

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 March 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 – Publication of the Order of 22 February 2023 concerning the minimum remuneration of authors of documentary project presentation dossier

Article [L. 132-25-1 of the Intellectual Property Code](#), resulting from [Order 2021-580 of 12 May 2021 transposing 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](#), provides that interprofessional agreements on contractual practices may be extended by ministerial order to all interested parties in a given sector of activity. On 23 January 2023, the professional organisations of documentary authors and collective rights management organisations, on the one hand, and the representative organisations of producers of audiovisual works, on the other hand, signed an agreement setting the minimum remuneration of authors of the presentation dossier for documentary projects of more than 52 minutes at €2,000 excluding tax. In accordance with article L. 132-25-1, the signatories of the agreement requested its extension to the Minister of Culture. The [Order of 23 February 2023](#) thus made the stipulations of the agreement compulsory for all audiovisual production contracts signed after 5 March 2023, the date of publication of the Order in the Official Journal.

*Authored by Etienne Barjol and Audrey Naturel*

- **Commercial**

#### **France - Enactment of the Descrozaile law**

The law n° 2023-221 of March 30, 2023 aimed at strengthening the balance in commercial relations between suppliers and distributors (known as the "Descrozaile Law") was published in the JORF on March 31, 2023. The Descrozaile Law is in line with the legislator's desire to preserve the interests of suppliers vis-à-vis distributors.

In particular, the Descrozaile Law:

- establishes a principle of public policy regarding transparency in the commercial relationship and unfair commercial practices between companies in that:
  - the related provisions of the Commercial Code apply "*to any agreement between a supplier and a buyer relating to products or services marketed on French territory*"; and
  - disputes relating to their application fall under the exclusive jurisdiction of the French courts, "*subject to compliance with European Union law and international treaties ratified or approved by France and without prejudice to recourse to arbitration*";
- introduces, on an experimental basis (for a period of three years), a mechanism allowing the supplier, at its choice:
  - to break off the commercial relationship with the distributor, in the absence of a "*single formal agreement*" ("*convention unique*") signed on March 1, without the latter being able to invoke a sudden termination of an established commercial relationship in the sense of Article L442 II of the French Commercial Code; or
  - to request the application of a notice period in accordance with the provisions of this article. During the notice period, the applicable price will have to take into account the economic conditions of the market. The parties may also decide to refer the matter to a mediator in order to conclude, before April 1, an agreement setting out the terms of a notice period;
- strengthens the framework for logistics penalties imposed by the distributor on the supplier, in particular by setting up a 2% cap of the value of the products ordered for which the non-performance of contractual commitments has been noted; and
- extends the raising of the resale loss threshold for food products until April 15, 2025 and the supervision of promotions until April 15, 2026 (initially limited to food products and to be extended to "consumer products" as of March 1, 2024).

**France - The law on various provisions for adaptation to European Union law in the areas of economy, health, work, transport and agriculture (DADUE) law was promulgated on March 9, 2023:**

On March 10, 2023, [the law containing various provisions for adaptation to European Union law in the areas of the economy, health, work, transport and agriculture](#) was published in the Official Journal. This law aims to bring French law into line with several European texts, in several areas such as the economy, finance, social law, agricultural aid and digital law.

With regard to digital law, article 16 of the law introduces provisions relating to the accessibility of products and services, which make mandatory accessibility requirements for many products and services such as e-books and Internet websites. This article 16 introduces a section regarding the accessibility of products and services in the French Consumer Code. Among the new provisions, economic operators concerned are exempted from certain accessibility requirements for products and services if these requirements impose a significant modification on the product or service or impose a disproportionate burden on these operators.

The accessibility of products and services refers to the ability of these products and services to be used and understood easily and effectively by everyone, including people with specific needs or physical, sensory or cognitive limitations. This may include features such as ease of use or the availability of alternative formats for people with disabilities.

In addition, a large number of actors will be subject to these accessibility requirements, for example, online communication services will also have to reinforce the accessibility of telephone services. However, small businesses with fewer than 10 employees and annual sales of up to EUR 2,000,000 or a total balance of up to EUR 2,000,000 will be exempt from these requirements.

