

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 December 2023.

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 – Adoption of the bill to ensure the long-term survival of cinemas in overseas France.

Article L. 213-11 of the French Code du Cinéma et de l'Image Animée, which sets the rates for the proportional contribution paid by exhibitors, has been amended to create a distinction between France and local authorities governed by Article 73 of the French Constitution.

This law, which comes into force on December 14, 2023, aims to ensure the long-term survival of cinemas and access to cinema in the French overseas territories. From now on, the rates of proportional participation for cinema exhibitors will be debated between a minimum percentage set at 25% and a maximum percentage set at 50% in mainland France and 35% in local authorities governed by Article 73 of the French Constitution.

Authored by Anaïs Le Coq and Anna Revidi

- **Commercial**

France – Law on emergency measures to reduce inflation in consumer goods

The Law on emergency measures to combat inflation in consumer goods was enacted on 17 November 2023 and published in the *Journal Officiel* on 18 November 2023. Annual commercial negotiations take place between 1 December and 1 March and are governed by the French Commercial Code, which sets out the rules for negotiations between suppliers and distributors of fast-moving consumer goods.

The purpose of this Law is to introduce a derogation system for commercial negotiations for 2024. It applies to all agreements relating to fast-moving consumer goods marketed in France concluded between any distributor operating a predominantly food retailing business and any supplier of such goods.

Introduction of new deadlines for 2024

The deadline for reaching an agreement, initially set at 1 March 2024, has been brought forward to January 2024. Parliamentary debates led to the introduction of two separate deadlines for reaching an agreement on prices. These are:

- **15 January 2024** for suppliers with pre-tax turnover of less than €350,000,000 with the agreement taking effect on 16 January 2024 at the latest;
- **31 January 2024** for suppliers with pre-tax turnover of €350,000,000 or more, with the agreement taking effect on 1^{er} February 2024 at the latest.

Communication of general terms and conditions of sale to the distributor by the supplier

The Law also requires suppliers to communicate their general terms and conditions of sale to distributors no later than 5 December 2023 if their annual sales excluding tax are equal to or greater than €350,000,000 or no later than 21 November 2023 if their annual pre-tax turnover is less than €350,000,000.

Penalties provided for in the event of non-compliance with these deadlines

The penalties applicable in the event of non-compliance with:

- The deadline for concluding agreements: the Law introduces an administrative fine of up to 200,000 € for a natural person and 5,000,000 € for a legal entity, per offence detected;
- The deadline for the supplier to communicate the general terms and conditions of sale to distributors : the Law provides for an administrative fine, the amount of which shall not exceed 75,000 € for an individual and 375,000 € for a legal entity.

Arrangements if negotiations fail

This timetable for negotiations is implemented as part of the system introduced by the "Descroizaille" law of 30 March 2023. Thus, if an agreement is not reached by 15 or 31 January 2024 (depending on the pre-tax turnover of the supplier), suppliers will have the choice of terminating all commercial relations with the distributor or requesting the application of a notice period in accordance with II of article L. 442-1 of the French Commercial Code. Parties can also agree to have recourse to the mediator for agricultural commercial relations or the business mediator to reach an agreement before 15 or 29 February 2024 (depending on the pre-tax turnover of the supplier) defining the conditions of a notice period, taking into account in particular the economic conditions of the market in which the parties operate.

Commercial negotiations are taking place in a particularly tense atmosphere. The government has also announced an increase in controls related to the ongoing negotiations between distributors and farmers by the General Directorate for Competition Policy, Consumer Affairs, and Fraud Control ("DGCCRF").

Authored by Charlotte Haddad and Clara Mazannek

- **Corporate**

France – French government extends the scope of application of the French Foreign Direct Investment screening regime

The new measures, which came into force on January 1, 2024, result from two texts:

- a [Decree no. 2023-1293](#), which sets out most of the new measures, in particular those modifying the scope of the FDI screening regime, and
- an [order dated December 28, 2023](#), which deals with certain issues relating to the new 10% voting rights threshold.

The [decree](#) implements the measures announced by the Minister of the Economy back in 2023, namely:

- the perpetuation of the COVID-19 temporary regime applicable to French listed entities on a regulated market, instituted by Decree no. 2020-892 of July 22, 2020,
- the addition to the scope of control of acquisitions of control of branches in France of entities governed by foreign law, and
- The extension of the scope of control to the processing and extraction of critical raw materials.

Other additions include the scope of control within the public security sector to cover prison security services, the simplification of exemptions for intra-group reorganizations, with the substitution of a new paragraph for I. of R. 151-7 of the Monetary and Financial Code, and the modulation of the procedure for reviewing conditions at the initiative of the Minister, through the deletion of the 2nd paragraph of article R. 151-9 of the Monetary and Financial Code.

