

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 November 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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- **Capital Markets**

France – Amendments to the general regulation of the French *Autorité des Marchés Financiers* (AMF)

Pursuant to [order dated 10 November 2022](#), the General Regulation of the AMF has been amended.

The amendments to books II and III of the General Regulation of the AMF purport to align the provisions of such regulation with those of [ordinance n°2022-1229 of 14 September 2022](#). This ordinance extends in particular the transitional period by one year to allow national crowdfunding service providers to continue their activities until they obtain the new European license.

The amendments to Book IV are essentially intended to introduce, for certain UCITS, new provisions to implement the following anti-dilution mechanisms: the gates (i.e. placing a restrictive ceiling on redemptions) and swing pricing (i.e. reducing the cost to existing investors of a restructuring of portfolio ownership due to subscriptions and redemptions of investors).

Authored by Charlotte Bonsch

- **Corporate**

European Union – Proposal for a Directive on corporate sustainability due diligence (CS3D)

A few days following the [adoption](#) in November of the Directive on Corporate Sustainability Reporting (CSRD), [the Council of the European Union adopted its negotiating position](#) on the corporate sustainability due diligence directive (CS3D) in early December. The text aims to strengthen the protection of the environment and human rights in the European Union and beyond.

It provides for additional safeguards for large EU companies and third country companies operating in the EU with new information to be disclosed on their social and environmental impact and an obligation to prevent certain risks in relation to governance, respect for human rights and the environment (§ 14).

This proposal also sets out the obligation for companies to adopt a plan to ensure that their business model and strategy are compatible with limiting global warming to 1.5°C, in accordance with the Paris Agreement (§50). Finally, the text also provides for a penalty mechanism in the event of a violation of these obligations (§ 54).

The timing of this text remains to be clarified and will depend on the negotiations with the European Parliament.

Authored by Louis-Nicolas Ricard

- **Cybersecurity**

European Union – Adoption of the NIS 2 Directive by the European Parliament and the Council of the European Union

The European Parliament and the Council of the European Union have adopted the [final text of the Directive on measures to ensure a common high level of cyber security throughout the Union \(NIS 2 Directive\)](#).

The main contribution of the NIS 2 Directive is the considerable broadening of its scope (Article 2 of the NIS 2 Directive) compared to that of the NIS 1 Directive, which it repeals. Indeed, the latter only targeted actors in the energy, transport and health sectors, as well as banks and certain digital infrastructures. From now on, Annexes I and II of the NIS 2 Directive, which list the actors concerned by the obligations it sets out, include certain public administrations, chemical manufacturers, digital service providers, the space sector and the food sector.

In addition, the NIS 2 Directive also creates a distinction between so-called essential and important entities (Article 3 of the NIS 2 Directive), which will respectively have to take appropriate measures to manage the risks related to the security of networks and information systems, and introduces reporting obligations (Article 23 of the NIS 2 Directive) to the competent national authorities (ANSSI in France) in the event of an incident. Member States will have to determine the applicable sanctions for non-compliance with the provisions of the NIS 2 Directive (Article 36 of the NIS 2 Directive).

The NIS 2 Directive will enter into force on the twentieth day following its publication in the Official Journal of the European Union, which is expected shortly. Once it enters into force, Member States will have 21 months to transpose it into their national legislation.

Authored by Rémy Schlich and Augustin Lacroix

- **Employment**

France - Order of October 27, 2022 defining the procedures for transmitting to the administration any gaps in representation between women and men in the company;

[This decree](#) sets out the procedures for transmitting these possible gaps: they must be transmitted on a dedicated page of the Ministry of Labor's website, which has been active since November 3, 2022 at the following address: <https://egapro.travail.gouv.fr/representation-equilibree/>

France - Decree no. 2022-1374 of October 29, 2022 temporarily extending the rules of the unemployment insurance scheme.

Pending the entry into force of the law on emergency measures relating to the functioning of the labor market, the purpose of this decree is to allow the payment of unemployment insurance benefits and the collection of related contributions to continue beyond November 1, 2022 and until January 31, 2023.

France - Decree no. 2022-1435 of November 15, 2022 on the approval and activity reports of occupational health and prevention services.

[This decree](#) implementing the LAW n° 2021-1018 of August 2, 2021 to strengthen prevention in occupational health, defines the criteria for the approval of occupational health services.

Thus, each occupational health and prevention service (SPST) must be approved by the DREETS (approval issued for 5 years), which can only be refused for non-compliance with the provisions of the Labor Code, such as failure to comply with the specifications (Article D. 4622-49-1, I), which relate in particular to governance, the offer, the implementation of multidisciplinary, the information systems or the coverage of the needs of companies.