Ordinances should strengthen penalties for non-compliance with accessibility rules.

*Authored by Olga Kurochkina, Daghan Ozturk, Nathan Ponthieu, Malak Hegazi and Clément Taieb*

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- **Corporate**

**European Union – Next step towards the digitalisation of EU company law: EU Commission’s proposal for a Directive to further expand and upgrade the use of digital tools and processes in company law**

The European Commission adopted on March 29<sup>th</sup> a [new proposal for a Directive on further expanding and upgrading the use of digital tools and processes in company law](#).

According to the [Commission's press release](#), the text aims to :

- facilitate cross-border company's operations by reducing red tape through the use of digital tools and processes in EU company law. The proposed rules notably provide for the application of the principle of single transmission of information with the help of the Business Registers Interconnection System (BRIS), an EU company certificate, available free of charge and in all languages, a multilingual standard model for a digital EU power of attorney to represent the company in other Member States and the removal of certain formalities;
- improve business transparency and trust by making more information about them available to the public at EU level. The proposed rules notably include making company information available to the public through the BRIS, facilitating search for information through BRIS and simultaneously through beneficial owners and insolvency registers, and ensuring "accurate, reliable and up-to-date" data in business registers.

The application of these measures should impact around 16 million limited liability companies and 2 million partnerships in the EU. Following the [Digitalisation Directive 2019/1151](#), this proposal, which still needs to be discussed by the European Parliament and the Council, shall provide for the 2<sup>nd</sup> step in the digitalisation of EU company law.

A [Q&A](#) provides for additional information relating to the purposes of this proposal for a directive.

*Authored by LN Ricard*

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- **Employment**

**France - Decree no. 2023-215 of March 27, 2023 establishing the list of pathologies entitling parents to specific leave when their child's chronic illness is announced**

[This decree](#) extends the 2-day leave granted to parents upon the announcement of a disability in their children to two new situations. From now on, parents are entitled to specific leave when a chronic illness is announced, for chronic pathologies covered under articles D. 160-4 and R. 160-2 of the Social Security Code, listed rare diseases, and severe allergies requiring the prescription of an injectable treatment.

**France - Decree No. 2023-185 of March 17, 2023 on employee secondment**

[This decree](#) concerns the secondment of an employee to France by an employer established outside France. It simplifies the prior declaration of secondment sent to the labor inspectorate of the place where the service is provided (L. 1262-1 of the Labor Code and following). Certain documents, such as those attesting to the number of contracts and the employer's turnover, no longer need to be kept. Certain information is also no longer required, such as the date of signature of the employment contract for each employee or the terms and conditions for the employer's coverage of travel and food expenses.

**France - LAW No. 2023-171 of March 9, 2023, containing various provisions for adapting to European Union law in the fields of the economy, health, labor, transportation and agriculture**

[This law](#), made to comply with European Union law makes several changes to the Labor Code.

With regard to leave, the one-year seniority requirement for entitlement to parental leave is now counted from the date of application for leave. Paternity leave is now considered as actual working time for the calculation of seniority, and as a period of presence for participation. Family solidarity and caregiver leave is extended to employees of private individuals and to private maternal assistants.

Secondly, the "DDADUE" law puts an end to the derogation that allowed branch agreements concluded before June 26, 2008 to provide for maximum trial periods longer than the legal ones. Branches have 6 months to comply.

Thirdly, the employer will now be obliged to inform employees on fixed-term and temporary contracts who so wish of any open-ended positions to be filled. Employees must have been with the company for at least six months. An application decree will specify the terms of this new system.

Finally, the list of information to be provided to the employee upon hiring has been extended (new Article L. 1221-5-1 of the Labor Code). The employee will be able to bring an action before the competent judge if he does not obtain communication of these documents from his employer. For the time being, a decree from "Conseil d'Etat" is awaited, which will set the terms of application of this provision as well as the list of the documents concerned.

*Authored by Baptiste Camus & Oussama El Hassani*

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- **Insurance**

**France – ORIAS: decision to postpone the ORIAS registration commission in order to process the applications received before the 31 March 2023 deadline**

ORIAS, the register of insurance, banking and finance intermediaries, has announced the postponement of the registration commission due to the large number of renewal applications received towards the end of the period defined for the submission of the renewal applications.

