hire, finance and improve their cash flow. The Young Innovative Company status allows eligible companies to benefit from a variety of tax exemptions. The text, which still needs to be examined by the Senate, include the following measures:

- Lowering the threshold for spending on research and development under the Jeunes Entreprises Innovantes (JEI)'s scheme to 10% from the current 15% ([amendment no. I-CF2553](#));
- Creation of a new category of young innovation and growth companies (JEIC) for those carrying out between 5% and 10% of R&D expenditure, but with the added criterion of being capable of strong growth from January 1st 2025 ([amendment no. I-CF2554](#));
- Creation of a new category of young disruptive innovation companies (JEIR) for those devoting R&D expenditure representing at least 30% of costs from January 1st 2025 ([amendment no. I-CF2555](#)).

Authored by L.-N. Ricard

– **Environment**

France - Enactment of the Green Industry Act

[Law no. 2023-973 of October, 23 2023](#) on green industry was published in the Official Journal on October, 24 2023 (J.O no. 0247 of October, 24 2023) (the "**Law**").

As stated in the press release issued by the Council of Ministers on the occasion of the presentation of the Law, the aim is to accelerate reindustrialization and reduce the climate and environmental impact of industry. This twofold objective is based on the following three pillars: (i) facilitating and accelerating the establishment of industrial sites and rehabilitating brownfield sites, (ii) financing green industry and (iii) greening public procurement.

The main provisions of the Law, which are designed to facilitate and accelerate the establishment of industrial sites and rehabilitate brownfield sites, are as follows:

- Speeding up and simplifying the environmental authorization procedure to make it easier to set up new facilities in France. Specifically:
 - The public consultation phase will take place at the same time as the application is examined by the competent authority and by the environmental authority, rather than afterwards. This simplification is complemented by an increase in the resources of the competent authority responsible for examining the applications. The aim of this simplification is to reduce the time taken to set up new classified facilities for the protection of the environment from the current average of 17 months to 9 months,
 - In areas where several development projects are likely to be referred to the National Public Debate Commission ("*Commission Nationale du Débat Public*") within the next eight years, it will be possible to organize a global public debate or a global preliminary consultation (for all those projects). The projects concerned are in particular those costing more than 600M€;
- The introduction of an exceptional procedure for industrial projects of major national interest (PIINM), identified by decree, namely projects which, given their purpose and scale, are of particular importance for the ecological transition or national sovereignty. Specifically:
 - electricity connection procedures will be accelerated,
 - building permit applications will be issued by the State rather than by local authorities (local authorities, and in particular the municipalities in which the projects are located, will nevertheless be involved in these projects from the outset, and will be required to give their consent prior to the compatibility of planning documents),
 - It will be easier to obtain protected species exemptions if there is a compelling reason of overriding public interest (RIIPM);

- The introduction of a presumption of overriding public interest in the case of applications for protected species exemptions for :
 - industrial projects classified as projects of major national interest (PIINM),
 - industrial projects subject to a declaration of public interest,
 - industrial projects consisting of "the establishment of an industrial facility for the manufacture, assembly or recycling of products or equipment, including small and medium-sized enterprises, which participate in the value chains of activities in the sectors of technologies conducive to sustainable development". The concept of "technologies conducive to sustainable development" will be defined by decree in the Council of State;
- The improvement of the third-party procedure. Provided for by [law no. 2014-366 of March, 24 2014](#) (known as the "ALUR" law), the third-party procedure allows responsibility for site rehabilitation to be transferred to a substituted third party (the "third party applicant"). The Law makes the following improvements:
 - the procedure can now be anticipated: a third-party applicant can apply in advance to the Prefect, with the agreement of the operator, for authorisation to replace the operator in the event of future cessation of activity,
 - the third party applicant can also carry out all or part of the site's safety measures and not just its rehabilitation;
- Strengthening of the Prefect's powers who may now give the operator formal notice shut down permanently part of a classified facility for the protection of the environment if it remains idle for three consecutive years;
- Tougher administrative penalties under article L. 171-7 of the French Environmental Code for unauthorized operation of a classified facility for the protection of the environment;
- Facilitating the removal of waste status as part of the development of the circular economy. The Law stipulates that "a substance or object produced in a production facility that uses all or part of waste as a raw material shall not have the status of waste" if the substance or object is similar to the substance or object that would have been produced without using waste. However, this removal of waste status is subject to all of the following conditions being met: (i) the substance or object is used for a specific purpose, (ii) there is a demand for such a substance or object or there is a market for it, (iii) the substance or object complies with the technical requirements for the specific purpose and the legislation and standards applicable to products and (iv) its use will not have an overall harmful effect on the environment or human health;

