

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 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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- **Corporate**

France – Publication of Law no. 2023-1107 of 29 November 2023 transposing the national interprofessional agreement on the sharing of value within the company

The main purpose of this law is to improve employee savings schemes and develop employee share ownership. It does also include a number of provisions of interest to company law:

- An increase in the individual and overall ceilings for the allocation of free shares ([C. com., art. L.225-197-1](#));
- The obligation for companies with more than 50 employees to make an "exceptional payment" to their employees when they buy back shares and then cancel them for the benefit of their shareholders ([C. trav., art. L. 3346-1](#)).

These provisions came into force on Friday 1st December.

France – Transposition of CSRD Directive: what are the new requirements?]

Pursuant to [Article 12 of Law no. 2023-171 of 9 March 2023](#) containing various provisions for adapting to European Union law in the fields of the economy, health, labour, transport and agriculture, [French Order no. 2023-1142](#) on the publication and certification of sustainability information and environmental obligations, social and corporate governance obligations of commercial companies transposes [Directive 2022/2464, known as the "CSRD" directive](#), and amends several existing provisions of the French Commercial Code relating to corporate social and environmental responsibility.

- The new obligation to publish sustainability information replaces the extra-financial performance declaration (DPEF) resulting from previous [directive no. 2014/95](#) (NFRD) and takes its place within the management report (*art. 8*, which amends *C. com., L. 232-1*). The information to be disclosed is more extensive and must be reliable, comparable and accessible in order to comply with the principle of "double materiality", i.e. it must represent both the company's impact on environmental, social and corporate governance issues, known as "sustainability issues", and the impact of these issues on the development of the company's business, results and situation

This obligation to publish sustainability reporting is intended to apply progressively according to certain thresholds.

- The directive also stipulates that published sustainability information must be audited by a statutory auditor, who may be different from the auditor certifying the accounts, or by an independent third-party organization.
- Meanwhile transposing the provisions of the directive, the framework of ESG obligations is harmonized within the French commercial Code.

These provisions shall be applicable as of January 1st 2024 with some exceptions and should soon be supplemented by a decree before the end of 2023.

European Union – Corporate sustainability due diligence: Agreement between the Council and the Parliament

The Council and the European Parliament reached on December 14th 2023 a [provisional deal](#) on the [corporate sustainability due diligence directive \(CSDDD\)](#), which aims to enhance the protection of the environment and human rights in the EU and globally. The due diligence directive will set obligations for large companies to take measures to prevent, identify and mitigate any adverse impact on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners.

According to the Press Release, the agreement sets *“the scope of the directive on large companies that have more than 500 employees and a net worldwide turnover over €150 million. For non-EU companies it will apply if they have over €150 million net turnover generated in the EU, three years from the entry into force of the directive. The Commission will have to publish a list of non-EU companies that fall under the scope of the directive”*.

The provisional agreement reached with the European Parliament now needs to be endorsed and formally adopted by both institutions.

Authored by L.-N. Ricard

- **Environment**

France – Decree on the notification of recourses against environmental permits.

[Decree no. 2023-1103 of November 27, 2023](#) on the notification of recourses against environmental permits was published in the Official Journal on November, 26 2023 (the "**Decree**").

The purpose of the Decree is to specify the conditions of application of the obligation to notify recourses against environmental permits, on pain of inadmissibility, introduced into article [L. 181-17](#) of the Environmental Code by [article 23 of law no. 2023-175 of March 10, 2023 relating to the acceleration of the production of renewable energies](#).

This obligation applies to administrative or contentious recourses lodged by interested third parties against :

- an environmental permit,
- an order setting one or more additional requirements, or
- a decision refusing to withdraw or revoke an environmental permit or a complementary order.

With regard to the practical details of this notification, the Decree stipulates that :

- notification must be made by registered letter with acknowledgement of receipt within 15 clear days of the lodging of the contentious recourse or the date of dispatch of the administrative recourse;
- notification of the recourse to the author of the decision and, where applicable, to the beneficiary of the decision, is deemed to have been completed on the date of dispatch of the registered letter with acknowledgement of receipt.

