

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 2023.

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

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- **Audio-visual**

#### **France – Enactment of the law aimed at regulating commercial influence**

The law n°2023-451 of June 9, 2023 *aimed at regulating commercial influence and combating the abuses of influencers on social networks* was promulgated on June 9, 2023, and published in the French Official Bulletin on June 10, 2023.

This was the subject of an [article](#) last month.

*Authored by Anna Revidi and Emie Paganon*

- **Corporate**

#### **France - update: presentation to the Council of Ministers on July 21, 2023 of a bill to ratify Ordinance no. 2023-393 of May 24, 2023 reforming the rules governing mergers, demergers, partial contributions of assets and cross-border transactions by commercial companies**

In its [press release](#), the government states that this ratification bill makes "a number of adjustments to the ordinance: on the one hand, it clarifies the application of double voting rights for partial contributions of assets subject to the same legal regime as demergers; on the other hand, it specifies the regime applicable to demergers carried out solely between limited liability companies. Finally, it corrects a number of drafting imperfections. This legal framework (together with [decree no. 2023-430](#) published alongside) applies to cross-border transactions by limited liability companies, the draft of which is filed with the clerk of the commercial court on or after July 1, 2023.

**France - update: presentation to the Council of Ministers on July 5, 2023 of a bill to ratify Ordinance no. 2023-77 of February 8, 2023 relating to the practice of regulated liberal professions.**

In its [press release](#), the government stresses that this ordinance is the "fruit of nearly two years of consultation, and simplifies, clarifies, makes more legible and secures the legal framework applicable to the practice of regulated liberal professions in partnership. It also offers new development tools for professionals, while reinforcing the protection of their independence". Most of its provisions are scheduled to come into force on September 1, 2024.

*Authored by L.-N. Ricard*

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- **Environment**

**France – Enactment of the Nuclear Acceleration Act**

[Law no. 2023-491 of June 22, 2023](#) on the acceleration of procedures relating to the construction of new nuclear facilities near existing nuclear sites and to the operation of existing facilities was enacted on June 22, 2023, and published in the Official Journal on 23 June 2023 (J.O no. 0144 of 23 June 2023) (the “Law”) essentially aims – as its name suggests – to accelerate construction projects for new nuclear facilities, in this case six EPR2 reactors and the possibility of eight other reactors.

In a [decision no. 2023-851 DC of June 21, 2023](#), the French Constitutional Council ruled that most of the Law complied with the Constitution, but censured several provisions as legislative riders or contrary to the Constitution.

This Law applies only to the construction of electronuclear reactors (*réacteurs électronucléaires*), including small modular reactors, which are to be built in the immediate vicinity or within the perimeter of an existing basic nuclear facility (*installation nucléaire de base*), and for which the application for authorization to set up (*autorisation de création*) these facilities is submitted within 20 years of its promulgation.

The main provisions of this law are as follows:

- The State will directly initiate and steer procedures construction projects for new nuclear facilities, in this case;
- Constructions, developments, installations and works relating to the creation of new nuclear reactors are exempt from all formalities under the French town planning code.
- Land artificialisation resulting from the construction of new nuclear reactors is not taken into account when assessing the achievement of local or regional targets for reducing the rate of land artificialisation included in planning and urban development documents in application of the regulations on land artificialisation;
- The construction of a nuclear power reactor that meets the conditions (particularly in terms of power and type of technology) defined by decree is considered to constitute an "imperative reason of major public interest" (RIIPM) - which therefore makes it possible to waive the prohibition on harming protected species and their habitats;

- In the event of the construction of new reactors by the sea, the existing town-planning constraints (associated with the application of the so-called "coastal" law) are set aside as long as these reactors are installed in the immediate vicinity or within the perimeter of an existing basic nuclear facility (INB) and an application for authorisation has been submitted within twenty years of the promulgation of this law;
- Lastly, a special expropriation procedure is authorised, with the beneficiary of the declaration of public interest taking immediate possession of all built or unbuilt property whose acquisition is necessary for the construction of the new nuclear reactors.

The Law also contains several provisions relating to existing facilities. In particular, one of the points to be analyzed during the periodic review of a basic nuclear facility (INB) is the assessment of risks, taking into account the development of knowledge, particularly on climate change and its effects.