[The order](#) provides additional details concerning the information to be supplied to the foreign investment office when applying for authorization. It also stipulates that controlled research and development activities now include those relating to photonics and technologies involved in low-carbon energy production when they are intended for implementation in a sector listed in article R. 151-3 of the French Monetary and Financial Code. The text also provides a framework for the electronic transmission of applications for authorization and prior requests to examine an activity via the online platform set up by the Treasury, and of notifications, declarations of completion of an investment operation and all correspondence relating to foreign investments in France via the dedicated e-mail address.

Additional publication : [French government extends the scope of application of the French Foreign Direct Investment screening regime](#)

France – Publication of Decree no. 2023-1394 of December 30, 2023, completing the transposition of the CSRD

[Decree no. 2023-1394 of December 30, 2023, supplementing Order no. 2023-1142 of December 6, 2023 on the publication and certification of sustainability information and the environmental, social and corporate governance obligations of commercial companies, has been adopted.](#)

It completes the transposition of [directive no. 2022/2464](#), known as the "CSRD" directive, with a number of clarifications relating to:

- thresholds applicable to the definition of different sizes of companies and groups of companies (*art. 4, adding a preliminary chapter to Title III of the French Commercial Code, comprising articles D. 230-1 and D. 230-2*);
- the type of sustainability information to be drawn up and published by the various companies concerned (*art. 5, which supplements the French Commercial Code with articles R. 232-8-3 to R. 232-8-8 and R. 232-25 and R. 232-26*);
- the rules applicable to issuers' annual financial reports (*art. 12, which supplements Chapter I of Title V of Book IV of the French Monetary and Financial Code with articles R. 451-1 and R. 451-2*);
- the modification of the structure and provisions of Title II of Book VIII of the French Commercial Code relating to statutory auditors (*art. 9, 10 and 11*).

Except for [specific transitional provisions](#) (*art. 22*), the decree came into force on January 1, 2024.

Additional publication : <https://www.engage.hoganlovells.com/knowledgeservices/news/csrd-first-transposition-among-member-states-what-are-the-new-requirements>

Authored by L.-N. Ricard

- **Data Protection**

European Union – The EDPB publishes guidelines expanding the scope of requirements of the ePrivacy Directive regarding cookies and trackers.

The European Data Protection Board has recently published guidelines regarding the scope of obligations arising from the e-Privacy Directive concerning cookies and trackers. To read the article written by the Hogan Lovells team on this topic, please click on the following link: <https://www.engage.hoganlovells.com/knowledgeservices/insights-and-analysis/le-cepd-publie-des-lignes-directrices-etendant-la-portee-des-exigences-de-la-directive-eprivacy-en-matiere-de-cookies-et-trackers>

Authored by Patrice Navarro, Gabriel Lecordier and Clara Mazannek

- **Environment**

France – Decree specifying the application of the definition of brownfield site in the French Urban Planning Code.

[Decree no. 2023-1259 of December 26, 2023](#) specifying the application of the definition of brownfield site in the French Urban Planning Code was published in the Official Journal on December, 27 2023 (the "**Decree**").

As a reminder, [Law no. 2021-1104 of August 22, 2021](#) on combating climate change and strengthening resilience to its effects, also known as the "Climate and Resilience Act", defines the notion of brownfield site as "any property or real estate right, built or unbuilt, unused and whose condition, configuration or total or partial occupation does not allow reuse without prior development or works" (art. [L. 111-26](#) of the French Urban Planning Code). Two cumulative criteria emerge from this definition: (i) the unused nature of a property or real estate right, and (ii) the absence of any possibility of reuse without prior development or works.

The Decree (codified in articles [D. 111-54](#) et [D. 111-55](#) of the French Urban Planning Code) sets out the application of this definition, detailing the two criteria.

First of all, the Decree specifies the elements that can be taken into account to identify a brownfield site. In this respect, one or more of the following elements are taken into account:

- a high concentration of vacant dwellings or substandard housing;
- one or more vacant or run-down premises or facilities, particularly following the final shutdown of activities;
- identified pollution for which the person responsible or the operator of the site, his successor in title or who substituted for him has disappeared or is insolvent; and
- a significant cost for its re-use, or even a probable financial imbalance between acquisition and intervention costs, on the one hand, and the market price for the type of asset concerned, or taking into account the envisaged change of use, on the other.

Secondly, the Decree defines the notion of development or works prior to the reuse of an asset. This refers to works enabling the restoration, rehabilitation or transformation of the asset concerned.

