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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 June 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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- **Capital Markets**

France – Amendments to the general regulation of the French Autorité des Marchés Financiers (AMF)

Pursuant to order dated 27 June 2024, the General Regulation of the AMF has been amended.

The purpose of the amendments to Article 422-36 of the General Regulation of the AMF is to indicate that the information mentioned in Article 11 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector must be included in the report of the board of directors or management board of the SICAV or portfolio management company on the management of the FCP or, if not included in said report, within what timeframe this information must be communicated.

France – Modernization of the regime applicable to Alternative Investment Funds (AIFs)

Ordinance n°2024-662 of 3 July 2024 is intended to enable the Paris market to seize the opportunity offered by European long-term investment funds (ELTIF) known as " ELTIF 2. 0" (resulting from Regulation 2023/606 of 15 March 2023) by modernizing the French asset management framework, and in particular (i) chapter I contains measures to modernize so-called "professional" AIFs, (ii) chapter II contains measures to adapt the rules applicable to so-called "non-professional" AIFs to ensure their complementarity with the so-called "professional" funds (i.e. ELTIF 2. 0) and (iii) chapter III will enable employee savings funds to invest in ELTIF 2.0 by referring these rules at the regulatory level.

Authored by Charlotte Bonsch

- **Corporate**

France – INPI: access to company beneficial owner data restricted to persons with a legitimate interest

Access to the register of beneficial owners had been opened to the general public without any conditions (*Ord. n°2020-115, 12 Feb. 2020*), in application of the 5th anti-money laundering directive (*dir. (EU) 2018/843*).

Previously, only the company itself, a certain number of authorities (judicial authorities, tax authorities, etc.) and persons subject to anti-money laundering requirements (banks, insurance companies, etc.) had access to the register. Any other person had to ' *justify a legitimate interest and be authorised by the judge (...)* "(*Ord. 2016-1635, 1st Dec. 2016*).

Following the publication online on the INPI website of its general conditions of use applicable to accounts allowing access to data relating to beneficial owners for persons with a legitimate interest in force as of July 2024, the institution emphasises in the preamble that ' *persons with a legitimate interest in accessing information on beneficial owners and who identify themselves as belonging to one of the categories indicated in the access request form* " are now provided with " *information relating to beneficial owners in accordance with the operative part of the judgment of the CJEU of 22 November 2022 (Cases. C-37/20 and C-601/20) and Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on mechanisms to be put in place by Member States to prevent the use of the financial system for the purpose of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849* '.

Making access to the register of beneficial owners conditional on the justification of a 'legitimate interest', combined with the reference to the CJEU's decision invalidating the provision of the 5th Anti-Money Laundering Directive providing for public access to registers of beneficial owners highlights a further development in line with the invalidation of the arrangement whereby information on the beneficial owners of companies had to be accessible in all cases to any member of the general public, after the CJEU held that such openness constituted a serious interference under the Charter of Fundamental Rights of the European Union. This development reverses the decision by the French Ministry of the Economy to maintain public access to data in the register of beneficial owners.

These access procedures are likely to change again with the anti-money laundering package (*dir. 2024/1640, 31 May 2024*. -*Reg (EU) 2024/1624, 31 May 2024*).

Other source: Infogreffe: Press release of July 18, 2024

European Union – CS3D published in the Official Journal

The new Directive on corporate sustainability due diligence (Directive 2024/1760, or CS3D) has been published on July 5, 2024 in the EU Official Journal.

This legislation amends both the Whistleblowing Directive and the Single Access Point Regulation. It impacts EU and Non-EU undertakings and Groups of undertakings, taking effect on July 25, 2024.

Companies within its scope shall implement comprehensive due diligence measures from July 2027 (See also: https://www.engage.hoganlovells.com/knowledgeservices/news/european-parliament-adopts-cs3d-new-esg-litigation-risks-in-the-supply-chain).

It provides that designated companies must identify and address the negative adverse impacts on human rights and the environment of their operations, those of their subsidiaries, as well as those of their direct and indirect business partners throughout their chains of activities actions inside and outside the EU.

Each Member State shall designate one or more supervisory authorities to supervise compliance with the obligations laid down in the provisions of national law adopted pursuant to the CS3D, which has the power to impose penalties (*art. 24 et seq*.).

Pursuant to Article 38, it will enter into force on the 20th day following its publication in the EU Official Journal, i.e. on 25 July, and must be transposed by the Member States by 26 July 2026 (*art. 37*).

Authored by L.-N. Ricard

- **Environment**

France – Decree on the national mutualization of the consumption of natural, agricultural and forest areas by projects of national or European scope of major general interest

The Decree of May 31, 2024 *on the national mutualization of the consumption of natural, agricultural and forestry areas by projects of national or European scope of major general interest* was published in the Official Journal on June 9, 2024 (J.O no. 0133 of June 9, 2024) (the "**Decree**").

