

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 June 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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- **Banking**

France – Loans guaranteed by the French State

The [order of 16 June 2022](#) has amended article 6 VIII of the initial order dated 23 March 2020 in order to provide that an assignment by a lender to a lending institution that is itself already a creditor of the same company under a loan guaranteed by the French state will not result in the forfeiture of the French state guarantee.

Authored by Charlotte Bonsch

- **Commercial**

France - Bill on emergency measures to protect purchasing power

This [bill](#) presented on Thursday, July 7th in the Council of Ministers has a triple objective:

- The protection of the standard of living of the French people (title I)
- The protection of the consumer (title II)
- The energy sovereignty (title III)

The second axis of intervention relating to the protection of the consumers provides for amendments of the French Consumer Code aiming to facilitate the termination of contracts by consumers (especially insurance contracts) and to strengthen the fight against misleading or aggressive commercial practices by increasing the sanctions applicable to professionals when these practices are committed in certain circumstances (Articles 7 to 9).

Article 7 provides for the simplification of the termination of contracts concluded by electronic means (on the Internet and on mobile applications): when the professional offers consumers the possibility to subscribe to a contract by electronic means, it must also be possible to cancel the contract by the same means so as not to keep the consumer captive to an economic operator and prevent him from subscribing to a more interesting offer. The purpose of this article is to have a virtuous impact on competition by allowing consumers, in an inflationary context, to easily terminate their contract in order to choose a more advantageous one, especially in terms of price.

Article 8 offers the same measures for simplifying the termination of insurance contracts. Consumers must be able to terminate insurance contracts concluded by electronic means in the same way, through easy, direct and permanent access to a dedicated function. The government's stated objective is to reduce the French people's forced spending.

Article 9 provides for an increase of the sanctions incurred by the professional committing a misleading or aggressive commercial practice when this practice is followed by the conclusion of a contract or when it has been committed in an organized gang. The aim is to reinforce the fight against consumer scams.

European Union - Entry into force of the new Commission exemption applicable to categories of vertical agreements and concerted practices

Entered into force on 1 June 2022, the new [Commission exemption Regulation n°2022/720, applicable to categories of vertical agreements and concerted practices](#), draws lessons from the application of the previous regulation n°330/2010 by adapting the exemption rules for vertical agreements to the new developments of the European market.

The purpose of this new Regulation is to simplify, clarify and update the exemption rules applicable to vertical agreements concluded by undertakings in order to ensure their compliance with the European competition rules. According to the Commission, these changes were made necessary by the growth of e-commerce and the emergence and proliferation of new types of vertical agreements.

Among the changes to be noted, Regulation n°2022/720 distinguishes, for the definition of hardcore restrictions, three types of distribution agreements (standard distribution system, exclusive distribution system and selective distribution system), taking into account the specificities of these different distribution systems. The new Regulation also innovates by allowing the implementation of shared exclusivity, enabling a supplier to appoint a maximum of 5 exclusive distributors for a given territory or customer base, or by enabling the dual pricing system, whereby a supplier is able to set different wholesale prices for online and offline sales from the same distributor.

Regulation n°2022/720 addresses even more explicitly than the previous Regulation n°330/2010 the issues raised by the development of online trade. Thus, platforms offering online intermediation services, and also selling goods or services in competition with the businesses to which they provide services, are withdrawn from the block exemption. The prohibition on the use of the Internet by a distributor or its customers to sell goods or services is expressly qualified as a hardcore restriction, in line with the case law developed by the Court of Justice of the European Union over the last decade. However, this Regulation maintains certain rules already present in Regulation n°330/2010, such as the threshold of a maximum of 30% of the supplier's and buyer's respective market share on the relevant market in order for the vertical agreement to benefit from the exemption.

Finally, it should be noted that contracts ongoing on 1 June 2022 will continue to benefit from the provisions of Regulation n°330/2010 for one year. As from 1 June 2023, they will be subject to the new Regulation.

Authored by Floriane Cadio de Kermainguy, Emma Gelle and Charles Bret

- **Data Protection**

European Union – Guidelines on the use of facial recognition technology in the area on law enforcement

The European Data Protection Board ("EDPB") has issued [guidelines](#) on facial recognition technologies and the legal framework for their application in the field of prevention, investigation, prosecution of criminal offences and enforcement of sanctions. In these guidelines, the EDPB underlines that facial recognition tools should only be used (i) in strict compliance with the Police-Justice Directive and (ii) if necessary and proportionate to the Charter of Fundamental Rights of the European Union.

The EDPB also states that the use of facial recognition should be prohibited in certain situations, in particular when it is used for :

- remote biometric identification of individuals in publicly accessible areas ;
- classifying individuals on the basis of their biometric data into groups according to ethnicity, gender, political or sexual orientation or other grounds of discrimination
- inferring the emotions of an individual ;
- law enforcement that would rely on a database fed by the collection of personal data on a large scale and in an indiscriminate manner, for example by collecting photographs and facial images accessible online.

European Union – Guidelines on the calculation of administrative fines under the GDPR

The European Data Protection Board ("EDPB") has adopted [guidelines](#) in order to harmonise the methods of calculation of administrative fines adopted by the national authorities of the Member States.

