

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 January 2023.

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- **Audio-visual**

France – Presentation to the Assemblée nationale of three Bills Nos. 456, 653 and 672 aimed at regulating practices and creating a legal framework for influencers

Through three new bills introduced between November and December, the Assemblée nationale intends to regulate all influencer activities in France.

The first [Bill n°456](#) filed on 15 November 2022 is aimed at regulating commercial and advertising practices related to the online influence market, by creating a general legal framework for the activity of influencer. The second [Bill n°653](#) filed on 15 December 2022 proposes to reinforce the prevention and repression of online fraud related to the influence market. Finally, the last [Bill n°672](#) filed on 27 December 2022 intends to fight against the abuses of influencers on social networks through, among other things, the prohibition of product placement taking into account health and public order interests.

The Bills n°456 and n°672 suggest to legally define the influencer as a person active on social media and having a community that is likely to be influenced by them regarding their consumption choices.

The Bill n°456 intends to require influencers' agents to sign a "representation contract" and influencers to sign contracts with the user of their services, contracts that will have to contain certain mandatory mentions. The text also provides for penalties of up to a 6-month imprisonment and 75,000 euros fine in the absence of such contracts or in case of failure to comply with the obligations of the signed

contracts.

Broader obligations are provided for influencers in the practice of their activity, including an obligation to clearly and unequivocally mention any partnership or advertising content or an obligation to ensure the lawfulness of content under French law.

These obligations are completed by Bill n°672 which aims to prohibit influencers from promoting pharmaceutical products and medical devices as well as certain financial and risky investments.

A public consultation on the profession of influencer has been opened from January 9 to January 31 of 2023 on the website [make.org](https://www.make.org) so that citizens can give their opinion on what framework regulation of these practices to adopt.

Authored by Etienne Barjol and Claire Borgel

- **Commercial**

France – The new DGCCRF's power: the publication of injunction measures

By a [decree of December 29, 2022](#), the government has strengthened the possibility of publicizing the measures taken by the DGCCRF. As a reminder, the DGCCRF has the possibility to publish the identity of companies subject to administrative sanctions ("name and shame"). From now on, it can also publish the identity of companies subject to an injunction. The injunction measures aim at putting an end to an illegal practice in a short period of time: the DGCCRF can thus order a company to cease an illegal act, comply with the regulations, or remove an illegal clause. The decree also specifies the terms of publicity of injunctions: from now on, they may be published in the form of a press release on various material and immaterial media, informing the public of the reasons and content of the injunction, at the expense of the company subject to it. This decree came into force on December 31, 2022.

France - The bill to secure the supply of consumer products to the French passed its first reading.

On January 18, 2019, the National Assembly passed the first reading of a bill aimed at securing the supply of French consumer products, the list of which is established by Decree No. 2019-1413 of December 19, 2019.

This bill intends, in particular, to rebalance commercial negotiations between suppliers and distributors.

Although the text was adopted mainly in consideration of the existing difficulties in commercial relations between food manufacturers and supermarket chains, the system it creates is general and is intended to apply to all supplier-distributor relations as long as the products or services concerned are marketed on French territory.

The text, as voted by the National Assembly, includes 8 new measures. Article 3 of the proposal is particularly interesting, in that it will allow the continuation of the commercial relationship in the event of disagreement between the supplier and the distributor which has led to the impossibility of adopting the single agreement on March 1st.

Indeed, in the absence of an agreement between suppliers and distributors at the legal end of the annual commercial negotiations, located on March 1, the expired agreement is extended for a period of one month, during which the most diligent party will be able to seize the mediation of the agricultural commercial relations or companies in order to conclude, under its aegis, an annual agreement, of 2 years or 3 years or, failing that, an agreement fixing the conditions of a notice. If the written agreement or the agreement setting out the terms of a notice period is not concluded by the end of this one-month period, the proposed law provides for the termination of the commercial relationship, without any of the parties being able to invoke a brutal breach of their established commercial relationship.