*Authored by Laure Nguyen and Julie Paladian*

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- **Insurance**

**France - Publication in the *Journal Officiel de la République Française* of a decree on the accounting rules for the resilience provision made by captive reinsurance companies**

Decree no. 2023-449 of 7 June 2023 on the accounting rules for the resilience provision made by captive reinsurance companies, published on 9 June 2023 in the *Journal Officiel de la République Française*, defines the provisions and provisioning limits for captive reinsurance companies since the adoption of the Finance law for 2023.

The decree no. 2023-449 of 7 June 2023 defines the applicable limits and the accounting rules for the provision referred to in II of Article 39 quinquies G of the French General Tax Code as amended by the Finance law for 2023, which provides that captive reinsurance companies owned by a company other than a financial company and whose purpose is to provide reinsurance cover exclusively for business risks, other than financial companies, may set up, on a tax-free basis, a provision to cover expenses relating to accepted reinsurance transactions involving insurance risks pertaining to the categories of damage to business and agricultural property, natural disasters, general civil liability, pecuniary losses and damage and pecuniary losses resulting from attacks on information and communication systems. Decree no. 2023-449 of 7 June 2023 includes a reference to this provision in the French Insurance Code ("**FIC**") by amending articles R. 343-7 and R. 343-8 of the FIC. The decree also limits the annual allocation of the provision provided for in II of article 39 quinquies G of the French General Tax Code to 90% of the amount of the profit resulting from the sum of the technical profits associated with each category of risk concerned.

The provisions of decree no. 2023-449 apply to accounts for financial years beginning on or after 1<sup>st</sup> January 2023.

**Source:** [Decree no. 2023-449 of 7 June 2023 on the accounting rules for the resilience provision set aside by captive reinsurance companies](#)

### **France - Publication by the CCSF of its recommendations for improving information and advice for home insurance policyholders**

On 23 May 2023, the *Comité Consultatif du Secteur Financier* ("CCSF") submitted the results of its work, in which it considers that it is essential for insurers to monitor insurance contracts to ensure that they are still suited to policyholders' needs, and that policyholders would be better informed if they were been provided with information on a regular basis, and accordingly recommends:

- The implementation of a regular reminder by the insurer, on a durable medium, of the characteristics of the insured property;
- To supplement the annual notice of payment of the insurance premium by (i) a reminder of the need to contact the insurer in the event of a change in the policyholder's situation or the evolution of their properties and (ii) educational examples enabling the policyholder to assess the need to adapt the insurance cover;
- The introduction of a periodic exchange between the insurer and the policyholder to assess any changes that might affect the cover underwritten; and
- A proposal to adapt the contract if necessary.

**Source:** [CCSF recommendations on information and advice to policyholders on home insurance](#)

### **France - Publication on 14 June 2023 of an Order and a decree amending the system for determining certain thresholds relating to the definition of large risks**

Decree no. 2023-466 of 14 June 2023 and the Order of the same date, which came into force on 18 June 2023, amend the modalities for determining certain thresholds relating to the definition of large risks without though modifying the thresholds which were recently modified by Decree no. 2022-1018 of 20 July 2022. The purpose of Decree no. 2023-466 of 14 June 2023 is to refer to a ministerial order for the determination of the thresholds relating to the conditions pertaining to the balance sheet and the turnover which shall be satisfied so that a transaction be considered as covering a large risk. These measures have been taken in accordance with European Commission opinion 2021/C 423/12 periodically revising the thresholds for defining large risks.

Decree no. 2023-466 of 14 June 2023 amends article R. 111-1 of the French Insurance Code ("FIC"), which now refers to a ministerial Order for the determination of large risk thresholds. In this respect, the Order of 14 June 2023 creates a new article A. 111-7 of the FIC, which states that for the purposes of assessing the thresholds for large risks, the total amount of the last balance sheet shall be greater than EUR 6.6 million and the amount of turnover for the last financial year shall be greater than EUR 13.6 million.

**Source :**

- [Decree no. 2023-466 of 14 June 2023 amending the system for determining certain thresholds relating to the definition of large risks](#)
- [Order of 14 June 2023 setting the thresholds for defining large risks](#)

*Authored by Ghina Farah and Mohamed Boukesra*

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- **Intellectual Property**

#### **European Union – Unified Patent Court (UPC)**

The Unified Patent Court (UPC) was established on June 1, 2023, marking the starting point for the unitary patent system. The EU regulations establishing the unitary patent system (n°1257/2012 and n°1260/2012) and the UPC Agreement therefore came into force on June 1.