As a reminder, law no. 2021-1104 of August 22, 2021 *on combating climate change and strengthening resilience to its effects*, known as the "Climate and Resilience Law", sets a twofold objective: (i) to halve the rate of concreting between 2021 and 2031 compared with the previous decade, and (ii) to achieve zero net artificialization by 2050, i.e. at least as much renaturated land as artificialized land.

Law no. 2023-630 of July 20, 2023, *aimed at facilitating the implementation of objectives to combat the artificialization of land and to strengthen support for local elected representatives*, includes several provisions designed to facilitate the implementation of the aforementioned objectives at territorial level. In particular, it provides for a mechanism whereby the consumption of natural agricultural and forest areas ("**ENAF**") induced by projects of national or European scope ("**PENE**") of major general interest will be taken into account at national level, rather than at regional or local level. (See Legislative and regulatory news – July/August 2023)

The purpose of the Decree is to specify the objective of reducing ENAF consumption and to establish a list of PENE's major general interest.

The Decree specifies that, for regions covered by a regional planning, sustainable development and territorial equality schemes (*Schéma Régional d'Aménagement, de Développement Durable et d'Egalité des Territoires*) ("**SRADDET**"), the aim of reducing the rate of ENAF consumption for the 2021-2031 period must be at least 54.5% compared with the consumption observed over the 2011-2021 period.

Concerning PENE's major general interest:

- Appendix I of the Decree contains a list of 167 PENE whose characteristics are well defined. The list includes for example: road and rail projects, Gigafactory projects, power and nuclear plant projects, etc.;
- Appendix II of the Decree provides an indicative list of projects that may be identified as PENE, for example, road, port and railway development projects; electrical substation projects; etc.

The Decree came into force the day after its publication, i.e. June 10, 2024.

France - Decree containing various provisions relating to the environmental assessment of projects

Decree no. 2024-529 of June 10, 2024 *containing various provisions relating to the environmental assessment of projects* was published in the Official Journal on June 11, 2024 (J.O no. 0135 of June 11, 2024) (the " **Decree** ").

As a reminder, Article R. 122-2 of the French Environment Code transposes the scope of Directive 2011/92/EU of December 13, 2011 *on the assessment of the effects of certain public and private projects on the environment*, which is defined in two appendices of the directive. Projects listed in Appendix I of the directive are subject to systematic environmental assessment, while those listed in Appendix II may be subject to environmental assessment :

- on the basis of a case-by-case examination ;
- on the basis of thresholds or criteria set by the Member State; or
- on the basis of a combination of the two approaches.

The table appended to article R. 122-2 of the French Environment Code lists the headings for the categories of projects subject to systematic environmental assessment or case-by-case examination.

In order to bring national regulations into line with the aforementioned Directive 2011/92/EU, the Decree:

- modifies the environmental assessment thresholds for intensive livestock farming and for geological CO_2 storage (cf. heading no. 1);

- introduces a threshold for triggering case-by-case examination for sports, cultural and leisure facilities. The case-by-case examination applies to installations likely to accommodate more than 1,000 people (heading no. 44); and
- all land, agricultural and forestry development operations, including related works, are subject to a case-by-case examination (heading no. 45).

The new provisions introduced by the Decree apply to files submitted to the authorities, as from the date of publication of the Decree, i.e. June 11, 2024.

Authored by Laure Nguyen, Julie Paladian & Charlotte Dahdah

- **Finance**

France – Implementation in France of a new legal regime governing electronic transferable trade documents ("titres transférables")

In France, legislation was adopted by Parliament on 13 June 2024 to enable electronic trade documents ("titres transférables") to have the same effect in law as the equivalent paper trade documents. The provisions relating to electronic transferable trade documents ("titres transférables") are included in part II entitled "facilitating the international growth of French companies through the dematerialization of trade documents ("titres transférables")" and are largely inspired from the draft legislation provided in the June 2023 report by Paris Europlace and ICC France. The legislation includes (i) a legal definition of electronic transferable trade documents ("titres transférables") and indicates that transferable trade documents ("titres transférables") include bills of exchange ("lettres de change"), promissory notes ("billets à ordre"), bills of lading ("connaissements maritimes"), Dailly assignment of receivables payable to order ("bordereaux de cession ou de nantissement de créances professionnelles stipulés à ordre"), (ii) how to carry out certain actions on electronic transferable securities (e.g. execute, transfer, amend…) and (iii) the conditions that need to be fulfilled to enable full legal recognition of electronic transferable trade documents ("titres transférables"). The provisions of this new legislation will come into force on a date to be set by decree and no later than nine months after the promulgation of the law. They do not apply to transferable trade documents ("titres transférables") issued before such entry into force.

