

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/March 2022.

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

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- **Audio-visual**

France – Publication of Order of 4 February 2022 extending the Agreement for the reorganization of the media chronology of 24 January 2022

On 9 February 2022 was published on the Official Journal the [Order](#) of 4 February 2022 extending the Agreement for the reorganization of the media chronology of 24 January 2022.

The Order extends the Agreement for the reorganization of the media chronology, signed by the professional organizations of the cinema industry and the representatives of the broadcasters to all concerned companies. The extension of the Agreement was requested by its signatories in order to ensure effectiveness of the media chronology (see also [Legislative and regulatory Updates – January 2022](#)).

France – Publication of Decree No. 2022-256 of 25 February 2022 amending the regulatory part of the Film and Moving Image Code and providing various measures relating to the film and moving image sector

On 27 February 2022 was published on the Official Journal the [Decree No. 2022-256](#) of 25 February 2022 amending the regulatory part of the Film and Moving Image Code and providing various measures relating to the film and moving image industry.

On the one hand, the Decree clarifies the legal framework applicable to the fee due in consideration to the mission of maintaining the cinema and audiovisual registers and facilitates the operating procedures of the regulatory control Committee.

On the other hand, the Decree amends several measures relating to cinema production. It annualizes the periodicity of the activity report of the classification Committee in charge of giving an opinion to the Minister of culture for the issuance of film exploitation permits. It modernizes the legal framework of local cinematographic representations by adapting it to the new programming of theaters. In addition, the Decree guarantees the transparency of the management costs declared for unlimited access to the cinema.

The Decree came into force on 28 February 2022.

Authored by Mathilde Grammont, Anaïs Merires and Tommy Verdier

- **Commercial**

France – Publication of the Decree No. 2022-424 of 25 March 2022 relating to the obligations of pre-contractual and contractual information of the consumers and the right of withdrawal

On March 26th 2022 was published in the Official Journal the [Decree No. 2022-424](#) of March 25th 2022 completing the provisions of Ordinance No. 2021-1734 of December 22nd, 2021 concerning distance and off-premises contracts, as part of the transposition into French law of the EU Directive n°2019/2161 of November 27th 2019, known as the “Omnibus Directive”.

This Decree modifies in particular Article R.221-2 of the French Consumer Code, which defines the list of pre-contractual information to be communicated by the professional to the consumer prior to the conclusion of these contracts. The following elements are added to the list:

- the name or corporate name of the professional;
- if applicable, the means of online communication complementary to its e-mail address. This means ensure that the consumer is able to keep all the written exchanges with the professional on a durable medium, including the date and time of those exchanges;
- the terms of payment, delivery and performance provided for in the contract;
- if applicable, the procedures for handling complaints;
- if applicable, the existence and the modalities of implementation of the legal guarantee of conformity, the guarantee of the hidden defects or any other applicable legal guarantee;
- if applicable, the duration of the contract or, in the case of an open-ended or tacitly renewable contract, the conditions for termination;
- if applicable, the functionality of the goods with digital elements, contents and services, including the applicable technical protection measures;
- if applicable, any relevant compatibility and interoperability of goods with digital elements, content and services of which the professional is or reasonably should be aware;
- and the contact details of the competent consumer mediator(s) to whom the consumer may have recourse pursuant to Article L.616-1.

The mention of the professional’s fax number is logically removed from the list, the fax having fallen into disuse.

Consequently, the Decree has also modified the information that must appear on the standard withdrawal form provided for in Article R.221-1. The mention of the professional's fax number disappears, while the professional's email address becomes mandatory. The pre-contractual information relating to the conditions and procedures for exercising the right of withdrawal provided for in Article R.221-3 and its annex are amended in the same way.

This Decree comes into force on May 28th, 2022.

France – Publication of three opinions issued by the French Commercial Practices Review Panel on April 4th, 2022

The French Commercial Practices Review Panel ("*Commission d'examen des pratiques commerciales*") issued three opinions on April 4th, 2022 on relations between suppliers and distributors.

In its [opinion n°22-1](#), the Panel considered that the practice of distributors to require suppliers to affix the Nutri-Score logo, which is not a legal obligation, on their distributors-branded products, constitutes a practice likely to be apprehended under the angle of restrictive practices of competition referred to in Article L. 442-1, I, 2° of the French Commercial Code. Abusive delisting practices or abusive threats of delisting are indeed, since the recasting of Title IV of Book IV of the French Commercial Code by the Ordinance No 2019-359 of April 24th, 2019, covered by these provisions.