These guidelines complement the guidelines on the application and setting of administrative fines of 3 October 2017, which focused on the circumstances in which such a fine may be imposed.

These new guidelines provide further details on the methods of calculating administrative fines, taking into account in particular:

- the categorisation of infringements by nature
- the gravity of the infringement
- the turnover of the undertaking.

The guidelines have been put out to public consultation until 27 June 2022.

Authored by Anaïs Ligot, Gabriel Privat and Glorify Ndombaxe

- **Employment**

France – Decree n°2022-958 of 29 June 2022 extending the derogation to the amount of the one-off aid to employers of apprentices and exceptional aid to employers of apprentices and employees on professionalization contracts

[Decree n°2022-958 of 29 June 2022](#) extends until 31 December 2022 the exceptional State aid for the recruitment of a student on an apprenticeship or professionalization contract.

Thus the aid remains at 5,000 euros for the recruitment of a worker under the age of 18, and 8,000 euros for the recruitment of a worker of at least 18 and less than 30 years of age preparing a diploma, a professional title or a certificate of qualification up to 5 years of higher education.

This amount is paid for the first year of the contract.

Companies with fewer than 250 employees remain eligible without conditions, while those with a larger number of employees must achieve at least 5% of contracts promoting professional integration over a period varying according to when the contracts were concluded, or at least 3% of alternating workers and have experienced a 10% increase in alternating workers, again the period being variable.

Authored by Marion Guertault, Alexandra Tuil et Baptiste Camus

- **Insurance**

France – Order of 27 May 2022 specifying the format and content of the standardised information sheet relating to insurance for the purpose of loan repayment insurance

An order of 27 May 2022 has provided further details with respect to the format and content of the standardised information sheet relating to insurance contract for the purpose of loan repayment. This order provides that from 1st June 2022 the standardised information sheet shall:

- include the following statement : *"the disability guarantee as provided for in the loan insurance contract is independent of the notion of disability as defined by the social security or any other competent body that judges professional incapacity. Recognition of a state of disability by one of these bodies is not binding on the insurer which is bound only by the definition provided in the contract"* ;
- include the total cost of the insurance in euros for the first eight (8) years ; and
- comply with the provisions of Law No. 2022-270 of 28 February 2022 known as the Lemoine law, regarding the (i) possibility of cancelling the loan insurance contract at any time and (ii) the absence of any obligation to fill out a medical questionnaire for contracts not exceeding EUR 200.000 entered into prior to the policyholder's 60th birthday.

Source : [Order of 27 May 2022 amending the order of 29 April 2022 specifying the format and content of the standardised information sheet relating to insurance for the purpose of loan repayment insurance](#)

European Union – Joint report by EIOPA, EBA and ESMA on the withdrawal of licence for serious breaches of AML / CFT rules

In response to breaches of anti-money laundering and counter-terrorist financing ("AML / CFT") rules identified in the market which may have a significant impact on the sound and prudent management of supervised financial entities, the joint report by EIOPA, EBA and ESMA clarifies the criteria to be assessed by supervisory authorities in relation to AML / CFT. In this respect, the report specifies in particular that these supervisory authorities must take into account the context of the breach in order to carry out a case-by-case analysis of it. The report thus specifies that a serious violation of the AML / CFT rules does not necessarily correlate systematically with a withdrawal of the supervised entity's licence.

Source : [Rapport conjoint de l'EIOPA, l'EBA et l'ESMA](#)

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

France - Publication of Decree No. 2022-928 of 23 June 2022 completing the transposition of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights

On 24 June 2022 was published in the Official Journal [Decree No. 2022-928](#) of 23 June 2022 amending the Intellectual Property Code and completing the transposition of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC.

This Decree is taken in application of [Order n°2021-1518](#) of 24 November 2021 also transposing the European Directive 2019/790 (see [Legislative and regulatory Updates - November 2021](#)).

It specifies in particular the conditions of application of the exemptions to copyright and related rights aiming to promote text and data mining as well as digital uses of works for illustration purposes in the context of teaching and dissemination of cultural heritage.

It also provides a framework for the mechanism of extended collective licenses that can be issued by collective management organizations, established to implement the Directive.

The Decree came into force on 25 June 2022.

France - Publication of the Order of 29 June 2022, pursuant to Article L. 212-14 of the French Intellectual Property Code, making the agreement of 12 May 2022 on the guarantee of minimum remuneration mandatory

On 1 July 2022, an order was published in the Official Journal to implement the guarantee of minimum remuneration provided for at Article L. 212-14 of the French Intellectual Property Code in relation to the remuneration paid by phonogram producers to performers in return for making a phonogram available, in the context of streaming services.

This Order makes mandatory the stipulations of the specific Agreement on the guarantee of minimum remuneration of 12 May 2022 concluded between the professional organizations and collective management bodies representing performers, on the one hand, and the professional organizations and collective management bodies representing producers of phonograms exercising this activity on a principal basis, on the other hand (see [Legislative and regulatory Updates - May 2022](#)).