Authored by Charlotte Bonsch

- **Insurance**

France - New ACPR recommendation on the implementation of certain IDD provisions

On 28 June 2024, the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**") has published a new recommendation 2024-R-01 on the implementation of certain provisions stemming from Directive (EU) 2016/97 on insurance distribution ("**IDD**").

Recommendation 2024-R-01 reaffirms the provisions of Recommendation R-2023-01 of 17 July 2023, which it repeals and replaces, while adding new clarifications. In this regard, recommendation 2024-R-01 specifies, with regard to the governance and supervision of insurance products, that national benchmarks have been developed in cooperation with professional federations to assess the cost-performance ratio of life insurance products distributed on the French market, including that of each of the investment instruments. The ACPR states that the cost-performance ratio of these products is assessed using a methodology based on both the investment instruments and the contracts in which they are referenced (*e.g.* use of a benchmark resulting from a cross-reference between risk indicators and asset classes stemming from regulatory categorisations for the quantitative assessment of costs and the performance of units of account).

In addition, the ACPR specifies that the product tests to be undertaken by insurance manufacturers must include market-wide assessments and comparisons based on national benchmarks (*i.e.* with regard to both the performance and the costs of the investment instruments and contracts in which they are referenced).

Lastly, the ACPR specifies that product manufacturers will have to examine the performance and costs of their insurance products annually.

Recommendation 2024-R-01 came into force on 28 June 2024.

Source: Recommendation 2024-R-01 of 28 June 2024 on the implementation of certain provisions stemming from Directive (EU) 2016/97 on insurance distribution.

France - New ACPR recommendation on complaints handling

On 2 July 2024, the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR"**) has published a new recommendation 2024-R-02 on complaints handling.

Recommendation 2024-R-02 reaffirms the recommendations set out in the previous recommendation 2022-R-01 of 9 May 2022, which it repeals and replaces, and extends the scope of the recommendation to credit servicers and token issuers (as defined in a) of paragraph 1 of Article 16 of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023).

Recommendation 2024-R-02 came into force on 2 July 2024.

Source: Recommendation 2024-R-02 of 2 July 2024 on complaints handling

France - Publication of a decree on the accounting rules for the equalisation provision and the FGAO's financial regime

Decree no. 2024-523 of 7 June 2024 on the accounting rules for the equalisation provision and the financial regime of the *Fonds de garantie des assurances de dommages obligatoires* ("**FGAO"**) was published in the *Journal Officiel de la République Française* on 9 June 2024.

The decree amends the applicable ceilings and the rules for establishing the equalisation provision provided for in I of article 39 quinquies G of the French General Tax Code ("**FGTC"**). In this respect, following the adoption of the finance act for 2024, the decree amends articles R. 343-7 and R. 343-8 of the French Insurance Code ("**FIC**") so that these provisions can also cover risks due to damage to information and communication systems, in addition to risks due to natural elements, atomic risk, civil liability risks due to pollution, space risks, risks related to air transport, and risks related to attacks or terrorism.

The decree also amends article 16 A, I of annex I of the FGTC. This article states that "*the annual allocation to the provision provided for in I of Article 39 quinquies G of the General Tax Code* [*i.e. the* provision relating to credit insurance transactions other than those carried out on behalf of the State or with its guarantee] *is limited to 75% of the underwriting profit for the category of risks concerned*". The decree supplements this article by stating that "*this limit is raised to 90% of the underwriting profit for risks due to hailstorm, risks due to the legal guarantee for natural disasters, other risks due to natural elements, and risks due to damage to information and communication systems*". The decree also amends the amount of this provision, which may not exceed, in relation to the amount of premiums or contributions, net of cancellation and reinsurance, written during the financial year: 300% for risks due to hailstorm, 500% for risks due to the legal guarantee against natural disasters, 300% for risks due to damage to information and communication systems and 800% for atomic risk.

Lastly, the decree repeals articles R. 421-27 and R. 421-28 of the FIC relating to the FGAO's financial regime, which became obsolete following the entry into force of the finance act for 2024.

The new provisions introduced by decree no. 2024-523 apply to accounts for financial years opened on or after 1st January 2024.

Source: Decree no. 2024-523 of 7 June 2024 on the accounting rules for the equalisation provision and the financial regime of the FGAO

France - Publication of a decree on the conditions for valuing and redeeming units of account

Decree no. 2024-539 of 12 June 2024 on the conditions for valuing and redeeming units of account mentioned in the last sentence of the second paragraph of article L. 132-5-4 of the French Insurance Code ("**FIC**") was published in the *Journal Officiel de la République Française* on 14 June 2024.