[Opinion n°22-2](#) concerned the legality of a clause allowing the customer of a software publisher to revise the price of the contract downwards when it is 5% higher than the market price, under penalty of termination of the contract. The Panel considered that such a clause, which allows a software publisher's customer to terminate the contract when it refuses the software publisher's new pricing proposal, constitutes a significant imbalance within the meaning of Article L.442-1, I, 2° of the French Commercial Code, provided that it has not been effectively negotiated and that its effect on the software publisher is not offset by other more favourable clauses.

Finally, in its [opinion n°22-3](#), the CEPC recalls that no remuneration may be charged by the distributor to the manufacturer for the performance of commercial cooperation services by the distributor for distributor-branded products, such a practice being prohibited by Article L. 441-7 of the French Commercial Code. Consequently, the practice of invoicing the supplier for the implementation, in the context of the relationship between a supplier and a distributor, of commercial cooperation services aimed at promoting the sale of distributor-branded products, is illegal and subject to an administrative fine of €375,000.

Authored by Floriane Cadio de Kermainguy and Elise Foussereau

- **Competition**

European Union – the Commission plans for a coordinated response to the economic effects of the war in Ukraine through State Aid

On 23rd of March, the Commission adopted a [Temporary Crisis Framework](#) for State aid measures in the context of Russia's invasion of Ukraine ("**Temporary Framework**"). It allows Member States to support the companies and sectors affected by the war, in a similar way to what was allowed in the context of the [global Covid-19 pandemic](#).

The aid granted under this Framework is intended to mitigate the negative effects that the war may have on the economy, whether that be because of sanctions, disruptions to the supply chain, or high energy prices. The Commission will therefore allow Member states to :

- grant direct aid to companies affected by the crisis, up to the limit of €400,000 per company (or up to €35,000 for companies in agriculture, fisheries and aquaculture sectors);
- provide liquidity support in the form of State guarantees and subsidised loans; and
- compensate for additional costs caused by the rise in energy prices, up to a limit of 30% of eligible costs and up to a maximum of €2 million (other limits of up to €25 or €50 million may apply in certain circumstances for intensive energy users or sectors).

The Temporary Framework does not exempt Member States from having to notify the Commission when they plan to grant direct aid or implement aid schemes; it simply provides the rules under which the Commission will assess a scheme's compatibility with EU law.

On 7th April 2022, the Commission [approved](#) a loan guarantee scheme notified by France to provide liquidity support to companies that have been affected by Russia's invasion of Ukraine.

The Temporary Framework will be in place until 31st December 2022 and may be extended beyond that date depending on economic and geopolitical developments.

Authored by Eric Paroche, Pierre Chellet and Siofra Collins

- **Data Protection**

France – Introduction of the Cyberscore: "the Nutriscore of internet"

The [law for the implementation of cybersecurity certification of general public digital platforms](#), which will come into force on October 1st, 2023, inserts a new article 111-7-3 into the French Consumer Code - which aims to impose new transparency obligations on operators of online platforms (social networks, sites for referencing or ranking content, goods or services, connecting people, etc.).

This law requires them to provide individuals with the results of the cybersecurity audit they have had carried out by audit providers qualified by the National Agency for Information Systems Security (*Agence nationale de la sécurité des systèmes d'information*).

A decree and an order will specify, respectively, the thresholds of activity above which the above-mentioned persons will be subject to the new rules as well as the criteria of the security audit cyberscoring.

The operators concerned will be required to display a visual cyberscore that will inform users about the level of security of their site or service and about the security and location of the data they host directly or through a service provider.

France – Conseil Constitutionnel decision of February 25th, 2022

On February 25, 2022, the Constitutional Council endorsed the European and national views on the generalized retention of connection data. It thus held that the former regulation on data retention was unconstitutional because such retention was (i) used to provide numerous and precise information on the users as well as third parties and (ii) applied in a general and indiscriminate way to all users of electronic communication service providers, excessively infringing the right to privacy.

This decision is in line with the Quadrature du net rulings of the [CJEU of October 6, 2020](#), which further framed the retention obligations under the French Post and Electronic Communications Code (French PECC), and of the [Conseil d'Etat of April 21, 2021](#), which it had paved the way for the implementation of a new regulation. Following these decisions, Law no. 2021-998 of July 30, 2021 was adopted and modified article L. 34-1 of the French PECC.

Authored by Anais Ligot, Anastasia Braud von Brevern, Hamza Bouhassoune and Mihnea Dumitrascu

- Insurance

France – ACPR: conclusions of the ACPR's questionnaire survey on the processing of life insurance redemption requests

As part of the [ACPR's market surveillance reviews](#), the authority found that information provided to life insurance policyholders needs to be improved in order to provide them with clear, comprehensive and accessible information on the elements to be communicated and the procedure to be followed when requesting a redemption in relation to a life reinsurance contract.

