

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 2024.

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- **Corporate**

### France – Transposition of the CSRD Directive into French law: publication of Decree no. 2024-60 of January 31, 2024

[Decree no. 2024-60 of January 31, 2024](#), published in the Journal officiel of February 1, 2024, amended [Decree no. 2023-1394 of December 30, 2023](#), issued in application of [Ordinace 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](#).

This decree brings forward the entry into force of articles 7 to 11 of the decree of December 30, 2023, relating to the status of statutory auditors (art. 10), the High Audit Authority (art. 9), and the status of independent third-party bodies and auditors of sustainability information (art. 11). Initially set to take effect on January 1, 2025, these provisions are now applicable as of February 1, 2024, harmonizing the implementation of the new auditing provisions.

*Authored by L.-N. Ricard*

- **Data Protection**

## **European Union – Entry into force of the Data Act**

January 11, 2024, marked a milestone in the European Union's digital landscape with the enforcement of the Data Act, a flagship legislation aimed at regulating access to and use of both personal and non-personal data generated by connected products and their related services. This regulation, adopted on December 13, 2023, covers a wide range of Internet of Things devices, such as watches, medical devices, household appliances, and connected vehicles, which are ubiquitous in many sectors, including industry, agriculture, and health. Connected products will now need to be designed so that users can easily and securely access, use, and share the data they have generated.

### What are the main measures of the Data Act?

With a clear objective of overcoming challenges related to data access and sharing to stimulate innovation and economic development, the Data Act introduces precise rules for:

- The obligation to make data generated by these products accessible to users.
- The right for users to share their data with third parties, including the right to financial compensation for providing this data.
- The importance of interoperability and pre-contractual information obligations, as well as specific contractual rules to be respected to facilitate the exchange and use of data.
- Dispute resolution between the parties concerned.

Businesses, manufacturers, and providers of related services have until September 12, 2025, to comply with these provisions, giving them time to adapt their operations to the requirements of the Regulation. From September 12, 2026, it will be required that products and services be designed so that product and service data are accessible by default. This transition period is key and should lead all stakeholders to adequately prepare for the full implementation of the Regulation.

In terms of sanctions, the regulation establishes that Member States must provide for punitive measures that can be either administrative, in the form of fines, or civil, including damages, for those who do not comply with these provisions.

*Authored by Patrice Navarro and Clara Mazannek*

- Insurance

**France - Implementation of the "motor insurance directive" by Order no. 2023-1138 of 6 December 2023**

Order no. 2023-1138 of 6 December 2023 implements Directive no. 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC on motor third-party liability insurance. The order amends certain provisions of Title 1 of Book II of the French Insurance Code relating to the insurance of motor land vehicles and their trailers and semi-trailers, Chapters 1 and 4 of Title 2 of Book IV relating to mandatory damage insurance guarantee funds and compensation bodies, as well as Article L. 451-2 of the French Insurance Code.

In particular, it:

- excludes the classification of electric wheelchairs as land motor vehicles within the meaning of Article L. 211-1 of the French Insurance Code, and consequently these are not subject to mandatory insurance;
- defines the terms and conditions of mandatory motor third-party liability insurance by providing that insurers are no longer required to provide mandatory cover for damage caused abroad by motorised personal transport devices (*engins de déplacement personnel motorisés* – (EDPM)) and similar vehicles (although mandatory insurance for these vehicles remains in force in France);
- makes it easier to take out motor insurance by providing for the certification of tools enabling consumers to compare prices, rates and cover between different motor insurance distributors;
- strengthens the compensation scheme for victims, on the one hand, by specifying the procedures for involving the *Fonds de garantie des assurances obligatoires de dommages* ("FGAO") following the bankruptcy of a motor liability insurance company whose registered office is located in France or in a State party to the European Economic Area and, on the other hand, by adjusting the contribution made by insurance companies to finance the involvement of the guarantee fund to take account of the FGAO's new tasks.

The provisions of the Order of 6 December 2023 came into force on 23 December 2023, with the exception of certain provisions whose entry into force is subject to the conclusion of agreements, between the compensation funds competent in the event of insolvency of an insurance undertaking, relating to their functions and obligations and the reimbursement procedures between said funds following compensation granted to an insured person. As these agreements have not at the date hereof been concluded, Directive 2021/2118 provides that the Commission is empowered to adopt delegated acts in order to define the tasks and procedural obligations of these compensation funds.