The decree applies to units of account made up of categories of collective investment scheme invested mainly directly or indirectly in unlisted assets or in securities mentioned in article L. 221-32-2 of the French Monetary and Financial Code (*i.e.,* equity savings plans intended to finance small and medium-sized enterprises and intermediate-sized enterprises) or securities of commercial companies that meet the conditions set out in article 1-I of law no. 85-695 of 11 July 1985 containing various economic and financial provisions (*loi portant diverses dispositions d'ordre économique et financière*) (*i.e.,* French joint stock companies known as *sociétés de capital-risque*) as provided for under the future article L. 132-5-4 of the FIC introduced by law no. 2023-973 of 23 October 2023 on green industry (*loi industrie verte)* and amended by law no. 2024-537 of 13 June 2024 aimed at increasing business financing and the attractiveness of France (*loi visant à accroître le financement des entreprises et l'attractivité de la France*).

In this respect, law 2023-973 of 23 October 2023 on the green industry introduced a future article L. 131-5 of the FIC, which will come into force on 24 October 2024, allowing insurance or capitalisation companies to use an estimated value when making premium payments, redemptions, transfers, arbitrations, benefits in the event of life or death and conversions into annuities relating to the units of account described above.

Following on from the French law no. 2023-973 of 23 October 2023 on the green industry, the decree defines, by introducing a new article R. 131-12 of the FIC, the methods for calculating and publishing the estimated value of the underlying assets of the units of account described above when paying premiums, redeeming, transferring, arbitrating, receiving benefits in the event of life or death and converting into an annuity.

In addition, the decree amends articles R. 132-5-3 of FIC and R. 223-8 of the French Mutual Code ("**FMC**") in order to introduce ceilings on the indemnities provided for under article L. 132-21-1, paragraph 6 of the FIC and article L. 223-20-1, paragraph 3 of the FMC that may be applied in respect of certain unit-linked commitments.

These provisions will come into force on 24 October 2024.

Source: Decree no. 2024-539 of 12 June 2024 on the conditions for valuing and redeeming units of account mentioned in the last sentence of the second paragraph of article L. 132-5-4 of the French Insurance Code

France - Publication of an Order relating to the conditions for using estimated values for units of account with underlying illiquid real assets

Following on from decree no. 2024-539 of 12 June 2024, an Order of 12 June 2024 relating to the conditions for using estimated values for units of account with underlying illiquid real assets was published in the *Journal Officiel de la République Française* of 28 June 2024.

This Order creates a new article A. 131-5 of the French Insurance Code ("**FIC**"), providing that "an *insurance or capitalisation undertaking may use estimated values under the conditions set out in article L. 131-5* [*see* previous news item] *if the period separating the publication of two net asset values by the undertaking for collective investment scheme representing the unit of account involved is more than or equal to 2 months*".

This Order also clarifies the net investment income used to calculate the rate of return provided for under article A. 132-14 of the FIC, in order to include the indemnities provided for under article R. 132-5-3 of the FIC (*i.e.* indemnities that may reduce the redemption or transfer value of an insurance or capitalisation contract).

These provisions will come into force on 24 October 2024.

Source: Order of 12 June 2024 on the conditions for using estimated values for units of account with underlying illiquid real assets

France - Publication of a decree relating to the conditions for sharing potential indemnities in the event of constrained liquidity conditions of units of account for contracts governed by the French Social Security Code

Decree no. 2024-597 of 25 June 2024 relating to the conditions for sharing potential indemnities in the event of constrained liquidity conditions for the units of account mentioned in the last sentence of the second paragraph of article L. 132-5-4 of the French Insurance Code ("**FIC**") for contracts governed by the French Social Security Code ("**FSSC**") was published in the *Journal Officiel de la République Française* on 27 June 2024.

This decree amends article D. 932-3 of the FSSC to revise the definition of net investment income used to calculate the rate of return provided for under article D. 932-3 of the FSSC to include the indemnities provided for under article R. 132-5-3 of the FIC (*i.e.* indemnities that may reduce the redemption or transfer value of an insurance or capitalisation contract).

These provisions will come into force on 24 October 2024.

Source: Decree no. 2024-597 of 25 June 2024 on the conditions for sharing potential indemnities in the event of constrained liquidity conditions for the units of account mentioned in the last sentence of the second paragraph of Article L. 132-5-4 of the French Insurance Code for contracts governed by the French Social Security Code

France - Publication of two Orders strengthening the duty to advice on capitalisation and life insurance contracts

Following on from the French law no. 2023-973 of 23 October 2023 on green industry, two Orders dated 12 June 2024 were published in the *Journal Officiel de la République Française* on 16 June 2024 aimed at strengthening the duty to advice in relation to capitalisation contracts and certain life insurance contracts.

Firstly, the Order of 12 June 2024 improving the performance of the duty to advise in respect of capitalisation contracts and certain life insurance contracts creates a new Chapter II within Title II of Book V of the regulatory part of the French Insurance Code ("**FIC**"), entitled "*rules of conduct relating to the duty to advice over time in respect of capitalisation contracts and certain life insurance contracts*", which includes a new article A. 522-2.