It should be noted, however, that this is an experimental scheme, which will be implemented for a period of 2 years from the entry into force of the law. The proposed law provides that at the end of this experiment, the Government will submit to Parliament an evaluation report on this system in order to consider its possible perpetuation.

Article 3 and Article 3 bis A of the same proposal also introduce new sanctions in the event of non-compliance with the March 1 deadline for the conclusion of a single agreement on consumer products:

- The failure to conduct negotiations in good faith resulting in the failure to conclude the single agreement by March 1 will thus constitute a new restrictive practice of competition, in addition to the other restrictive practices of competition provided for by Article L.442-1 of the French Commercial Code (such as the significant imbalance between the rights and obligations of the parties or the brutal disruption of established commercial relations);
- An administrative fine will also be applicable in the event of non-compliance with the March 1 deadline for the conclusion of a single agreement relating to consumer products. This non-compliance will be punishable by an administrative fine of up to €200,000 for a natural person and €1 million for a legal person.

The text also strengthens the framework for logistics penalties that was introduced by the Egalim 2 law. The proposal provides for maximum amounts for logistics penalties imposed by the supplier to the distributor. The text also allows the Government, in the event of a crisis of exceptional magnitude seriously affecting the supply chain, to suspend the application of the logistics penalties provided for by the single agreements.

This proposal is currently being examined by the Economic Affairs Committee, which will have to publish its report on the text before it can be read in the Senate.

Authored by Floriane Cadio de Kermainguy, Léanne Fortuna and Théophile Tsimaratos

- **Corporate**

France - Publication of Ordinance no. 2023-77 of February 8, 2023 relating to the practice of regulated liberal professions within a company (JO, Feb. 9, 2023)

On the basis of the law in favor of independent professional activity (L. n° 2022-172, Feb. 14, 2022, art. 7), the Government has issued an ordinance relating to the practice of regulated liberal professions within a company.

This ordinance:

- clarifies, simplifies and harmonizes the rules relating to the liberal professions by specifying the common rules applicable to them, on the one hand, and by adapting the various legal regimes allowing them to practice as a company, on the other hand;
- facilitates the development and financing of structures for the practice of the liberal professions, excluding any additional opening of capital and voting rights to third parties outside these professions.

In order to achieve this, the ordinance brings together the texts that are transversal to the regulated liberal professions: the law relating to professional non-trading companies (L. n° 66-879, 29 Nov. 1966) and the law that governs liberal practice companies, multidisciplinary practice companies, financial participation companies of the liberal professions (SPFPL) and silent partnership of liberal professions (L. n° 90-1258, 31 Dec. 1990) have been abrogated, but their provisions have been included, in substance, in the ordinance.

Authored by L.-Nicolas Ricard

- **Cybersecurity**

European Union – Entry into force of the European DORA regulation on digital operational resilience: major innovation in the financial sector of the European Union

[Regulation \(EU\) 2022/2554 of the European Parliament and of the Council of December 14, 2022](#) on the digital operational resilience of the financial sector (known as the “DORA” regulation) was published on December 27, 2022, this regulation entered into force on January 17 2023 and must be applicable from January 17, 2025. This regulation will coexist with [the NIS 2 directive](#), in terms of cybersecurity and will provide a harmonized, detailed and comprehensive framework between EU Member States on the digital transformation of finance and on the operational resilience of businesses that are victims of cyber-attacks and of financial institutions in order to ensure the stability and integrity of the European financial system. It also applies to information and communication technology (ICT) service providers operating within the European Financial Services Union. The regulation provides requirements for cyber-resilience testing, and will create a supervisory framework for European authorities over technology providers in the European financial sector. This is a major innovation compared to the current regulatory framework. Improving operational resilience is an opportunity for financial institutions to become more competitive and differentiate themselves by relying on ICT and good cyber risk management.