**Source:** [Order no. 2023-1138 of 6 December 2023 implementing Directive no. 2021/2118 of 24 November 2021 amending Directive 2009/103/EC relating to motor third-party liability insurance in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability](#)

**France - Publication of decree no. 2023-1152 of 8 December 2023 simplifying the procedures for evidencing and checking mandatory motor third-party liability insurance**

Decree no. 2023-1152 of 8 December 2023 changes the methods of evidencing and checking mandatory motor insurance as set out in article L. 211-1 of the French Insurance Code.

The decree provides for the end of the requirement for drivers of registered vehicles to produce a certificate of motor insurance when being controlled and to affix an insurance certificate (*vignette verte*) to their vehicle.

This new presumption of insurance will be based on information contained in the file of insured vehicles referred to in article L. 451-1-1 of the French Insurance Code. Drivers of vehicles that do not fall within the scope of the said article will however still be required to produce a certificate and to affix a certificate to their vehicle.

The provisions of the decree will come into force on 1<sup>st</sup> April 2024.

**Source:** [Decree no. 2023-1152 of 8 December 2023 simplifying the methods of evidencing and checking mandatory third-party motor insurance](#)

**France - Order of 22 December 2023 increasing the amount of policyholders' contributions to the guarantee fund for victims of acts of terrorism and other offences (*Fonds de garantie des victimes des actes de terrorisme et d'autres infractions*)**

The decree of 22 December 2023 setting the amount of policyholder contributions to the *Fonds de garantie des victimes des actes de terrorisme et d'autres infractions* ("**FGTI**") was published in the *Journal Officiel de la République Française* on 28 December 2023, and provides for an increase in the terrorism tax.

The decree provides for an increase from EUR 5.90 to EUR 6.50 in the annual contribution relating to the terrorism tax charged on each non-life insurance policy from 1<sup>st</sup> July 2024.

**Source:** [Order of 22 December 2023 increasing the amount of the contribution paid by policyholders to the \*Fonds de garantie des victimes des actes de terrorisme et d'autres infractions\*](#)

**France - Publication of a CCSF opinion on the coverage of a "family assistance" guarantee in loan insurance**

The *Comité Consultatif du Secteur Financier* ("**CCSF**") adopted on 12 December 2023 an opinion on loan insurance guarantee, inviting insurance companies to include a "family assistance" guarantee in at least one of their loan insurance policies. The purpose of this guarantee is to temporarily cover all or part of the mortgage repayments allocated to the purchase of the main residence when the policyholder is forced "*to partially or totally cease his or her professional activity in order to assist his or her minor child (suffering from a serious illness or victim of a serious life accident)*".

Insurance policies will have to define the conditions applicable to this guarantee and may make it conditional on the purchase of temporary work incapacity guarantee.

The "family assistance" guarantee will be introduced by July 2025 at the latest in at least one of the loan insurance policies distributed from that date.

**Source:** [CCSF opinion on the inclusion of a "family assistance" guarantee in loan insurance](#)

#### **France - Entry into force of Decree no. 2023-1010 of 31 October 2023 on the pledging of assets as collateral for receivables held by insurance undertakings against third-country reinsurance undertakings**

On 1<sup>st</sup> January 2024, decree no. 2023-1010 of 31 October 2023 relating to the pledging of assets as collateral for receivables held by insurance undertakings against reinsurance undertakings from third countries came into force.

The decree creates a new article R. 310-10-4 in the French Insurance Code, which (re)introduces an asset pledge requirement for certain third-country reinsurers. French cedants, including now those falling under the Solvency II regime, may represent their technical provisions relating to risks ceded to these reinsurers, by a reinsurance receivable, only if the receivables are guaranteed by a pledge of a securities account and up to the amount guaranteed by the said pledge. Previously, only cedants not falling under the Solvency II regime were subject to this requirement.

Only reinsurers whose registered office is in a State outside the EEA or in a State which is not a member of the OECD, and whose solvency regime is not deemed to be equivalent pursuant to Article 172 of the Solvency II Directive or which have not entered into an agreement pursuant to Article 175 of the Solvency II Directive are required to pledge assets as security for the receivables held by French cedants. In this respect, the aforementioned reinsurance undertakings are required to deposit assets (belonging to categories listed exhaustively by reference to article R. 332-2 of the French Insurance Code) in a securities account opened with a credit institution authorised within the EEA. This pledge must cover the full amount of the technical provisions relating to the risks ceded. In addition, the pledged assets must be valued at each annual closing and may require additional pledging to guarantee the full amount of the technical provisions. The decree also amends the provisions of articles R. 332-17, R. 343-1 and R. 351-12 of the French Insurance Code accordingly.