The registration commission which was initially scheduled on 7 April 2023 has been postponed to 21 April 2023 in order to process the more than 4600 applications received by ORIAS between 20 and 30 March 2023. However, ORIAS reminded that the deadline for submitting applications was still set at 31 March 2023. Therefore, all applications which have been received after this date will not be processed.

Source: [Orias website](#)

### **France – Decree: termination of insurance contracts by electronic means**

Decree 2023-182 of 16 March 2023 sets out the terms and conditions for accessing and using the electronic contract termination facility provided for in Article 17 of Law 2022-1158 of 16<sup>th</sup> August 2022 on emergency measures to protect purchasing power.

Where an insurance contract has been concluded through distance means, the decree specifies the requirements applicable to insurance companies in order to enable policyholders to terminate their insurance contract through distance means. In particular, insurers must provide policyholders with easy, direct and permanent access to the termination functionality provided for by the law from the online interface (in particular the website or mobile application). The decree specifies the information to be provided in the event of termination, enabling the insured to file its request. Finally, the insured must be directed to a last page summarising the information provided, from which he or she can notify the termination to the insurer.

Source: [Decree 2023-182 of 16<sup>th</sup> March 2023 regarding the termination of insurance contracts by electronic means](#)

### **France – ACPR: Status of distributors of loan insurance contracts**

In a press release dated 15 March 2023, the Autorité de Contrôle Prudentiel et de Résolution ("**ACPR**") reminds the status of insurance distributors who market loan insurance policies.

The ACPR highlights that shortcomings have been identified in connection with the distribution of loan insurance products linked to consumer credit in particular by partners of banking institutions (or credit distributors) whose main activity consists in providing goods or services unrelated to the loan insurance product distributed such as the sale of boilers, solar panels, furniture or vehicles.

The ACPR points out that these partners must be considered as insurance intermediaries on a principal basis and not on an ancillary basis in accordance with Article L. 511-1 of the French Insurance Code and must comply with the obligations arising from this status.

Source : [ACPR press release on the status of distributors of loan insurance contracts](#)

### **EIOPA: supervisory statement on differential pricing practices in non-life insurance lines of business**

EIOPA has published on 22 February 2023 a supervisory statement on differential pricing practices in non-life insurance lines of business.

EIOPA recalls that the premium paid by customers is generally linked to the individual underwriting risk. Customers with higher underwriting risks generally pay higher premiums. However, certain insurance undertakings adjust the premium by using a number of different practices that are not linked to the customers' underwriting risk profile or the cost of service. By way of illustration, EIOPA indicates that certain customers may be charged a different premium depending on personal characteristics such as the propensity to compare prices upon renewal of the insurance policy and that vulnerable customers are likely to be charged higher premiums because they are not in a position to compare the various offers available on the market in comparison for example to younger or digitally equipped customers.

EIOPA considers that these differential pricing practices although not new, are becoming increasingly sophisticated and part of a process of automation and reminds in this respect insurance undertakers and insurance distributors the need to comply with the requirements set forth under the Insurance Distribution Directive (UE) 2016/97, including the obligation to act in the interest of their customers.

**Source:** [EIOPA supervisory statement on differential pricing practices in non-life insurance lines of business](#)

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

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- **Intellectual Property**

**France – Phasing out of paper Soleau envelopes**

By [Decree n°2023-166 of 7 March 2023 on envelopes intended to facilitate proof of the content and dating of certain intellectual property annexes](#), the use of paper Soleau envelopes is gradually being abandoned. Soleau envelopes allow to prove the existence of a creation at a given date. The paper Soleau envelopes are now replaced by the online filing service e-Soleau. The Decree came into force on 1 April 2023. A transitional regime has been put in place by Article 7 of the Decree allowing the use of paper Soleau envelopes purchased before 1 April 2023 until 1 April 2024.