The ACPR also notes that the processing of redemption requests should be more closely monitored, in particular by strictly supervising delegated activities and by setting up rigorous mechanisms for monitoring fund payments.

Furthermore, in view of the number of redemption requests, the ACPR invites insurance undertakings to consider the suitability of the products distributed to the targeted customers.

France - ACPR: publication of the first ACPR report on climate change risk governance in the insurance sector

The ACPR published on 17th February 2022 a [report](#) that involved 21 insurance and reinsurance groups and three industry federations to establish best market practices for the integration of climate change risks.

The report identifies four key areas for climate change risk management:

- the implementation of a genuine long-term strategy with intermediate steps to achieve a commitment to carbon neutrality by 2050;
- the use of tools, ESG data and quality monitoring indicators to steer the business;
- the evolution of the internal organisation towards a cross-cutting climate change risk governance strategy; and
- the involvement of reinsurers in the climate change risk awareness strategy.

France - Payment protection insurance: promulgation of the law n° 2022-270 of 28 February 2022 for a fairer, simpler and more transparent access to the payment protection insurance market

[The law of 28 February 2022, known as the Lemoine law](#), introduces a right to cancel the payment protection insurance policy at any time. This right to cancellation will be effective for new loan offers issued as of 1st June 2022, and as of 1st September 2022 for ongoing contracts. It also reduces to 5 years the right to be forgotten for people who have had cancer and abolishes the medical questionnaire for real estate loans of less than 200 000 euros. For patients who are not covered by the right to be forgotten, the reference table of the AERAS convention is being modified to facilitate access to payment protection insurance for a certain number of pathologies.

France - ACPR: publication of the list of approved associations for the self-regulation of the brokerage profession

Since 1st April 2022, Article L. 513-3 of the French Insurance Code requires any person registering as a broker with ORIAS to join a professional association approved by the ACPR. On 23rd March 2022, [the ACPR published a list](#) of seven approved professional associations representing insurance or reinsurance brokers.

France - ACPR: publication on the bad practices identified in the context of insurance cold calling

In the context of the new system relating to cold calling governed by Articles L. 112-2-2 and R. 112-7 of the Insurance Code resulting from Law No. 2021-402 of 8 April 2021 and Decree No. 2022-34 of 17 January 2022, the ACPR published on 24th March [2022 a note on insurance cold calling](#). In this note, the ACPR highlights the new system that market actors must now respect in order to put an end to the bad practices identified.

European Union - EIOPA: recommendations from EIOPA's 2021 insurance stress test

During 2021 EIOPA conducted a Europe-wide stress test of insurance actors. After analysing the stress test data, EIOPA issued the three following categories of recommendations for a more resilient insurance sector in Europe:

- recommendations related to the identified vulnerabilities;
- recommendations relating to the availability of actions to manage adverse conditions; and
- recommendations specific to the individual undertaking.

EIOPA has defined a series of follow-up actions to implement these recommendations in order to improve the results of any future stress tests it may conduct.

European Union - Publication of Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in relation to destabilising actions of Russia in Ukraine

As a consequence of the armed conflict between Russia and Ukraine, the Council of the European Union published [the Council Regulation \(EU\) 2022/328](#) in order to ensure the uniform application in the European Union of [Council Decision \(CFSP\) 2022/327](#) of 25th February 2022. Indeed, the CFSP Decision prohibits the direct and indirect provision of insurance and reinsurance services in relation to aviation and space related goods and technologies to any person or organisation in, or for use in, Russia.

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

France – France – Filing of Government Bill ratifying Ordinance No. 2021-1658 of 15 December 2021 relating to the devolution of property rights of non-employees or public agents in research sector

On 2 February 2022 was presented in Conseil des ministres and filed before Senate the [Government Bill](#) ratifying the [Ordinance No. 2021-1658](#) relating to the devolution of intellectual property rights on assets obtained by authors of software or inventors who are either non-employees either public agents hosted by a legal entity carrying out research activity (see also [Legislative and regulatory Updates – December 2021](#)).

France – Filing of Government Bill ratifying Ordinance No. 2021-1518 of 24 November 2021 completing the transposition of the EU Directive 2019/790 of 17 April 2019 on copyright and neighbouring rights

On 23 February 2022 was presented in Conseil des ministres and filed before Senate the [Government Bill](#) ratifying the [Ordinance No. 2021-1518](#) of 24 November 2021. This Ordinance completes the implementation of the [EU Directive 2019/790](#) of 17 April 2019 on copyright and neighbouring rights into domestic law (see also [Legislative and regulatory Updates – November 2021](#)).