Article A. 522-2 of the FIC requires insurers to renew their duty to advise during the lifetime of the contract to ensure that the contract meets the policyholder's needs. In this respect, the duty to advise must be renewed every four (4) years if no transactions have been carried out on the contract or if the contract has only been subject to scheduled transactions (*i.e.* scheduled payments, scheduled redemptions, scheduled arbitrages). However, if a personalised recommendation service has been provided to the policyholder, the duty to advise must be renewed every two (2) years. Article A. 522-2 of the FIC also stipulates that the intermediary or the insurance or capitalisation undertaking is not required to update the information provided to the policyholder or subscriber, if the latter refuses or does not respond to the request for an update sent on any durable medium by the insurance undertaking, after a reminder sent on any durable medium. In the event of refusal or lack of response by the policyholder, the aforementioned period of four (4) or two (2) years will start running again from the date of refusal or reminder.

Article A. 522-2 of the FIC also defines the notion of "*transactions likely to have a significant impact on the contract*" in accordance with the future article L. 522-5 of the FIC, which will come into force on 24 October 2024 and which stipulates that the duty to advise or a personalised recommendation must be renewed in the event of any transaction likely to have a significant impact on the insurance contract. Accordingly, the following are considered as "*transactions likely to have a significant impact on the contract*": payments, redemptions or arbitrages: (i) greater than or equal to EUR 2,500 and 20% of the contract outstanding for contracts with outstanding strictly less than EUR 100,000; or (ii) greater than or equal to EUR 30,000 and 25% of the contract outstanding for contracts with outstanding greater than or equal to EUR 100,000.

While article L. 522-5 of the FIC will come into force on 24 October 2024, article 2 of this Order specifies that the calculation of the periods mentioned in article A. 522-2 of the FIC must be taken into account from 17 June 2024.

In addition, another Order of 12 June 2024 creates a new article A. 132-20 of the FIC, which also sets at four (4) years the frequency with which the intermediary or the insurance or capitalisation undertaking checks the appropriateness of the allocation profile in the context of the arbitration mandate for life insurance and capitalisation contracts.

These provisions will also come into force on 24 October 2024.

Source :

- Order of 12 June 2024 strengthening the performance of the duty to advice with regard to capitalisation contracts and certain life insurance contracts ;
- Order of 12 June 2024 setting the frequency at which the intermediary or the insurance or capitalisation undertaking checks the appropriateness of the allocation profile as part of the arbitration mandate for life insurance and capitalisation contracts

France - Publication of a decree specifying the content of the arbitration mandate agreement and the information to be sent to the principal

Following on from the French law no. 2023-973 of 23 October 2023 on green industry, decree no. 2024-572 of 21 June 2024 defines the content of the arbitration mandate agreement and the information to be sent to the principal in relation to life insurance and capitalisation contracts. The decree was published in the *Journal Officiel de la République Française* on 23 June 2024.

The decree creates a new section VI in Chapter II of Title III of Book 1 of the French Insurance Code ("**FIC**"), entitled "*the arbitration mandate for life insurance and capitalisation contracts*", including a new article D. 133-1 of the FIC, which sets out the information to be included in the arbitration mandate agreement and the information to be sent to the principal by the agent at least once a year and in the event of termination of the arbitration mandate.

The arbitration mandate agreement must therefore contain *inter alia*:

- information relating to the identity of the agent, his/ her address, his/ her authorisation or registration, complaints procedures and recourse to a mediation process, as well as, where applicable, the existence of financial links with one or more insurance intermediaries or insurance undertakings involved in the management of the life insurance or capitalisation contract or the arbitration mandate, or one or more investment services providers involved in the execution of operations under the arbitration mandate, and the names of these entities;
- the information as to whether the agent is under a contractual obligation to work exclusively with one or more insurance companies or investment services providers, and the names of these entities;
- if the agent entrusts, under his/ her responsibility, a third party investment services provider with the execution of all or part of the transactions covered by the mandate, the identity of this third party must be specified alongside the terms of this delegation (*i.e.,* type of transaction, nature of the corresponding remuneration, in particular whether the third party delegatee is remunerated: by the payment of fees, when the remuneration is paid directly by the principal or the agent; by the payment of a commission, when the remuneration is included in the insurance premium paid by the principal; by any other type of remuneration, including any economic benefit, offered or proposed in connection with the life insurance or capitalisation contract; by a combination of the types of remuneration mentioned above);
- a description of the allocation profile or management approach adopted, setting out the main features of the investment policy to be implemented by the agent, with particular regard to the level of risk;
- the duration, if any, of the mandate agreement; or
- the renewal and termination terms and conditions.