Authored by Olga kurochkina et Malak Hegazi

- **Data Protection**

France – Publication of the CNIL's guide on recruitment

On January 30, 2023, the French Data Protection Authority (the “CNIL”) published [its guidance on recruitment](#), which had been submitted for public consultation in September 2021. The purpose is to help the various recruitment stakeholders to comply with the personal data rules. In 2002, the CNIL first published a recommendation on the collection and processing of personal information during recruitment. Therefore, the CNIL is updating its old recommendation. This publication takes place in a context of increasing use of technological tools, both in terms of recruitment channels and means of communication used for recruitment.

The guide is organized in 19 practical sheets and two main parts. The first part is focused on the fundamentals of personal data protection in the context of recruitment, and the second part focuses on concrete examples and specific questions. In addition to this guide, the CNIL has also published a sheet for recruitment candidates presenting the “good practices” to protect personal data.

Authored by Anais Ligot and Clément Taieb

- **Employment**

France - Decree no. 2023-37 of January 27, 2023 concerning the paid sick days issued to people contaminated by Covid-19.

This decree puts an end to the system of derogatory paid sick days related to Covid-19 contamination, which allowed the payment of supplementary benefits to employees without application of the required conditions or application of the waiting period. Employees who test positive for Covid will now have to consult their doctor in order to obtain a work stoppage.

France - Decree No. 2023-33 of January 26, 2023 on the unemployment insurance scheme.

This decree implementing the law of December 21, 2022 sets the rules for modulating the duration of compensation for jobseekers according to the situation of the labor market. If the overall unemployment rate is under 9% or if it has not changed by +0.8% over a quarter, the duration of compensation entitlement will be reduced by 25% (but with a minimum of 6 months). In all other cases, the old rules will apply.

France - Net-entreprises.fr, adding reservations to work accident declarations (DAT), 18 January 2022.

The net-entreprises portal now offers employers the possibility to make reasoned reservations about the occupational origin of an accident at the time of the declaration and up to 10 days afterwards. Once entered, these reservations are transmitted to the employee's CPAM (public health insurance body).

France - Press release from the Ministry of the Economy of January 11, 2023 - 2024 Olympic Games and 2023 Rugby World Cup

This press release announces that, exceptionally, tickets or associated services (transport, accommodation in gifts or vouchers...) for the Rugby World Cup in 2023 or the Olympic and Paralympic Games in Paris in 2024 awarded by the CSEs (or employers in the absence of a CSE) will be excluded from the basis of assessment of social security contributions. The exemption ceiling applicable to vouchers and gifts awarded for these events is set at 25% of the monthly social security ceiling ('PMSS') per employee and per calendar year (five times higher than the exemption ceiling for other benefits granted by the CSE). If this ceiling is exceeded, only the higher fraction will be subject to social security contributions.

France - Communication of January 4, 2023 from URSSAF regarding the annual declaration relating to the obligation to employ disabled workers.

This communication, published on the Urssaf website, states that the annual declaration and the payment of the contribution, if any, must be made on the Nominative Social Declaration (DSN) of April 2023 (due on May 5 or 15, 2023).

France - Decree no. 2022-1686 of December 28, 2022 on the supplementation of the personal training account of an employee whistleblower.

This implementing decree of the law of March 21, 2022 on the protection of whistleblowers specifies the terms and conditions of application of the contribution to the personal training account of the whistleblower employee. Indeed, in the event of any dispute, the Labor Court can force the employer to pay up to €8,000 on the 'CPF' (personal training account) of the whistleblower employee, the facilitator or a person in connection with a whistleblower who is at risk of reprisals.

In order to determine the amount of this payment, the labor court must take into account the rights already registered in the beneficiary employee's account and the rights ceiling. The amount set may not exceed the difference between the maximum entitlement and the amount of entitlements registered. The employer must send to the "Caisse des Dépôts" the information required for this contribution (name of the employee, amount) no later than the date mentioned in the Labor court's decision or, if not mentioned, the last day of the calendar quarter following the date of the decision.