**European Union – Publication of the European Patent Office statistics - France maintains its second place in Europe**

The European Patent Office has published its [2022 statistics on patent applications](#). France holds on to the second place in Europe behind Germany with 10,900 applications filed, up 1.9% compared to 2021. France ranks 5th worldwide. Transport, electrical machinery and medical technologies are the [technological fields that have attracted the most applications](#).

*Authored by Etienne Barjol and Audrey Naturel*

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- **Public Law**

**France – The Law on the acceleration of renewable energy production: adjustment of the duration of the PPAs**

The law n°[2023-175](#) of 10 March 2023 on the acceleration of renewable energy production, published in the OJRF dated 11 March 2023, created a specific legal framework for the conclusion by public purchasers of power purchase agreements ("PPA" – i.e. contracts for the direct sale of electricity by producers), which allow end consumers to be supplied with electricity at steady prices over the long term.

Firstly, this law introduced into the environment Code (article L. 228-5) the principle stating that public procurement takes into consideration, for the purchase of renewable energy production devices, *"their carbon and environmental footprint throughout their manufacturing process, their use and their recovery after their end of life"*.

Secondly and most significantly, it introduced a new article L. 331-5 in the energy Code, which provides that contracting authorities and contracting entities may use a public procurement contract to meet their needs for electricity produced from renewable sources (i) with a third party for the implementation of an individual self-consumption operation, (ii) as part of a collective self-consumption operation with one or more producers participating in this operation, or (iii) as part of a long-term direct electricity sales contract, as referred to in article L. 333-1 of the energy Code. Article L. 331-5 of the energy code specifies that the duration of these contracts *"is defined taking into consideration the nature of the services and the depreciation period of the facilities necessary for their execution, including when the contracting authority or entity does not acquire these facilities"*. In doing so, the law simplifies the use of PPAs by public entities by eliminating the difficulty previously associated with the duration of public contracts. In concrete terms, public purchasers will now be able to conclude long-term contracts for the direct purchase of renewable energy.

#### **France – The Law on the acceleration of renewable energy production: measures to accelerate the development of offshore wind power**

The law n°[2023-175](#) of 10 March 2023 on the acceleration of renewable energy production, published in the OJRF dated 11 March 2023, moreover includes provisions aiming at accelerating the development of offshore wind power.

First of all, it establishes a planning of offshore wind energy. In this regard, it stipulates that the strategic document for each coastline establishes, for each coastline, a map of priority maritime and land areas for the implementation, over a period of ten years from its publication, of offshore renewable energy production facilities from wind and their connection to the public electricity transmission grid. This mapping will have to define the priority areas for the development of offshore wind energy by 2050, and is drawn up by targeting as a priority the priority areas located in the exclusive economic zone and outside national parks with a maritime part. The competitive bidding procedures must target these exclusive economic zone priority areas as a matter of priority. The first mapping should be published in 2024.

Secondly, the law simplifies some of the procedures. In this respect, it provides that it is the State's responsibility to carry out the technical and environmental studies required for the preparation of projects by applicants and for conducting the impact study, and that these studies may be initiated in advance with a view to launching a competitive tendering procedure (new article L.311-10-3 of the energy Code). Furthermore, the environmental authorisation set out in article L.181-1 of the environmental Code will now stand in lieu of the single authorisation and approval set out respectively in articles 20 and 28 of ordinance n°2016-1687 of 8 December 2016 *regarding maritime areas under the sovereignty or jurisdiction of the French Republic*, and of the approval order for the concession agreement for the use of the maritime public domain located outside the administrative borders of ports (amended article L.181-3 of the environmental Code). Additionally, the general Code on the ownership of public bodies now provides that the judge hearing a claim against an authorisation or contract for the occupation of the public maritime domain may limit the scope of the annulment to the part of the act or the phase of the investigation that is vitiated, or invite the regularisation of a vitiated act by an amending act and postpone the ruling until the expiry of the time limit set for this regularisation (new article L.2331-1-1 of this code).



Lastly, act law n° 2023-175 amends the aforementioned ordinance n° 2016-1687 to provide, on the one hand, that production facilities located partly in the territorial sea and partly in the exclusive economic zone are governed by the regime applicable to facilities located exclusively in the territorial sea and, on the other hand, to create provisions on the status and safety of floating facilities and structures. As a result, floating wind turbines will no longer be subject to the regime for ships, which was not appropriate, but to this new regime for floating facilities and structures.