The decree specifies that when the transactions covered by the arbitration mandate may involve units of account mentioned in the last sentence of the second paragraph of article L. 132-5-4 (*i.e.,* minimum proportion of units of account set by order of the Minister of Economy, made up of categories of collective investment schemes mainly invested directly or indirectly in unlisted assets or in securities mentioned in article L. 221-32-2 of the French Monetary and Financial Code or shares in commercial companies which meet the conditions laid down in article 1-1 of law no. 85-695 of 11 July 1985 containing various provisions of an economic and financial nature and defined by the same order), clear information must be provided on the risks associated with the selection of these units of account, the redemption terms and conditions and the consequences of exercising this option in case of such investment instruments.

These provisions will come into force on 24 October 2024.

Source: Decree no. 2024-572 of 21 June 2024 specifying the content of the arbitration mandate agreement and the information to be sent to the principal for life insurance and capitalisation contracts

European Union - EIOPA publication on the transfer of registered office of insurance and reinsurance undertakings

On 1st July 2024, the European Insurance and Occupational Pensions Authority ("**EIOPA**") has published the Annex II to the EIOPA decision on collaboration regarding the transfer of registered office of insurance and reinsurance undertakings ("**Annex II of EIOPA-BoS-24/273**").

Annex II of EIOPA-BoS-24/273 relates to the framework of Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions ("**Mobility Directive"**). Annex II of EIOPA-BoS-24/273 refers to the need for National Competent Authorities ("**NCAs"**) to work closely together to safeguard the interests of insurance and reinsurance undertakings as well as policyholders when an insurance or reinsurance undertaking implements an operation subject to the Mobility Directive.

In this respect, Annex II of EIOPA-BoS-24/273 recommends in particular:

- that the home and host NCAs establish regular communication from the moment they are informed of the insurance or reinsurance undertaking's relocation project (exchange of prudential information, assessment of the operation with regard to policyholders, checking continuity of insurance cover, *etc.*);
- that the home NCA facilitates the transfer to the host NCA of supervisory knowledge with respect to the transferred insurance or reinsurance undertaking;
- EIOPA to be able to intervene in the event of divergence between the home and host NCAs (*e.g.* development of prudential convergence tools, technical assistance for complex cases or when specific guidance is required);
- active cooperation between the NCAs during the relocation approval procedure (joint organisation with regard to the respective assessments and authorisations required; communication by the home NCA of information deemed relevant (*e.g.* latest ORSA report, authorisations already granted under the Solvency II Directive, *etc.*));
- transferring information and knowledge on monitoring (*e.g.* coordination of on-site inspections, staff exchanges);
- joint handling of outstanding supervision issues by the home and host NCAs;
- joint treatment of home and host NCAs with regard to authorisations or approvals already granted under the Solvency II Directive;
- to coordinate the processing of procedures relating to the European passport which may has been requested from the insurance or reinsurance undertaking (*e.g.*, informing the NCAs of the jurisdictions in which the insurance or reinsurance undertaking operates under the European passport; managing notifications under the European passport);
- to carry out particular vigilance in the case of a group with a cross-border implementation whose parent company is to be relocated (*e.g.*, review of group mapping, possible appointment of a new group supervisor);
- to take into account consumer protection as part of the relocation of the insurance or reinsurance undertaking (*e.g.*, effective communication between the home and host NCAs in order to avoid any negative impact on policyholders; information provided by the home and host NCAs regarding any notifications to be made by the insurance or reinsurance undertaking towards its policyholders).

Source: Annex II to the EIOPA decision on collaboration regarding the transfer of registered office of insurance and reinsurance undertakings

European Union - Publication by EIOPA of an opinion on the supervision of captive insurance and reinsurance undertakings

On 2 July 2024, the European Insurance and Occupational Pensions Authority ("**EIOPA"**) has published an opinion on the supervision of insurance and reinsurance captives.

Due to the specific model of insurance and reinsurance captives giving rise to specific supervisory expectations and the need to apply regulation in a proportionate manner, EIOPA's opinion is part of the implementation of the regulatory framework focusing on intra-group transactions (*e.g. cash pooling*), the application of the "prudent person" principle, governance aspects in relation to key functions and outsourcing requirements.

EIOPA's opinion highlights the risks related to *cash pooling,* such as the risk that its members receive remuneration that does not reflect market interest rates or the risk of contagion (*e.g.*, default risk, liquidity risk in the event of insolvency of the parent company or other *pool* members with negative balances). In this respect, EIOPA recommends that captives record cash pooling in their accounts and classify it in the Solvency balance sheet of transactions in order to correctly assess the Solvency Capital Requirement ("**SCR"**). In this respect, EIOPA is providing the Competent National Authorities ("**NCAs"**) with recommendations on how cash pooling should be taken into account in the SCR.