France – Publication of Decree No. 2022-196 of 17 February 2022 December 2021 relating the transfer to the Director of the French Industrial Property Office of decisions concerning authorizations and prohibitions of disclosure and free exploitation of inventions

On 19 February 2022 was published on the Official Journal the [Decree No. 2022-196](#) of 17 February 2022 relating the transfer to the Executive Officer of the French Industrial Property Office (INPI) of decisions concerning authorizations and prohibitions of disclosure and free exploitation of inventions.

The Decree provides for a transfer of competence to INPI's Executive Officer with respect to decisions relating to the authorization of disclosure and free exploitation of inventions that are the subject of patent applications, on the extension of prohibitions on disclosure and free exploitation, and to the lifting of these prohibitions, which was the responsibility of the Minister in charge of Industrial Property.

The Decree amends [Article R.612-27](#) of the French Intellectual Property Code leading to a split of competence between INPI's Executive Officer for French patent applications and the Minister in charge of Industrial Property for European patent applications and for international applications for the protection of inventions.

Finally, the Decree amends [Article R.613-42](#) of the French Intellectual Property Code transferring, to INPI's Executive Officer, the competence to handover decisions concerning decrees and orders in matters of secret defence, i.e. administrative acts for which the judge in charge of the remittal must preserve the secrecy when the disclosure of the invention is not authorized.

The Decree came into force on 20 February 2022.

France - Deliberation No. 2022-06 of 9 March 2022 relating to the activity of referencing legal offers by the Regulatory Authority for Audio-visual and Digital Communication (ARCOM)

On 17 March 2022, the [Deliberation No. 2022-06](#) of 9 March 2022 relating to the activity of referencing of the legal offer by ARCOM was published on the Official Journal.

According to the Deliberation, ARCOM is in charge of referencing the legal offer in terms of offers which are compliant with copyright and neighbouring rights. Referencing responds to the wish to inform Internet users and professionals about the existing compliant offers that could be observed.

The Deliberation provides for a method of observation and referencing of offers deemed to respect copyright, neighbouring rights and audio-visual exploitation rights. To this end, ARCOM shall develop tools aimed at reinforcing the visibility and referencing of the legal offer to the public.

Additionally, ARCOM is responsible for publishing referencing indicators annually.

The Deliberation came into force on 17 March 2022.

France - Publication of a Report relating to the funding of the production and distribution of photographic works

In a [Press Release](#) of 17 March 2022, the French Ministry of Culture announced the publication of the [Report](#) relating to the funding of the Production and Distribution of Photographic Works.

The Report suggests several measures, structured around five main axes aiming at:

- Reinforcing the respect of copyright;
- Supporting and revitalising French photographic creation;
- Consolidating the various undertakings of the industry;
- Protecting the French photographic heritage; and
- Developing actions of education to the image.

France - Extension of examination deadlines for parties having their residence or registered office in Ukraine

In a [Decision No. 2022-46](#) of 14 March 2022, the Executive Officer of the INPI announced, in view of the situation in Ukraine, the extension of the time limits for replying to notices of proceedings, for parties having their residence or registered office in Ukraine.

The time limit is therefore four months for proceedings relating to patents, trademarks and designs for deadlines not yet expired by 24 February 2022.

European Union – Signature of a Cooperation Agreement aiming at strengthening the collaboration against intellectual property infringements between the European Anti-Fraud Office (OLAF) and the European Union Intellectual Property Office (EUIPO)

In a [Press Release](#) of 1 March 2022, the EUIPO announced the entry into force, on the very same day, of a Service Level Agreement relating to the development of an IT tool which facilitates the sharing and analysis of data with respect to counterfeiting cases at the European Union level.

This Agreement follows up the anti-counterfeiting fight policies set by the European Commission since it was elected, seeking for a better sharing of the information between the EU agencies and trying to grant a greater role for the OLAF in identifying counterfeiting networks (see Legislative and Regulatory updates – [September](#) and [November 2020](#)).

European Union – Implementation of the Provisional Application Phase for the entry into force of the Unified Patent Court

Since 19 January 2022, the Unified Patent Court (UPC) entered its Provisional Application Phase, which is expected to last at least 8 months. The Preparatory Committee thus started setting up of the administrative bodies of the UPC, including the recruitment of judges and the implementation of infrastructures and procedures (see [Legislative and Regulatory Updates - January 2022](#)).