Finally, the Decree stipulates that undeveloped land of an agricultural or forestry nature cannot be considered as brownfield site within the meaning of the Urban Planning Code. Land with a natural character, even if it has been restored to its natural state, is no longer concerned, since it can be used for this purpose without requiring any works for its re-use.

France - Decree implementing, in mainland France, article L. 211-2-1 of the French Energy Code and article 12 of Law no. 2023-491 of June, 24 2023.

[Decree no. 2023-1366 of December, 28 2023](#) implementing, in mainland France, article L. 211-2-1 of the Energy Code and article 12 of law no. 2023-491 of June, 22 2023 was published in the Official Journal on December, 30 2023 (hereinafter the "**Decree**").

This Decree sets the power thresholds above which renewable energy or nuclear power generation projects in mainland France requiring a protected species exemption are deemed to satisfy a reason of overriding public interest (hereinafter "**RIIPM**"), as defined in article [L. 411-2](#) of the Environment Code. These thresholds are determined by type of technology.

Specifically, to comply with a RIIPM, a renewable energy production or storage facility project must:

- Have a total projected power output greater than or equal to a certain minimum projected power output threshold. These thresholds are set at:
 - 2.5 MWp for an installation project producing electricity from photovoltaic sources;
 - 9 MW for a project for an onshore installation producing electricity from the mechanical energy of the wind (onshore wind power);
 - 12 GWh of gross calorific value per year for a biogas plant project;
 - 2.5 MW for a project to produce solar thermal energy; and
 - 1 MW for a gravity-fed hydroelectric production facility or pumped-storage energy transfer station.
- At the date of the protected species exemption request, the total capacity of the facility must be less than the maximum capacity target defined by the decree relating to the multiannual energy program (or "PPE") mentioned in article [L. 141-1](#) of the French Energy Code.

With regard to nuclear power generation projects, the Decree makes a distinction between those involving the construction of a nuclear power reactor and those involving the construction of a nuclear fuel storage facility.

For the former, the RIIPM condition is satisfied if at least one of the following two conditions is fixed:

- the projected thermal output of the facility is equal to or greater than 750 MW;
- the projected thermal output of the facility is greater than or equal to 30 MW, and the facility has one of the following characteristics:
 - its design receives public support as an innovative reactor; or
 - its construction qualifies as a project of general interest pursuant to article [L. 102-1](#) of the French Urban Planning Code.

For the latter, the requirement for the presence of a RIIPM is fulfilled if the project meets the criteria stipulated in [Article 7](#) of Law no. 2023-491 of June 22, 2023, and the fuel element storage capacity of the facility exceeds 500 tons of uranium and plutonium contained in these elements prior to irradiation.

Authored by Laure Nguyen, Julie Paladian and Dicle Yildirim.

- **Intellectual Property**

France – Adoption of a Patent Prosecution Highway (PPH) between INPI and Saudi Arabia

The French Intellectual property office (INPI) and the Saudi Intellectual Property Authority (SAIP) have signed a Patent Prosecution Highway (PPH) agreement.

As a reminder, a Patent Prosecution Highway (PPH) is a program designed to speed up the examination of patents, this is the eighth Patent Prosecution Highway (PPH) agreement signed by the French office.

From now on, applicants will be able to request the acceleration of the grant procedure for a second patent application filed with the SAIP, whether this is a national application or a Saudi national phase of a PCT application. To benefit from this system, applicants must ensure that their application contains claims that are sufficiently similar to those mentioned in the examined application and recognized as patentable by the INPI.

This system will come into force in the first half of 2024.

France - Proposal on children's image rights adopted by the Senate in final reading.

On December 19, 2023, the Senate adopted on a new reading, with amendments, a bill aimed at guaranteeing respect for children's image rights. This text completes the work of the "Child Influencers" law by modifying the rules of the civil code relating to parental authority.

The main measures adopted by the Senate are :

- The introduction in the civil code of an obligation for parents to jointly protect their child's right to image (article 372-1 of the civil code).
- Enshrinement of the right of the family court to prohibit a parent from disseminating content relating to the child without the consent of the other parent. Such measures may be ordered in summary proceedings in urgent cases (article 373-2-6 of the French Civil Code).

However, the senators refused to enshrine a case of delegation of the exercise of a child's image rights when the dissemination of the child's image by his or her parents seriously undermines his or her dignity or moral integrity.

The National Assembly must now examine the text in final reading.

European Union – Provisional Agreement between the Parliament and the Council to regulate Artificial Intelligence

At the beginning of December, after several months of negotiations, the Parliament and the Council reached a provisional agreement on legislation to regulate Artificial Intelligence. These provisions aim to regulate Artificial Intelligence by offering guarantees concerning respect for fundamental rights, democracy and business development.