In addition, EIOPA reminds captive insurance and reinsurance undertakings of the need to comply with the prudent person principle by considering their portfolio as a whole.

Finally, EIOPA's opinion warns about the use of outsourcing for certain key functions and recommends in particular that the outsourced key functions holder should hold an employment contract with the insurance or reinsurance captive (or be employed by a company belonging to the same group as the captive) or be a person under the supervision of a NCA. EIOPA also specifies that if the outsourcing of the key functions holder is carried out by a person who is not employed by the captive, then the NCA will have to pay particular attention to the risk of conflict of interest and the operational risks induced by such outsourcing.

Source: EIOPA opinion on the supervision of captive insurance and reinsurance undertakings

European Union - Anti-money laundering package published in the Official Journal of the European Union

The Anti-Money Laundering Package ("**AML Package**") including the sixth (6th) Anti-Money Laundering Directive ("**AMLD6**"), the Regulation on Combating Money Laundering and Terrorism Financing ("**AMLR**") and the Regulation establishing the Authority for Combating Money Laundering and Terrorism Financing ("**AMLAR**") (see our March and May news updates) was published in the Official Journal of the European Union on 19 June 2024.

Source: Publication in the Official Journal of the European Union of the anti-money laundering package

European Union - DORA Delegated Regulations published in the Official Journal of the European Union

On 30 May 2024, the following Delegated Regulations were published in the Official Journal of the European Union:

- Commission Delegated Regulation (EU) 2024/1502 of 22 February 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities; and
- Commission Delegated Regulation (EU) 2024/1505 of 22 February 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council by determining the amount of the oversight fees to be charged by the Lead Overseer to critical ICT third-party service providers and the way in which those fees are to be paid.

These Delegated Regulations entered into force on the twentieth (20th) day following their publication in the Official Journal of the European Union, *i.e*. on 19 June 2024, with the exception for Commission Delegated Regulation (EU) 2024/1502 of sub-criterion 1.4 referred to in Article 2(5)(b) [*i.e.,* the dependence of the critical ICT third-party service provider on the same subcontractors providing ICT services supporting critical or important functions of financial entities] which can only be applied by the European Supervisory Authorities from 16 January 2025.

Also, on 25 June 2024, the following Delegated Regulations were published in the Official Journal of the European Union:

- Commission Delegated Regulation (EU) 2024/1772 of 13 March 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents;
- Commission Delegated Regulation (EU) 2024/1773 of 13 March 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers; and
- Commission Delegated Regulation (EU) 2024/1774 of 13 March 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework.

These Delegated Regulations defining the technical regulatory standards pursuant to Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on the digital operational resilience of the financial sector ("**DORA**") will enter into force on the twentieth (20th) day following their publication in the Official Journal of the European Union, *i.e*., 15 July 2024.

Source :

- Commission Delegated Regulation (EU) 2024/1502 of 22 February 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities;

- Commission Delegated Regulation (EU) 2024/1505 of 22 February 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council by determining the amount of the oversight fees to be charged by the Lead Overseer to critical ICT third-party service providers and the way in which those fees are to be paid ;
- Commission Delegated Regulation (EU) 2024/1772 of 13 March 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for the classification of ICT-related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incidents;
- Commission Delegated Regulation (EU) 2024/1773 of 13 March 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers; and
- Commission Delegated Regulation (EU) 2024/1774 of 13 March 2024 supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework.

Authored by Mohamed Boukesra

- **Intellectual Property**

France - Implementation of the European Digital Services Regulation: Arcom, CNIL and DGCCRF sign a cooperation agreement

On June 27, 2024, Arcom, the DGCCRF and the CNIL signed an agreement to implement the European Digital Services Regulation (DSA). This regulation aims to make players in the digital economy more accountable and to protect users' rights.

The agreement facilitates cooperation between the three organizations, imposing a set of obligations in the fight against illicit content and transparency on the operation of algorithms to create a safer digital environment, and to protect the fundamental rights of users.

France - The Conseil supérieur de la propriété littéraire et artistique (CSPLA) launches a mission on NFT contracts

In June 2024, the CSPLA entrusted Jean Martin and Stéphanie Kass-Dano (lawyers) with the task of drawing up a charter of good contractual practices to secure the exploitation of NFT in the cultural field. In consultation with NFT industry professionals and representatives of the cultural and creative sectors, the mission aims to identify practices that may weaken the rights chain, and to formulate recommendations for remedying them.

The report underlines the need to secure the players involved, and puts forward recommendations for informing the public, rights holders and professionals about the copyrights involved in NFT creation and transactions. The mission's conclusions are expected in December 2024.

European Union - New restrictions on intellectual property rights in Russia

Council Regulation (EU) 2024/1745 of June 24, 2024 amended Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine. In particular, this regulation made several changes to the annex and articles of Regulation (EU) No. 833/2014.