Notification of the contentious recourse is mandatory, otherwise the recourse will be inadmissible. In the case of administrative recourses, notification is required on pain of non-extension of the time limit for contentious recourse.

The Decree applies to requests registered on or after January 1, 2024, and to administrative recourses received on or after the same date.

Authored by Laure Nguyen & Julie Paladian

- **Insurance**

France - Promulgation of the law on green industry – strengthening the duty of advice for life insurance

Law no. 2023-973 of 23 October 2023 on green industry was published in the *Journal Officiel* on 24 October 2023.

To enable life insurance to make a more significant contribution to the financing of real assets, the law further strengthens investor protection by supplementing the provisions of article L. 522-5 of the French Insurance Code relating to the duty to advise owed to policyholders. The law adds to this article an obligation for the insurance intermediary or the insurance undertaking to ensure that the contract remains appropriate to the policyholder's requirements and needs if it becomes aware of a change in the policyholder's personal situation or a change in its investment objectives or if no transactions have been carried out for a certain period of time, to be specified at a later date by ministerial decree, or if the contract has only been subject to scheduled transactions (the nature of which shall be defined at a later date by ministerial decree). The new article also provides that the insurance intermediary or the insurance undertaking must advise the policyholder on a transaction that is consistent with his/ her requirements and needs when a transaction is likely to have a significant impact on an existing contract. The law also provides for improvements to the way life insurance policies are underwritten, making it compulsory to present a profiled management method (*méthode de gestion profilée*), and extending the list of eligible assets to include units in securitisation and specialised financing vehicles (*organismes de titrisation et de financement spécialisé*). These provisions will come into force on 24 October 2024.

Source: [Law 2023-973 of 23 October 2023 on green industry](#)

France - Promulgation of the law on the green industry - framework of the life insurance arbitration mandate

Law no. 2023-973 of 23 October 2023 on green industry was published in the *Journal Officiel* on 24 October 2023. In a new article L. 132-27-3 of the French Insurance Code, the law introduces a legal definition of arbitration and of the arbitration mandate in the context of life insurance contracts, and sets out the terms and conditions that apply to it. The law provides that only insurance intermediaries and insurance undertakings may act as agents appointed under an arbitration mandate, provided that no commission or remuneration may be received by them upon investment or disinvestment transactions between funds (this prohibition will come into force on 1st January 2026). However, the agent may delegate this activity to an investment services provider, provided that such delegation is provided for and delimited in the arbitration mandate. The law also subjects professionals offering life insurance arbitration mandates to the rules applicable to insurance distribution (obligation to act in the customer's interest, management of conflicts of interest, product governance, etc.).

The provisions will come into force on 24 October 2024.

Source: [Law 2023-973 of 23 October 2023 on green industry](#)

France - Promulgation of the law on green industry - changes to the retirement savings plan

Law no. 2023-973 of 23 October 2023 on green industry introduces changes to the regime applicable to retirement savings plans. In particular, it provides for retirement savings plans to be eligible for funds open to professional investors and financing bodies. It also requires that, from 1st January 2024, any sustainability preferences of the policyholder of the retirement savings plan must be taken into account when selecting the contemplated investments. The law also authorises insurance companies to transfer an entire supplementary pension scheme to a compulsory retirement savings plan.

Source: [Law 2023-973 of 23 October 2023 on green industry](#)

France - AMF complies with EIOPA guidelines on pan-European individual retirement savings products

The Regulation of the European Parliament and of the Council of 20 June 2019 on a Pan-European Personal Pension Product ("**PEPP Regulation**") establishes uniform European rules on the registration, design, distribution and supervision of Pan-European Personal Pension Products ("**PEPP**"). In this regard, the European Insurance and Occupational Pensions Authority ("**EIOPA**") published on 31 March 2021 its guidance on PEPP supervisory reporting with regard to the nature, scope and format of the information that PEPP manufacturers are required to report to the competent authorities. EIOPA's guidelines, which the *Autorité des Marchés Financiers* ("**AMF**") complies with, concern the frequency of regular reporting for the supervision of PEPP manufacturers, deadlines for reporting information, the content of the PEPP supervisory report (in particular with regard to the activity of PEPP manufacturers, investment strategy and investment performance, risk management and risk mitigation techniques, aspects related to the prudential framework of the PEPP manufacturers).