The key points of this provisional agreement:

- Creation of guarantees concerning the use of Artificial Intelligence in a global context.
- Setting limits on use in high-risk systems, notably for biometric identification systems used by law enforcement agencies.
- Prohibition of AI in all social rating processes or processes designed to manipulate public opinion.
- Opening up a right of complaint for consumers, complemented by a right to receive explanations.
- Penalties set, including a fine ranging from 7.5 million euros or 1.5% of sales to 35 million euros or 7% of worldwide sales, depending on the infringement and the size of the company.

The agreement has to be formally approved by the Council and Parliament, before gradually coming into force over the coming months.

European Union - Council and Parliament reach provisional agreement on EU design protection package.

The Council and the European Parliament have reached provisional agreement on the revision of the two legislative proposals in the design package: the Directive on the legal protection of designs and the Regulation on Community designs.

In particular, this agreement continues the work of adapting design protection to the digital age and 3D printing. It clarifies the conditions of the "repair clause" in the spare parts sector, introduces fees to be paid for the registration and renewal of a design, and finally sets the transposition period for the directive and the revision periods for the regulation.

The provisional agreement must now be approved and formally adopted by the European Parliament and the Council.

Authored by Anaïs Le Coq and Anna Revidi

- **Litigation**

France – Reform of the civil appeals Procedure

The French [Decree no. 2023-1391 of 29 December 2023](#) seeks to simplify the French civil appellate procedure. It will enter into force on 1st September 2024. We discuss some of its provisions below.

The decree notably clarifies the content of the statement of appeal, in particular by removing references to the provisions applicable to lower courts, and by requiring the statement to include a reference to the reversal or annulment of the appealed judgment (new articles 901 and 933 of the French Code of Civil Procedure).

The decree allows the scope of the appeal to be extended in the first appellate brief (new article 915-2 of the French Code of Civil Procedure). In other words, the scope of the appeal will no longer depend solely on the statement of appeal, but may be extended to include the other challenged aspects of the operative part of the judgment in the first submissions.

All time limits for filing the appellate brief may be extended or reduced by the competent judge (new articles 906-2 and 911 of the French Code of Civil Procedure). In addition, in the context of the appellate summary proceedings, the time limits will be doubled: the obligation to serve the statement of appeal to the defendant not having constituted counsel will be increased from 10 to 20 days (new article 906-1 of the French Code of Civil Procedure) and the time limit for to file the first brief will be increased from one to two months (new article 906-2 of the Code of Civil Procedure).

Lastly, the decree provides for the parties to be systematically offered to enter into a “participatory procedure agreement” for the purposes of instructing the appeal (new article 905 of the French Code of Civil Procedure - such an agreement enables lawyers to prepare a dispute themselves).

- **Real Estate**

France – Publication of the decree specifying the legal framework for the compulsory solarisation or green roofing of new buildings or buildings undergoing major renovation

Published on December 20, 2023, [Decree no. 2023-1208](#) (the "**Decree**") clarifies the obligation to solarise or revegetate the roofs of new buildings or buildings undergoing major renovation, applicable to any requests for planning authorisation submitted from January 1st, 2024 or, in the absence of an application for planning authorisation, to quotations or the conclusion of contracts after January 1st, 2024.

The decree specifies :

- the definition of major renovation works: these are works *"whose purpose, or which necessitate the reinforcement or the replacement of structural elements contributing to the stability or solidity of the building"*;
- that if at least half of the floor area of a building is given over to the construction of buildings or parts of buildings used for warehousing, commercial, industrial or artisanal purposes, regardless of the use to which the roof is dedicated, the building is covered by the greening or solarization obligations, except in the case of technical, safety, architectural or patrimonial constraints prevent the installation of the processes and equipment mentioned or if the work cannot be carried out under economically acceptable conditions.

Disproportionate installation costs will be determined on the basis of a percentage to be defined by decree, calculated on the basis of the costs (excluding tax) of the work required to install a renewable energy production system or a greening system, in comparison to the total cost (excluding tax) of the construction, extension or renovation work.

The decree was accompanied by two Orders dated December 19, 2023. The former specifies the characteristics of the vegetation that must be installed. The second sets the percentage of the roof that must be covered by renewable energy production systems or vegetation, i.e. (i) an area at least equal to 30% of the roof area of the building constructed or renovated from January 1st, 2024 (ii) an area at least equal to 40% from July 1st, 2026 and (iii) an area at least equal to 50% from July 1st, 2027.

Authored by Margot Derumaux and Dicle Yildirim

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