These new requirements apply to reinsurance contracts entered into or renewed on or after 1<sup>st</sup> January 2024.

**Source:** [Decree no. 2023-1010 of 31 October 2023 relating to the pledging of assets as collateral for claims held by insurance undertakings against third-country reinsurance undertakings](#)

#### **European Union - Adoption of a new European directive on financial services contracts concluded at a distance**

Directive (EU) 2023/2673 of 22 November 2023, published in the Official Journal of the European Union of 28 November 2023 ("**Directive**"), amends Directive (EU) 2011/83 for distance financial contracts with a view to strengthening consumer protection and repeals Directive 2002/65/EC concerning the distance marketing of consumer financial services.

The aim of the Directive, which is to achieve full harmonisation, is to strengthen the pre-contractual information obligation to the benefit of consumers concluding distance contracts for financial services. The Directive sets out an extensive list of information to be provided to consumers, including the identity and activity of the professional, the contact details needed to make a complaint, the register in which the professional is listed, the website address, the main description of the financial service and the total cost to the consumer. The Directive specifies that Member States may impose stricter national rules on the obligation to provide contractual information.

The Directive also provides for harmonisation of the rules on withdrawal, in particular in order to facilitate the exercise of this right by imposing a "withdrawal function" on the financial service provider's interface

The Directive acknowledges that certain financial services are governed by specific acts (such as the Insurance Distribution Directive and the Solvency II Directive) which must continue to apply to these financial services. Thus, to avoid overlap, where other acts governing financial services include rules on pre-contractual information, the right of withdrawal or adequate explanations, only those provisions should apply as opposed to those set out in the Directive, unless those acts provide otherwise. With regard to the right of withdrawal in non-life insurance though, in the absence of specific provisions in the applicable sectoral regulations, the Directive provides that the rules on the right of withdrawal laid down in the Directive apply to these contracts.

Among its other contributions, the Directive provides for additional protection for consumers against misleading interfaces and the right for consumers to request human intervention on websites offering automated information tools (*e.g.* automated advice).

The Directive enters into force on the twentieth day following that of its publication in the Official Journal of the European Union. Member States must adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by 19 December 2025 at the latest, and must apply these provisions from 19 June 2026.

**Source:** [Directive \(EU\) 2023/2673 of 22 November 2023 on financial service contracts concluded at a distance](#)

### **European Union - Interim agreements of the Council and the European Parliament on the revision of the Solvency II Directive and on the rules for the recovery and resolution of insurance and reinsurance undertakings**

The Council and the European Parliament have reached an interim agreement on the revision of Directive 2009/138/EC, known as Solvency II, and on new rules for the recovery and resolution of insurance and reinsurance undertakings.

With regard to the interim agreement on the revision of the Solvency II Directive, its purpose is to strengthen the ability of European insurance companies to contribute to the financing of the economic recovery, to progress in the union of capital markets and to the channelling of funds towards the Green Pact for Europe. The revision of the Solvency II Directive also provides for simplified coordination of supervision between regulators and market players. To this end, the interim agreement provides for new tasks to be entrusted to the European Insurance and Occupational Pensions Authority ("**EIOPA**"), particularly with regard to the development of various technical standards.

With regard to the interim agreement on the recovery and resolution of insurance and reinsurance undertakings, it provides for a new harmonised regime at European level. In this respect, national authorities will be given preventive powers to intervene effectively in the event of the insolvency of an insurance or reinsurance undertaking. Insurance and reinsurance undertakings will have in particular to draw up and submit preventive recovery plans to the national supervisory authorities, while the national resolution authorities will have to draw up a resolution plan for insurance and reinsurance undertakings and groups representing at least 40% of their respective markets.

The text of the interim agreements will be finalised and presented to the representatives of the Member States and the European Parliament for approval. The Council and the European Parliament will then have to formally adopt the texts.