Lastly, the Law gives car park managers an additional 18 months to comply with the obligation to equip car parks with photovoltaic shades, as set out in article 40 of [law no. 2023-175 of March, 10 2023](#) *on the acceleration and production of renewable energies*.

Authored by Laure Nguyen and Julie Paladian

- **Finance**

France – Reform on security interests (update)

Pursuant to the provisions of [decree n°2023-916 of 3 October 2023](#), certain articles relating to the fees paid to commercial court clerks for registering, amending or deleting entries in the security over moveable assets register (*registre des sûretés mobilières*) have been amended and a [decree n°2023-921 of 5 October 2023](#) on the registration of ships and maritime mortgages has been published.

In addition, several orders ([order of 23 October 2023 relating to pledges without dispossession and pledges over shares](#), [order of 23 October 2023 relating to going concerns and register as a creditor \(L. 141-22 of the Commercial code\)](#), [order of 23 October 2023 relating to inalienability measures decided by court \(L. 626-14 and L. 642-10 of the Commercial code\)](#) et [order of 23 October 2023 relating to sale and lease back transactions and publicity on certain goods \(L. 624-10 of the Commercial code\)](#)) provide for the forms (*bordereaux*) that have to be used for establishing initial registration, amending registration, renewing registration or cancelling registration of published security interests (e.g. pledges over shares, pledges over going concerns, etc.) in the security over moveable assets register (*registre des sûretés mobilières*).

Authored by Charlotte Bonsch

- **Intellectual Property**

European Union – On 9 October 2023, the Council of the European Union adopted [Regulation \(EU\) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products](#), thereby amending Regulations (EU) 2017/1001 and (EU) 2019/1753. This Regulation was published on 27 October 2023.

With the aim of harmonising the various national protection systems, this Regulation enables products such as lace, glass, natural stone or porcelain that enjoy a local reputation or have certain qualities due to the geographical area in which they are produced to benefit from European protection, which until now has been reserved for agricultural products (food and drink).

Authored by Anna Revidi and Emie Paganon

- **Public Law**

France – Green Industry Act: provisions to make public procurement greener

[Law no. 2023-973 of 23 October 2023 on green industry](#), published on 24 October 2023 in the Official Journal of the French Republic, aims to make France the green industry leader in Europe. As part of this, it continues greening public procurement.

First of all, the law improves the way in which environmental criteria are taken into account in public procurement. For example, the obligation to adopt a scheme to promote socially and economically responsible public procurement ("SPASER") has been extended to all purchasers subject to the Public Procurement Code. Besides, purchasers may pool their efforts to draw up a SPASER. In addition, the legal definition of the most economically advantageous tender has been extended. From now on, in addition to cost or price, the assessment of the bid may take account of "*one or more other criteria including qualitative, environmental or social aspects*". From 22 August 2026, at least one of the criteria will have to take account of the environmental characteristics of the bid. Lastly, two new grounds for exclusion from a public procurement procedure have been created: the case of a company that does not meet its obligation to draw up a balance sheet of its greenhouse gas emissions and the case of a company that does not publish the information required in terms of sustainability by [Directive \(EU\) 2022/2464 of 14 December 2022](#).

Secondly, the law amends certain provisions of the Public Procurement Code applicable to contracting entities. They may derogate from the principle of allotment where there is a risk of an unsuccessful procedure and from the eight-year duration of framework agreements where there is a risk of a restriction of competition or an unsuccessful procedure. In addition, contracting entities may authorise economic operators to submit bids which vary according to the number of lots likely to be awarded for contracts meeting a need with a value equal to or greater than a threshold set later by regulation.