Since its introduction, no decision has yet been rendered.

Following the 7th meeting of the JUB Administrative Committee on June 26, 2023, it was announced that the Agreement had been amended to create a section in Milan of the Central Division based in Paris, rather than in London as originally planned. The decision is available [here](#).

A more detailed presentation of the JUB was the subject of an [article](#) last month.

*Authored by Anna Revidi and Emie Paganon*

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- **Public Law**

#### **France – Public procurement – Specifications on the electronic transmission of the backup copy**

An [explanatory note](#) entitled "The backup copy", published on June 22, 2023 by the French Legal Affairs Division of the Ministry of Economy and Finance, specifies how the electronic transmission of the backup copy works. This new method of transmission offered to candidates and bidders has been implemented by [Order n°ECOM2308848A](#) of April 14, 2023, amending Appendix 6 of the French Public Procurement Code [See [Legal and regulatory update - May 2023](#)].

The explanatory note points out that, in order for this new method of transmission to be used, the purchaser must authorize the candidate or bidder to submit electronically a backup copy of its candidature or bid.

The submission can then be made by electronic registered letter or by any other means that complies with the requirements of appendix 8 of the French Public Procurement Code (in particular, the precise identification of the purchaser and the economic operator, and the exact date and time of receipt of the copy).

However, the purchaser may impose the use of either a specific filing tool "*provided that this choice results from a procedure that respects public procurement law*", or a tool available for free. Finally, it is recommended that the filing tool is separated from the buyer profile, and that it works in the event of a failure of the latter.

## **France - Public procurement and riots - Dispensation from the rules on advertising and competitive tendering in case of emergency**

[Circular no. 6410/ SG](#) of July 5, 2023 on speeding up procedures to facilitate repair or rebuilding operations following damage in certain urban districts, posted online on July 5, 2023, encourages mayors to use the existing public procurement procedures to act quickly and efficiently to facilitate repairs, renovations and reconstructions of buildings, outdoor equipment or road elements.

Firstly, the circular recalls the possibility for purchasers to derogate from advertising and competitive tendering rules in case of extreme urgency resulting from external circumstances which the purchaser could not have foreseen, and which prevent him from complying with the minimum deadlines required by formalized procedures (articles L. 2122-1 and R. 2122-1 of the French Public Procurement Code). According to the circular, this basis could be used, for example, to award contracts to ensure the safety of goods and people, or to restore the continuity of the public service by conducting the necessary repairs.

The circular goes on to mention other legal tools that can be used to mobilize quickly companies, in particular (i) the negotiated procedure for the award of works contracts with a value of less than 100,000 euros (excluding VAT) or "small lots" with a value of less than 100,000 euros (excluding VAT) and of less than 20% of the total value of the works, or (ii) the adapted procedure for works contracts with a value of between 100,000 euros (excluding VAT) and 5,382,000 euros (excluding VAT).

This circular should be supplemented by the enactment of an emergency law aimed at removing certain legal obstacles to the completion of works that have become necessary.

*Authored by Bruno Cantier, Astrid Layrisse and Aurélie Toujas*

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- **Real Estate**

### **France – Publication of the TARI, CRI and CCI indices**

The French National Institute of Statistics and Economic Studies (INSEE) has published the indices for the 1st quarter of 2023 traditionally used for the revision of commercial and professional leases:

- Commercial Rent Index (CRI): 128.68, an increase of 6.69% over one year;
- Tertiary Activities Rent Index (TARI): 128,59 an increase of 6,51 % over one year;
- Construction Costs Index (ICC): 2077 an increase of 6,62 % over one year.

Law No.2022-1158 of 16 août 2022 (Loi pouvoir d'achat) limited the annual variation of the commercial rent index to 3.5% for the quarters between the second quarter of 2022 and the first quarter of 2023 for small and medium-sized companies, i.e. those employing less than 250 people and with an annual turnover not exceeding 50 million euros or a balance sheet total not exceeding 43 million euros. The cap on the annual variation is definitive and the increase or decrease in rent resulting from a subsequent review cannot take into account the portion of the variation in the commercial rents index exceeding 3.5% over the same period.

*Authored by Margot Derumaux and Marion Lequien*

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