Even if the operating conditions of the STPS are not compliant, the DREETS can issue a non-renewable 2-year approval subject to a commitment to comply, or, during the course of the approval, terminate it or reduce its duration after asking the STPS to complete the necessary work within 6 months. In case of reduction of the duration of the approval or its withdrawal, the president of the SPST must inform each member company.

In addition, an inter-company occupational health and prevention service may accept the membership of a company located in the region where it has an approval as long as this membership does not call into question the effective coverage of the occupational medicine needs of the sectors for which the service is approved, and that the service guarantees local access for each worker (fixed or mobile center).

France - The BOSS clarifies the new fixed deduction on overtime applicable to companies with at least 20 employees and less than 250 employees.

Although a decree was still pending, BOSS has clarified the conditions for the application of the new fixed deduction of €0.50 per hour of overtime worked and €3.50 per day of rest for employees with an annual day rate. The system is aligned with the flat-rate deduction already in place in companies with less than 20 employees. Details are also given by the BOSS on the consequences of crossing thresholds (counting in accordance with the rules of article L 130-1 of the CSS). Thus, for overtime hours worked as from October 1, 2022, a company that crosses the threshold of 250 employees may benefit from the flat-rate deduction of €0.5 applicable for the 5 years following the crossing of this threshold.

France - Decree no. 2022-1472 of November 24, 2022 relating to the regional committees for employment, vocational guidance and training and bearing various measures relating to vocational training.

[This decree](#) adapts these committees in light of the developments of Law No. 2018-771 of September 5, 2018, and also provides that these bodies include two personalities qualified in the field of ecological transition, after advice from the president of the regional council and the regional economic, social and environmental council.

France - CNIL publication of October 24, 2022: question and answer on professional elections and personal data

This publication recalls the obligations of the data controller in the context of professional elections, which must, in addition to the principles relating to the processing of personal data, carry out an impact analysis, register the processing in advance in the register of processing activities, inform voters about the operation of the voting system if it is electronic, and pay particular attention in the event of outsourcing.

France - Decree No. 2022-1369 of October 27, 2022 on vulnerable persons with a proven risk of developing a serious form of covid-19 virus infection

[This decree](#) sets out the terms and conditions for recognizing vulnerable persons who may develop a serious form of Covid-19 infection; eligible, therefore, for partial activity, using the criteria of the decree of 8 September 2021.

France - Decree no. 2022-1434 of November 15, 2022 on the occupational health medical file

[This decree](#) sets out the new rules associated with the occupational health medical file (DMST) in application of the law of August 2, 2021. Any occupational health professional may create an OHMR. It must include, at a minimum, information relating to the identification of the employee, current or past risks, his or her consent to access his or her DMST and other mentions. The employee also has the right to object, and the DMST must be kept for 40 years from the last visit, and 10 years from the death of its holder; but this period is extended for employees subject to specific risks.

Authored by Baptiste Camus & Oussama El Hassani

- **Insurance**

France – French Parliament: Adoption of the Article 4 of the “LOPMI” Order

On November 15, the French Parliament adopted Article 4 of the “LOPMI” Law (law on the orientation and programming of the Ministry of the Interior) on insurance against cyber risk.

Article 4 of the law provides that compensation for losses and damages due to a cyber risk will be subject to the filing of a complaint with the relevant authorities by the victim no later than seventy-two hours after the knowledge of the cyber loss.

It will apply only to a natural person or a legal entity in the course of their business activity.

Source : [Adoption of the LOPMI law by the French Parliament](#)

France – ACPR/AMF: Monitoring and evaluation report of the climate commitments made by actors regarding sustainable finance

The AMF and ACPR have published on [***]a report aiming to assess the evolution of the commitments of financial actors in favor of the climate, the credibility of policies relating to fossil fuel and their implementation.

The report also addresses the governance put in place by the actors to monitor their climate commitments.

Financial institutions are invited to:

- strengthen transparency around the implementation of climate commitments, which includes traceability and indication of the dates of implementation and the scope of the entities and investments concerned ;
- include the biodiversity theme into strategic thinking and decision-making;
- taking environmental risks into account in risk management monitoring ; and
- extend the practice of internal audit to the environmental policies of the entities.

Source : [Monitoring and evaluation report of the climate commitments regarding sustainable finance](#)

European Union - ESAs (EIOPA, ESMA, EBA): Joint call on evidence for greenwashing

On November 15, 2022, a survey about greenwashing has been conducted in order to have a better understanding of this concept and to strengthen the reliability of sustainability claims.

This survey was aimed to:

- understand what areas are the most at risk from greenwashing;
- gather stakeholder's views on how to understand the main characteristics of greenwashing;
- identify areas of risk and high risk of greenwashing; and
- identify all potential greenwashing practices relevant for the sustainable investment value chain in various segment.