The UPC announced that its Administrative Committee had held its [Inaugural Meeting](#) on 22 and 23 February. Furthermore, on 2 March 2022, UPC's Budget Committee also held its [Inaugural Meeting](#), during which it adopted its rules of procedure and defined its legal framework. At last, the Advisory Committee, which also held its first meeting, began the interview process with the judges, which will continue until the end of May according to a [Press Release](#) of 6 April 2022.

The UPC system came into force in late 2022 or early 2023.

International - Russia - Prohibition from payment of royalties relating to patents to owners of "hostile countries"

On 7 March 2022, Russian Prime Minister signed an agreement prohibiting the payment royalties in consideration of the implementation patents to owners of "*hostile countries*", including the 27 members of the European Union.

As a result, Russian companies can now freely use patents held by entities from the "hostile countries" in Russia without being caught.

Regarding to trademark law, there seems to be no decision at this stage.

Authored by Mathilde Grammont, Anaïs Merires and Tommy Verdier

- **Public Law**

European Union – Sanctions against Russia: ban on awarding and performing public procurement contracts with Russian operators

The European [Council regulation \(EU\) 2022/576](#) dated 8 April 2022 amending Regulation (EU) n°833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, published in the OJUE of 8 April 2022, contains sanctions against Russia specific to public procurement contracts. It adds to the modified regulation an article 5k which prohibits to award or continue the execution of any public or concession contract exceeding the European thresholds, to (i) a Russian national, or a natural or legal person, entity or body established in Russia, (ii) a legal person, entity or body whose proprietary rights are directly or indirectly owned for more than 50 % by an entity referred to in (i), and (iii) a natural or legal person, entity or body acting on behalf or at the direction of an entity referred to in (i) or (ii). This rule also concerns subcontractors, suppliers and entities whose capacities are being relied on, when they account for more than 10 % of the contract value. Public purchasers and contracting authorities who have to terminate the ongoing contracts have to do so by 10 October 2022.

The regulation provides for derogations from these prohibitions, which may be implemented subject to prior authorisation, on a case-by-case basis, by the French Treasury's general management services.

It came into force on 9 April 2022.

The Legal Affairs department of the French Ministry of the Economy has published, on 15 April 2022, a fact sheet dedicated to the implementation of the ban on awarding and executing public procurement contracts with Russia, implementing this regulation.

Authored by Bruno Cantier and Astrid Layrisse

- **Real Estate**

France – Transfer of a commercial lease and the "independent professional activity" law

Article 2 of the law n° 2022-174 of 14 February 2022, in support of independent professional activity, has modified article L.145-16 of the French Commercial Code, which provides that clauses aimed at prohibiting the lessee from transferring its lease to the purchaser of his business goodwill are considered non-written.

This law reforms the status of individual entrepreneur, whose personal and business assets are now clearly distinguished, and creates a new mechanism called "universal transfer of business assets" (transfert universel de patrimoine professionnel) allowing the individual entrepreneur to transfer all of his professional patrimony, which may be composed of a business goodwill or a commercial lease right.

Article L.145-16 of the Commercial Code is completed in order to deem non-written the clauses prohibiting the assignment of the lease "to the beneficiary of the universal transfer of his business assets".

France - New method of calculating the index on commercial rents (ILC) and publication of the indexes on tertiary activities' rents, on commercial rents and on the cost of construction for the fourth quarter of 2021

The decree of 14 March 2022 modified the method of calculating the ILC in order to make it steadier.

The ILC no longer takes into account the turnover index in the retail trade but is now composed solely of the consumer price index excluding rents (75%) and the cost of construction index (25%).

This modification should limit the increase of the index, which was beforehand affected in part by the continued growth of online sales (almost 100% increase between 2014 and 2021).

On 25 March 2022, INSEE also published the values for the fourth quarter of 2021 for the following indexes (considering the new formula for calculating the ILC):

- for the index on commercial rents (ILC): 118.59 ;
- for the index of rents for tertiary activities (ILAT): 118.97; and
- for the cost of construction index (ICC): 1,886.

France - Land registration reform expected by 21 August 2023

The law of 21 February 2022, known as the 3DS law, authorises the government to take appropriate measures to simplify the law on land registration. These measures will be taken by ordinance within 18 months of its promulgation, i.e. 21 August 2023.

The rules applicable to land registration will be incorporated into the Civil Code in order to :

- clarify and adapt the conditions of application and the effects of the principle of priority of publication of the prior title regardless of the good faith of the parties, and
- to align the regime of opposability of published deeds.

A reform of the registration of privileges and mortgages will also be necessary for the purpose of consistency.

Authored by Margot Derumaux and Albina Murati

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