In particular, this regulation imposed restrictions on the acceptance of applications for registration in the Union of a number of intellectual property rights by Russian nationals and companies. The aim of these restrictions is to counteract actions by the Russian government and courts aimed at illegitimately depriving EU intellectual property right holders of their protection in Russia.

These measures are part of a broader set of sanctions adopted by the EU in response to the situation in Ukraine.

As part of this, it will also be forbidden to purchase, import, transfer or export Ukrainian cultural goods and other goods of archaeological, historical, cultural, rare scientific or religious importance, where there are good reasons to suspect that these goods have been illegally removed from Ukraine.

European Union - Publication of the EUIPO Guide to Anti-Counterfeiting and Anti-Piracy Technologies

On June 26, 2024, the European Union Intellectual Property Office (EUIPO) has launched the Anti-Counterfeiting and Anti-Piracy Technology Guide (ACAPT), a directory of over 40 anti-counterfeiting and anti-piracy technologies for business owners.

The guide primarily covers electronic technologies, such as radio frequency identification and near-field communication, as well as marking technologies, such as security holograms and special inks, essential for tracking and authenticating products throughout the supply chain. It also explores chemical and physical technologies, such as DNA coding and laser engraving.

The guide is available in the EPO's three official languages in HTML and PDF format (German, English and French).

European Union – Romania ratifies the Agreement on a Unified Patent Court

Romania has deposited its instrument of ratification of the Unified Patent Court Agreement (“UPCA”) on 31 May 2024, with effect from Sept. 1, 2024. All European patents granted unitary effect from this date will therefore automatically cover Romania.

European Union – Opening of the Milan section of the central division of the Unified Patent Court

As of 27 June 2024, the UPC's Milan section of the central division will officially open its doors. It will handle cases pertaining to the International Patent Classification ("IPC") class A (Human Necessities) without Supplementary Protection Certificates.

International - USPTO and the UK IP office agree to collaborate on policies related to standard essential patents

A new Memorandum of Understanding (MoU) was signed on June 3, 2024 by Under Secretary of Commerce for Intellectual Property and USPTO Director Kathi Vidal and UK Intellectual Property Office (UKIPO) Director General Adam Williams to collaborate on the development of an international Essential Standards Patent (ESP) ecosystem.

The main objectives are to explore ways of :

- exchanging information on SEP policy issues, to better ensure a balanced standards ecosystem ;
- educating small and medium-sized enterprises seeking to implement or contribute to the development of technical interoperability standards ;
- improving transparency in licensing ;
- integrating other jurisdictions and stakeholders into the patent activities of the USPTO and UKIPO.

Authored by Iris Accary, Héloïse Croisille and Mengyao Li

- **Litigation**

France – Decree no. 2024-673 of 3 July 2024 on various measures to simplify civil procedure and relating to regulated professions

Decree no. 2024-673 of 3 July 2024 on various measures to simplify civil procedure and relating to regulated professions aims to simplify civil procedure and modify statutory regulations for court officers and the appointment of judges in the disciplinary jurisdictions of ministerial officers. The most important measures of the decree for litigation are as follows:

- **The decree facilitates the process for pleas of inadmissibility**. A plea of inadmissibility is a mean of defence by which the defendant aims to make the opposing party's application inadmissible, without examination of the merits. The decree aims to simplify the processing of pleas of inadmissibility. The decree notably provides that judges may rule on the merits and on a plea of inadmissibility in the same decision where a plea of inadmissibility requires a prior decision on the merits of the case. The decree also provides for a new exception as to the fact that submissions and exhibits are not admissible after a closing order on the investigation: incidental pleas, pleas of inadmissibility and requests for transfer of jurisdiction will now be admissible where their cause arises or is revealed after the closing order.

- The decree also **amends the procedure to seek an opinion from the French Supreme Court** as regards the fact that proceedings on the merits must be stayed. The procedure to seek an opinion from the French Supreme Court on a point of law normally provides that judges ruling on the merits stay the proceedings until the opinion of the French Supreme Court or the expiration of the three-month period during which the French Supreme Court is supposed to issue its opinion. The adaptation of the procedure provided by the decree enables courts that must hand down their decisions as matters of urgency or within a period of less than three months to not stay the proceedings and therefore to rule without wating for the opinion of the French Supreme Court. If a first-instance court rules without waiting for the opinion of the French Supreme Court and an appeal is lodged against such ruling, the court of appeal shall stay the proceeding, except where it itself has to rule as a matter of urgency or within in a time-period incompatible with the one allocated to the French Supreme Court to hand down its opinion.

These measures will come into force on 1 September 2024.

Authored by Charles-Henri Caron, Alexis de Kouchkovsky and Wissem Tazi

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