ESAs states that greenwashing can be analyzed under 4 prism:

- the role that actors can have regarding greenwashing;
- the actual subjects on which sustainability claims are made;
- the misleading sustainability claims, specifying why they are misleading; and
- the channels through which misleading claims are communicated to other actors.

Source : [Joint call on evidence for greenwashing](#)

Authored by Ghina Farah, Mohamed Boukesra, Maxime Kaya

- **Intellectual Property**

European Union - Revision of the European legislative framework applicable to industrial designs.

The European Commission is adopting a [proposal for a Directive on the legal protection of designs](#) and a [proposal for a Regulation on Community designs](#). The proposals presented follow the [Intellectual Property Action Plan](#) adopted in November 2020, in which the Commission announced that it would revise EU legislation on design protection.

This initiative aims, inter alia, to modernise, clarify and strengthen design protection, to make design protection more accessible and affordable across the European Union, and to ensure compatibility between EU and national design law rules. In particular, this proposal also aims to further align EU design protection for repair spare parts.

The draft texts were published on 28 November 2022, and the European Commission is now submitting them for [consultation](#) until 23 January 2023.

Both proposals will be forwarded to the European Parliament and the Council for adoption under the ordinary legislative procedure. Once the proposals are adopted, EU Member States will have to transpose the new rules of the Directive into national law within two years.

European Union - Notices of the European Patent Office (EPO), dated 11 November 2022, on the forthcoming introduction of the unitary patent.

On 11 November 2022, the EPO published two notices with regard to the forthcoming introduction of the unitary patent.

The first notice relates to the [possibility of requesting a delay in issuing the decision to grant a European patent in response to a communication under Rule 71\(3\) EPC](#). According to this decision, applicants for European patents will be given the possibility to request that the issuance of the decision to grant a European patent be delayed so that the mention of the grant is published in the European Patent Bulletin on or immediately after the date of entry into force of the Agreement on a Unified Patent Court (UPCA), in order to allow the registration of unitary effect for the European patent.

The second notice relates to the [possibility to file early requests for unitary effect](#). According to this decision, the EPO will accept requests for unitary effect filed prior to the date of application of the Regulations (EU) No 1257/2012 and (EU) No 1260/2012 setting up the Unitary Patent. Such early requests for unitary effect will be allowed to be filed as of 1st January 2023.

On 5 December, the Unified Patent Court announced a two month delay to the start of the sunrise period to 1 March 2023. This report delays the official launch of the Agreement on a Unified Patent Jurisdiction (the AJUB) to 1 June 2023.

Authored by Etienne Barjol, Eléonore Salles and Jessica Seray

- **Life Sciences**

France – Adoption of the PLFSS for 2023.

The [Social Security Financing Bill \(PLFSS\) for 2023](#) was definitively adopted by the National Assembly on Wednesday 30 November.

The text, whose main objective is to determine the amount of health insurance expenditure, foresees that it will amount to 244 billion euros, with a social deficit established at 7.1 billion euros.

This PLFSS for 2023 has focused on several topics, including prevention and access to care, support for families, the elderly in loss of autonomy and the fight against social fraud.

Among the latter, a few elements may be of interest, such as the introduction of "prevention appointments" at key ages of life (20-25, 40-45 and 60-65) from 2023, the fight against the shortage of doctors in medical deserts or an increase in the budget for the autonomy branch, now set at 37.3 billion euros.

This new PLFSS also creates new obligations, in particular for commercial companies offering teleconsultation services. These companies will have to obtain approval to bill the health insurance system for teleconsultation procedures.

Although the text has been adopted, it is not yet applicable. Some deputies have referred the matter to the Constitutional Council, which will have to rule on its conformity with the constitution. While waiting for the decision of the wise men, the provisions of the PLFSS must be considered as definitive.

Authored by Fabien Charissoux and Théophile Tsimaratos

- **Technology**

European Union - European Parliament adopts report on e-sports and video games

The European Parliament adopted a [report on esports and video games](#) in a resolution on November 10, 2022. The MEPs insist on the increasingly popularity of esports, partly among young people then "in the middle of their intellectual, mental, social and physical development".

In addition to the potential "significant mental health benefits", esports provides jobs that can be detrimental to workers.

MEPs also stress that due to the negative consequences that esports can have ("cheating", "adverse impacts on environmental sustainability", "online violence or harassment", "disinformation") a uniform approach of the legislation at the European Union level is necessary to ensure a better protection of consumers.

Finally, in addition to the above-mentioned issues, the development of a European strategy for intellectual property in video games is essential according to MEPs in order to protect game designers and artists.

The European Parliament has thus transmitted its resolution to the Council and the Commission.

Authored by Rémy Schlich and Gabriel Privat

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