#### **France – Public procurement: introduction of “self-cleaning”**

The law [n°2023-171](#) of 9 March 2023 containing various provisions adapting to European Union law in the fields of the economy, health, labour, transport and agriculture, published in the OJRF dated 10 March 2023, amends the public procurement Code to align its provisions regarding exclusions from award procedures with the requirements of European case law and directives. This non-conformity has been highlighted by the French Council of State in its "Vert Marine" decision (Council of State, 12 October 2020, n°419146) with regard to the provisions relating to automatic exclusions from the award of concession contracts. The law thus inserted in articles L.2141-6-1 (for public procurement contracts) and L.3123-6-1 (for concessions) of the public procurement Code a "self-cleaning" mechanism for candidates who have been the subject of a final criminal conviction for certain offences. The candidates can provide evidence that they have taken measures to demonstrate their reliability, in particular by proving that they have undertaken to pay compensation for the damage caused by the criminal offence or default, that they have fully clarified the facts or circumstances by actively collaborating with the authorities in charge of the investigation and that they have taken concrete measures to regularise their situation and prevent any new offence or default. If the public purchaser considers that this evidence is sufficient, candidates are not excluded. Self-cleaning is not applicable, as the case may be, during the exclusion period set by the final court decision.

*Authored by Bruno Cantier and Astrid Layrisse*

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- **Real Estate**

#### **France – Conseil d’Etat, 23 March 2023 n° 468360: "dark stores" are warehouses in accordance with the provisions of the French Urban Planning Code and the Paris Local Planning Regulations**

On 23 March 2023, the Conseil d’Etat ruled that dark stores (shops intended for the storage of goods for their delivery and without customer reception) are "warehouses" under the French Urban Planning Code and the Paris Local Planning Regulations (PLU).

Two fast delivery companies (Frichti and Gorillas Technologies) have transformed a dozen premises into dark stores the destination of which is “trade” located in Paris. The Paris City Hall ordered them to restore said premises to their original use (*destination*), as they had not filed the prior declaration required by the French Urban Planning Code when a building was changed in use. Furthermore, the Paris City Hall underlines that the Paris Local Planning Regulation prohibits the transformation into warehouses of ground floor premises.

The Conseil d'Etat ruled that the Paris City Hall was entitled to oppose this transformation and to demand the reinstatement of these premises into their initial use, since there had been an unauthorised change of activity.

The Conseil d'Etat specified in this decision that dark stores are warehouses within the meaning of the regulations in force, as they store goods for the purpose of rapid delivery to customers and are no longer intended for in-store sales (and not for the purpose of "constructions and installations necessary for public services or of collective interest" (urban logistics)).

#### **France – Decree 2023-195, March 22, 2023: creation of the sub-destination "Kitchen dedicated to online sales" in the destination "Other activities of primary, secondary and tertiary sectors"**

The decree of March 22, 2023 has created a new sub-destination entitled "Kitchen dedicated to online sales" (Dark kitchens) in the destination "Other activities of the primary, secondary and tertiary sectors".

This new sub-destination was created because the premises hosting dark kitchens did not correspond to the sub-destination "catering" which provides for the customers reception (article R 151-28 of the French Planning Code).

This decree will enter into force on 1 July 2023.

As of 1 July 2023, local Planning Regulations will be subject to the application of article R. 151-28, 5° of the French Urban Planning Code, in its updated version and integrating the sub-destination "Dark kitchens", except in cases where a procedure of elaboration or evolution has been initiated before 1 July 2023.

#### **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 4th quarter of 2022 traditionally used for the revision of commercial and professional leases:

- Commercial Rent Index (CRI): 126.05, an increase of 6.29% over one year;
- Tertiary Activities Rent Index (TARI): 126,66 an increase of 6,46 % over one year;
- Construction Costs Index (ICC): 2052 an increase of 8,80 % 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.

*Authored by Margot Derumaux and Thomas Ntometane*

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