

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 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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- **Corporate**

### France – Publication of the DDADUE III law // Changes applicable to limited liability companies and joint stock companies

Law 2023-171 of March 9, 2023, which contains various provisions adapting to European Union law in the fields of the economy, health, labor, transport and agriculture, known as DDADU 3, published in the Official Journal of March 10, has modified some aspects of French company law.

In particular, its Article 14 modifies the sanction provided for in case of loss of half of the capital of a SARL or a joint stock company, which states that if the situation is not restored within a certain period of time, any interested party may request in court the dissolution of the company.

This provision was likely to :

- constitute a disproportionate infringement of the freedom of enterprise, and
- overtranspose the EU directive n°2017/1132 of June 14, 2017.

The law therefore extends by two years the period granted to companies to restore equity with the obligation to clear losses by means of a reduction in share capital up to a minimum set by decree in the Council of State, depending on the size of the company and that of its balance sheet. The penalty currently provided for in the event of exceeding this time limit remains. Articles L. 223-42, L. 225-248 and L. 950-1 of the French Commercial Code are amended accordingly.

It should also be noted that this law contains two authorizations for the Government to transpose by ordinance:

- Within 3 months, Directive (EU) No. 2019/2121 of November 27, 2019 on cross-border transformations, mergers and divisions (art. 13);
- Within 9 months, Directive (EU) No. 2022/2464 of December 14, 2022, known as the CSRD (applicable progressively as of January 1, 2024 (art. 12).

*Authored by Louis-Nicolas Ricard*

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- **Data Protection**

#### **European Union – The EDPB opinion on the European Commission's draft adequacy decision for personal data transfers between the EU and the US**

On February 28, 2023, the European Data Protection Board ("*EDPB*") issued a non-binding opinion ("*the Opinion*") on the European Commission's new draft adequacy decision covering transfers of personal data between the European Union (EU) and the United States.

As a reminder, on July 16, 2020, the Court of Justice of the European Union invalidated a previous adequacy decision that was in force at the time because the level of protection provided to personal data under U.S. law was insufficient. On October 7, 2022, an Executive Order by the President of the United States strengthened the safeguards regarding the collection and use of personal data by U.S. intelligence services. On December 13, 2022, the European Commission took this new legal framework into account and issued a draft adequacy decision ("*the Draft Decision*").

In its Opinion, the EDPB raises some concerns about the Draft Decision, in particular about the scope of the exemptions to the right of access, the lack of "*key definitions*" and the absence of a prior authorization requirement by an independent authority for the collection of bulk data. The EDPB welcomes the implementation of the concepts of necessity and proportionality for the collection of data by the US intelligence services as well as a new appeal mechanism through the creation of the Data Protection Review Court, although the EDPB notes the absence of a systematic ex post review by an independent court.

The European Commission should, if it wishes to take the Opinion into account, issue a new version of the Draft Decision, which is expected for mid-2023 at the earliest.

*Authored by Rémy Schlich and Clément Taieb*

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- **Employment**

**France - Decree no. 2023-98 of February 14, 2023 implementing the provisions of Law no. 2022-1158 of August 16, 2022 on emergency measures to protect purchasing power with regard to collective bargaining and employee savings**

[This implementing decree](#) of the "purchasing power" law of August 16, 2022 sets out the terms and conditions for drafting agreements or unilateral decisions of the employer that set up a profit-sharing scheme for which social and tax exemptions are secured as soon as they are filed (pre-validated agreements). Pre-validated agreements must be designed via the website [mon-interessement.urssaf.fr](https://mon-interessement.urssaf.fr), managed by the Urssaf national fund, which issues an authentication code.

**France - Order of January 31, 2023 amending the order of February 25, 2016 setting the wording, order and grouping of information appearing on the pay slip mentioned in Article R. 3243-2 of the Labor Code. JORF of February 7, 2023**

[This decree](#) provides for new information to be displayed on the pay slip: the "net social amount". This obligation is effective as of July 1, 2023. The net social amount corresponds to the net income after deduction of all mandatory deductions. This obligation aims to simplify the steps taken by recipients, particularly with regard to the activity bonus or the RSA, which require the declaration of a net social amount but which required a calculation.