France – Publication of the 2023 version of the Guide on prices in public procurement contracts

The *DAJ* has published an updated version of the "[Guide on prices in public procurement contracts](#)", ten years after the publication of the first version. Drawn up as part of the Economic Observatory of Public Procurement ("*Observatoire économique de la commande publique*"), this guide is a tool bringing together the regulations, case law and best practices applicable to pricing issues in public procurement. This new version takes account of changes in public procurement law. It covers the new possibilities for amending contracts during performance, analysis of the methods for scoring the price criterion, the review clause, the valuation of energy saving certificates, etc.

European Union – Mandatory use of eForms

The forty standard forms for the publication of notices in the field of public procurement, resulting from [Implementing Regulation 2019/1780/EU of 23 September 2019](#), known as eForms, were to be compulsorily used from 25 October 2023.

However, for purchasers who do not yet have the necessary tools to publish eForms in the Official Journal of the European Union, the *DAJ* has obtained that the Publication Office of the European Union accepts the use of the current forms, resulting from [Implementing Regulation \(EU\) 2015/1986 of 11 November 2015](#), until the end of January 2024.

European Union – Returned goods and equipment acquired by the public service delegation contract’s holder prior to signature

In a [judgment of 5 October 2023, no. 24300/20](#), the European Court of Human Rights ruled that the application of the reversion of assets rule (*règle des biens de retour*) to equipment acquired by the public service delegation contract’s holder prior to the signing of the public service concession agreement does not violate Article 1 of Protocol No. 1 to the European Convention on Human Rights.

It follows the ruling [Conseil d'Etat, 29 June 2018, no. 402251](#), in which the judge considered that the reversion of assets rule applies "*when the administration's co-contractor was, prior to the award of the public service concession, the owner of property that it has, by agreeing to enter into the agreement, assigned to the operation of the public service and which is necessary for it*".

Authored by Bruno Cantier, Astrid Layrisse and Aurélie Toujas

- **Telecom**

European Union – The Digital Networks Act

On 10 October 2023, the European commissioner for International market, Thierry Breton from the EU Commission, announced his intention to work on a new project: **the Digital Networks Act, (DNA)** which would redefine the DNA of telecoms regulation. After having defined new obligations for online platforms, services and products (DSA, DMA, AI Act) and rules to unlock the data economy (Data Act), the European Commissioner now wants to work on the regulatory framework for European telecoms operators.

The Commission published on 10 October 2023 an exploratory consultation on the future of the electronic communications sector and its infrastructures. The aim of the exploratory consultation was to gather data and opinions on the evolution of telecommunications technologies and the telecommunications market.

The results of this consultation enabled the European commissioner for International market to conclude that there was a real need to work on a new European regulatory framework for telecom operators called the “**Digital Networks Act**”.

The DNA should focus on 3 main issues:

- **Firstly**, moving towards a single telecommunications market. The consultation highlighted the fact that the current EU telecom market is too fragmented.

On the one hand, the DNA should make it possible to **simplify** regulation, by removing sector-specific regulation for example, by simplifying administrative formalities in order to rapidly deploy harmonized networks, or even by improving spectrum management. On the other hand, the DNA should **facilitate** cross-border operations and the creation of true pan-European infrastructure operators. The DNA should remove barriers related to the deployment of core networks and network slices and touch on the issue of market consolidation.

- **Secondly**, The DNA should also address the **issues of investment and innovation**.

The DNA is also designed to **attract** more capital, particularly private capital, to the telecoms sector. However, the idea of the major platforms contributing to the financing of telecom infrastructures does not seem to be an objective pursued in the DNA project.

- And **thirdly**, telecom operators have identified a real lack of resources for securing networks, particularly critical infrastructure. In particular, the EU Commission wishes to improve network security in the areas of spectrum and submarine cables.

Authored by Gabriel Lecordier and Clara Mazannek

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