**Source :**

- [Final compromise text on the Solvency II Directive](#);
- [Final compromise text on the directive on the recovery and resolution of insurance and reinsurance undertakings](#)

*Authored by Ghina Farah and Mohamed Boukesra*

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- **Intellectual Property**

**France – Publication of CSPLA's mission report on artistic fakes on January 18, 2024**

On January 18, 2024, the French Higher Council for Literary and Artistic Property (CSPLA) published its [Mission report on artistic fakes](#). The aim of this mission was to identify ways of improving the tools available to combat art forgeries, the proliferation of which is profoundly weakening the art market. It was complementary to a bill to reform the law of February 9, 1895 on art fraud, known as the "Bardoux law", which was adopted by the Senate on March 16, 2023. The mission reports on the existing legal framework for combating forgeries, covering copyright, civil law and criminal law, and highlights its inadequacy. It analyzed the bill of law and made a number of recommendations to complete it, particularly in terms of criminal law, but also with a view to establishing a new civil law component inspired by the civil action for counterfeiting.

**France – Amendment of the Decree of January 24, 2014 relating to the notice provided for in Article L. 311-4-1 of the Intellectual Property Code (private copy remuneration).**

A [Decree of January 17, 2024](#), modernizing the decree of January 24, 2014 relating to the notice provided for in Article L. 311-4-1 of the Intellectual Property Code on private copy remuneration, was published in the French Official Journal (JO) of January 18, 2024. Appendix I of this order has thus been modernized to take into account the emergence of digital materials, which have replaced analog materials, enabling the multiplication of copies and increasing the loss of earnings for rights holders. The appendix also specifies that part of the sums collected for private copying (25%), which are traditionally allocated to initiatives to support the creation and dissemination of live performances and for artist training, will also be allocated to the development of artistic and cultural education.

### **European Union - Signature of the Headquarters Agreement between the UPC and Italy amending the UPC Agreement to establish the third headquarters of the Court Central division in Milan instead of London**

Following the decision of the Unified Patent Court (UPC) Administrative Committee in June 2023 to locate the third branch of the Central Division of the Court in Milan, UPC and Italy signed an [Headquarters Agreement](#) on January 26, 2024. From June 1, 2024, Milan will be the third seat of the UPC Central Division, with jurisdiction over patents relating to "human necessities", i.e. patents classified in section (A) of the International Patent Classification (IPC). The Paris headquarters will continue to be responsible for all patents with supplementary protection certificates (SPCs).

### **European Union - Announcement of a referendum on UPC in Ireland**

In a [Press release dated 23 January 2024](#), the Irish government approved a proposal to hold a constitutional referendum in June on Ireland's participation in the Unified Patent Court (UPC). This referendum will be held at the same time as the European and local elections. The government has also approved the priority drafting of a bill to give effect to the proposed constitutional amendment. At present, there are 17 member states in the system. However, this number could rise to 18 if Ireland ratifies the UPC Agreement.

### **Europe - Entry into force of the European patent validation Agreement between the EPO and Georgia**

On January 15, 2024, the [Validation agreement between the European Patent Organization \("EPO"\) and Georgia](#) on the validation of European patents came into force, having been signed by the two parties on October 31, 2019. This agreement will enable inventors and companies to have their European patent applications and EPO-granted patents validated in Georgia, on the basis of the country's national law.

### **International - Entry into force of the new versions of the International Patent Classification (IPC "2024.01") and the Nice Classification (NCL "12-2024") on January 1<sup>st</sup>, 2024**

As every year, the new version of the International Patent Classification (IPC) came into force on January 1<sup>st</sup>, 2024 ([IPC "2024.01"](#)). In a press release, WIPO pointed out that this new version was available in the two equally authentic languages, English and French. The new version of the Nice Classification [NCL "12-2024"](#) also came into force on the same date.

*Authored by Anna Revidi and Lisa Ribes*



- **Telecom**

#### **France - Towards a Universal Charger: A New Milestone for European Electronics**

The directive (EU) 2022/2380 of November 23, 2022, commonly referred to as the "universal charger," has been transposed into French law by decree no. 2023-1271, published in the Official Journal on December 28, 2023. Starting from December 28, 2024 (and April 26, 2026, for laptops), the following small and medium-sized electronic devices must be compatible with the same type of charger: the USB-C charger:

- Cell phones
- Tablets
- Digital cameras
- Headphones
- Headsets with microphones
- Portable video game consoles
- E-readers
- Keyboards
- Mice
- Portable navigation systems
- In-ear headphones
- Laptops

The decree mandates that any economic operator offering consumers and end users the possibility to purchase a radio equipment must also offer a separate sale of the device and the charger. Information regarding the presence or absence of a charging device with the radio equipment must be specified on a label, sticker, and in the case of distance selling, close to the price.

Furthermore, the decree requires manufacturers to provide information on charging capacities and compatible charging devices for radio equipment.

*Authored by Daghan Ozturk and Clara Mazannek*

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