*Authored by Baptiste Camus and Oussama El Hassani*

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- **Insurance**

**France – ACPR: The French regulator's supervision priorities for 2023**

In a press release dated 15<sup>th</sup> February 2023, the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**") has indicated its supervisory priorities for the year 2023. The ACPR has defined the following main priorities which need to be monitoring:

- international economic and geopolitical situation (including rise of energy prices). The ACPR has pointed out activities that are highly sensitive to the economic situation, such as construction insurance and loan insurance;
- rising interest rates, inflation and the valuation of real estate and financial assets, which have been amplified by the consequences of the war in Ukraine;
- the follow-up of actions in the area of customer protection and the fight against money laundering and the financing of terrorism;
- cyber and climate risks.

The ACPR has stated that it will continue in the future to carry out its analysis and consideration of risks related to financial institutions.

**Source:** [ACPR's supervision priorities for 2023](#)

### **France - ORIAS: tolerance measure for renewing registrations with ORIAS**

Order 2021-402 of 8 April 2021 on the reform of insurance brokerage and banking and payment services brokerage has established an obligation to join an approved professional association in charge of monitoring the activity and providing support to its members.

Intermediaries seeking to renew their registration with ORIAS had until January 2023 to join an approved association. In light of the delay observed by intermediaries in joining an approved association in order to be able to register with ORIAS for year 2023, ORIAS and the French Treasury have agreed to extend the deadline for registration renewal to 31 March 2023.

**Source :** [Orias' website](#)

### **European Union – Supervisory statement on the use of an entity established outside the European Economic Area**

EIOPA has issued on 3 February 2023 a supervisory statement on the use of governance arrangements in third countries which aims to ensure appropriate supervision of situations in which an EEA-registered company or intermediary ("**Undertaking**") uses a branch located in a country outside the European Economic Area ("**Third Country Branch**") to conduct regulated functions or activities. The EIOPA acknowledges that this situation is different from outsourcing but raises similar concerns.

EIOPA reminds the requirement applicable to Undertakings to demonstrate an appropriate level of corporate substance and expects the use of a Third Country Branch to not compromise this requirement. It calls on the Undertakings to avoid having Third Country Branches that have for sole purpose the support the Undertakings' EEA-based activities. According to EIOPA, Third Country Branches should be genuine bodies that should serve primarily the market in which they are established. It also emphasizes on the fact that the use of Third Country Branches by Undertakings should not be such that the latter becomes disproportionately dependent on the arrangement in a third country for its activities in the EEA and should not compromise the ability of the supervisory authorities to make sure that the Undertakings comply with all the obligations to which they are subject.

**Source:** [Supervisory statement on the use of an entity established outside the European Economic Area](#)

*Authored by by Ghina Farah, Mohamed Boukesra and Ryan-Landry Yohou*

- **Intellectual Property**

### **European Union – Germany deposits its instrument of ratification of the Agreement on the UPC**

On 17 February 2023, Germany deposited its instrument of ratification of the Agreement on a Unified Patent Court (UPCA), thus enabling the new Court to enter into operation on 1 June 2023.

The deposition of this instrument of ratification by Germany was the last step missing to allow the entry into force of the UPCA and the unitary patent system.

This step also opens the "Sunrise Period" as from 1 March 2023. This period allows patent owners to file opt-out applications before the Unified Patent Court becomes operational, so that their patents are not subject to its jurisdiction.

### **European Union – Entry into force of the new European Patent Office Guidelines**

On 1 March 2023, the new Guidelines for Examination by the European Patent Office (EPO) entered into force.

This update brings changes to all parts of the EPO Guidelines. In particular, it takes into account some recent decisions of the Boards of Appeal, as well as some recent changes to the rules of procedure before the EPO.

*Authored by Eléonore Salles and Adrien Bonnet*

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