Authored by Baptiste Camus & Oussama El Hassani

- **Insurance**

France – CCSF: publication of an opinion of the French Financial Sector Advisory Committee on ancillary insurance

The French Financial Sector Advisory Committee (*Comité Consultatif du Secteur Financier -CCSF*) has issued an opinion dated January 17 2023 on ancillary insurance contracts offered as an option to customers and subscribed to for non-professional purposes in addition to a good or service in which it makes recommendations to reinforce consumer information on terms and conditions of these ancillary insurance contracts and the improvement of their practices regarding their sales process.

In particular, the CCSF's opinion asks professionals to comply with the obligations applicable to the provision of pre-contractual documentation to the consumer and recommends for the implementation of a distinct signature for the conclusion of the insurance contract, a clear communication of the risk carrier's identity, the sending of a welcome letter containing essential information on insurance coverage after the signing the insurance contract and complete annual information in any durable medium. Where insurance contracts extend coverage over time, the CCSF recommends that more information be provided to clearly distinguish insurance coverage and legal or commercial guarantees, as well as its effective date.

The CCSF's opinion also asks professionals to pay attention to the methods of remuneration which is being used for the distribution of ancillary insurance contracts (*e.g.*, variable incentive remuneration) in order to comply with the applicable rules on the prevention of conflicts of interest.

The CCSF invites insurers to implement these recommendations no later than January 1, 2024.

Source: [CCSF's opinion on ancillary insurance](#)

France – Cyber risk: insurance cover for cyber-attacks is incorporated into the insurance code

Order No. 2023-22 of January 24, 2023 on the Orientation and Programming of the French Ministry of the Interior (*Loi d'Orientation et de Programmation du Ministère de l'Intérieur - LOPMI*) introduces within Book 1 of the French Insurance Code a new chapter X in the French insurance code dedicated to the insurance of cyber-attacks risks. This chapter is made of the single article L. 12-10-1 of the French insurance code which requires that a compensation made under an insurance contract covering losses and damages caused by a breach of an automated data processing system mentioned in articles 323-1 to 323-3-1 of the French penal code is subject to the filing of a complaint within seventy-two hours of the victim's knowledge of the attack.

This provision will come into force on April 24, 2023 and will apply to all legal and natural persons operating in the course of their professional activity.

Source: [Order No. 2023-22 of January 24, 2023 on the Orientation and Programming of the French Ministry of the Interior](#)

Europe - Digital operational resilience for the financial sector regulation published in the Official Journal of the European Union

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 Regulation**") was published in the Official Journal of the European Union on 27 December 2022.

It is applicable, subject to the principle of proportionality, to all financial institutions and requires in order to strengthen their IT security system against cyber-attacks and incidents risks, (i) the establishment of an IT risk management framework for the financial institutions; (ii) mandatory reporting to competent national authorities (*i.e.*, in France, the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**") and the *Autorité des Marchés Financiers* ("**AMF**") of major IT incidents; (iii) the implementation of an operational resilience testing program; (iv) the establishment of a risk management framework for third-party IT service providers; and (v) the chance of organizing information and intelligence sharing arrangements between financial entities on IT threats. The Regulation is supported by the publication of Directive 2022/2557 of 14 December 2022 on the resilience of critical entities, and repealing Directive 2008/114/EC ("**DORA Directive**") which should only partially apply to financial sector entities.

The DORA Regulation and DORA Directive will come into force no later than January 17, 2025.

Source : [The 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](#)

Europe – ESAs Thematic Report: identification of best practices in tackling cyber-attacks, scams and frauds

The three European supervisory authorities (*i.e.*, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority - "**ESAs**") have published a joint thematic report on the implementation of national financial education initiatives on digitalization in the European Union, in particular with regard to cybersecurity, scams and fraud. The report lists twelve good practices to assist national competent authorities in the design and implementation of their financial education initiatives. Among these best practices, the ESAs recommends that warnings be provided about scams and fraud by, for example, publishing a blacklist of fraudulent providers or setting up hotlines for consumers. The ESAs also recommend improving information to young consumers about the financial risks of new financial products and services involving new techniques or even applying a targeted approach to measuring the effectiveness of a financial education initiative, for example by conducting discussion group.

Source : [ESAs thematic report on national financial education initiatives](#)

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

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