International – Decision at the World Trade Organization (WTO) regarding patents covering Covid-19 vaccine

On 17 June 2022, at the Twelfth Ministerial Conference (MC12) in Geneva, WTO Member States adopted a Decision on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the context of the Covid-19 pandemic.

This Decision takes effect for a period of five years, and is limited to patents on vaccines against Covid-19. It provides that, within six months, the Member States will meet to decide on the extension of this Decision to the production and supply of diagnostics and drugs against Covid-19.

Authored by Jessica Seray and Adrien Bonnet

- **Real Estate**

France – Publication of the indexes of tertiary activities' rents, of commercial rents and on construction costs of the first quarter of 2022

On 22 June 2022, INSEE published the values of the first quarter of 2022 of the following indexes:

- index on commercial rents: 120.61;
- index tertiary activities' rents: 120.73; and
- construction cost index (ICC): 1,948.

France - Covid 19 lockdowns & commercial rents – French civil supreme court rules in favour of landlords

On 30 June 2022, the French civil supreme court (*Cour de cassation*) rendered three decisions in three cases concerning the payment of rents due during the Covid-19 lockdown periods (Ref. no. 21-19.889; no. 21-20.127 and no. 21-20.190). The Court was seized of thirty appeals and decided to deal with three cases as a priority, ruling in favour of landlords.

In order to limit the spread of Covid-19 pandemic, stores considered as non-essential were forced to close several times in 2020 and 2021. Many commercial tenants then suspended the payment of their rent. When the landlords brought actions for payment, the question of whether the suspension was justified was raised.

The French civil supreme court has taken into account a note from the Ministry of the Economy and Finance on the impact of the lockdowns on shop rents, whereby: up to 45% of retail stores were closed during the crisis; the total amount of rent and service charges thus concerned is estimated at more than 3 billion euros; these businesses were able to benefit from three successive aid schemes.

Among the grounds raised by the tenants, the French civil supreme court has ruled that the general and temporary stores closure:

- does not entail the "loss" of the rented premises within the meaning of article 1722 of the French civil code;
- is not constituting a breach by the lessor of his obligation to deliver the premises as per article 1719 of the French civil code and consequently tenants could not avail themselves of the exception of non-performance to suspend the payment of their rent;
- does not entitle tenants to rely on this as a force majeure event as per article 1218 of the French civil code to avoid payment of their rent.

Authored by Alice Houdart

- **Technology & Telecom**

European Union - Digital Services Act (DSA) and Digital Markets Act (DMA)

The European Parliament held the final vote on the [digital services act \(DSA\) and the digital markets act \(DMA\)](#) on 5 July 2022.

The DSA sets out obligations for digital service providers, including social media or marketplaces, to tackle the dissemination of online illegal content and misinformation.

The DMA sets out obligations for large online platforms that act as gatekeepers in digital markets to ensure healthy competition and stop unfair commercial practices by large digital platforms.

The Council of the European Union will have to validate these texts in July for the DMA and in September for the DSA before their publication in the Official Journal of the European Union (probably in October). They will officially enter into force 20 days after their publication.

They will then apply to all EU countries and companies operating in them. The DMA will come into force in March 2023. The DSA will apply in two stages:

- 4 months after the designation by the European Commission of the very large online platforms and search engines,
- 15 months after the entry into force of the DSA (or from 1 January 2024, whichever is later) for the other platforms.

European Union - Common charger : Provisional agreement between the European Parliament and the Council of the European Union

As part of the European Union's overall objective to limit e-waste, make products within the Union more sustainable, and make life easier for consumers, the European Parliament and the Council of the European Union have reached a provisional agreement on the proposed revision of Directive No. 2014/53/EU on radio equipment. In particular, the revised Directive establishes a [single charging solution for all small and medium-sized portable electronic devices](#).

Under the terms of the revised Directive, from autumn 2024, USB Type C will be established as the common charging port for all mobile phones, tablets, and cameras, regardless of manufacturer, within the Union. This new rule will also apply to headphones, headphones, video game consoles and laptops. This harmonisation will save consumers around €250 million a year on charger purchases.

Consumers will also be provided with clear information on the charging characteristics of their new devices, so that they can check their compatibility with the chargers they already have. In addition, buyers will have the opportunity to buy new electronic equipment without a charging device.

Finally, the charging speed will also be harmonised for devices that allow fast charging to allow users to charge their devices at the same speed with any compatible charger.

European Union - Entry into force of the EU regulation on addressing the dissemination of terrorist content online

The [EU Regulation on preventing the dissemination of terrorist content online](#) applies since 7 June.

As a reminder, this regulation aims to reduce the dissemination of terrorist propaganda online by ensuring that terrorist content is removed within one hour.

Since 7 June 2022, online platforms must notably comply with the following rules :

- Removing terrorist content within one hour of receiving a removal order from the competent national authority ;
- When exposed to terrorist content, taking specific measures to protect its services against the dissemination of terrorist content to the public ;
- Annually reporting the number of terrorist contents removed.

Authored by Anaïs Ligot, Emma Gelle and Glorify Ndombaxe

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