The AMF has incorporated these guidelines into a new position DOC-2023-08 published on 26 October 2023 and applicable from that date.

Source : [Pan-European Personal Pension Product: AMF complies with EIOPA guidelines](#)

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

European Union – Entry into force of the European Union Regulation on the protection of geographical indications for craft and industrial products

Regulation 2023/2411 of the European Parliament and of the Council on the protection of geographical indications (hereinafter "GIs") for artisanal and industrial products came into force on 16 November. From 1 December 2025, it will be possible to apply to the EUIPO - the designated competent authority - for the registration in the EU of the names of craft and industrial products that meet the necessary requirements, by means of a single GI application covering all EU Member States.

Producers of these products identified by a registered GI will be allowed to use the official “protected geographical indication” symbol on their products. This logo will allow consumers to identify artisanal and industrial products with specific characteristics linked to their geographical origin, enabling them to make informed choices when purchasing these products.

European Union – Launch of first EU mediation centre for IP disputes

The launch of the European Union Intellectual Property Office's (EUIPO) first mediation centre for IP disputes was announced on 22 November 2023. Its aim is to offer efficient out-of-court settlement services for IP disputes, free of charge.

The centre offers mediation, conciliation and the appointment of experts depending on the dispute. In addition, the centre's mediators and conciliators are experienced and speak several languages, giving users a wide choice of languages in which to negotiate.

International – Signature of a patent acceleration highway (PPH) between France and Saudi Arabia

An agreement to accelerate the grant of patents was signed between France and Saudi Arabia on 28 November 2023. It will come into force on 30 April 2024. This type of agreement speeds up the procedure for granting national patents - in this case French or Saudi - or the national phase of a national patent following an international PCT application.

This is the eighth PPH agreement signed by the INPI with a Middle Eastern country. French applicants are relatively active in Saudi Arabia, ranking 6th among all foreign applicants.

International – Entry into force of the 2024 version of the twelfth Nice Classification

Since the first edition of the Nice Classification was published in 1963, editions have generally been published and come into force every five years. Since 2013, the Nice Classification has been revised once a year, and a new version of each edition is published every year and comes into force on January 1.

A WIPO notice dated 10 November 2023 announces the entry into force on 1 January 2024 of the 2024 version of the twelfth edition of the International Classification of Goods and Services for the Purposes of the Registration of Marks, which is now available on the WIPO website.

Authored by Iris Accary and Ambre Cros Coitton

- **Litigation**

France – Decree of 29 July 2023 promoting the amicable settlement of disputes before the French Judicial Tribunal

[Decree no. 2023-686 of 29 July 2023](#), clarified by a [circular dated 17 October 2023](#), introduced two new procedural mechanisms designed to promote the amicable settlement of disputes brought before the French Judicial Tribunal: (i) the **amicable settlement hearing** (“**ARA**”) and (ii) the **trial caesura**. These measures apply to proceedings commenced on or after 1st November 2023. These mechanisms do not exist before French Commercial Tribunals and are only available before French Judicial Tribunals.

The **ARA** enables the judge hearing a case, at the request of one of the parties or *ex officio*, to entrust another judge, who does not sit on the panel of judges hearing the case, with the task of helping the parties to find a solution to the conflict between them (Article 774-1 of the French Code of Civil Procedure, “**CPC**”). The judge in charge of the ARA has access to the submissions and documents exchanged by the parties, and can carry out certain instructive acts (Article 774-2 of the CPC). Unless the parties agree otherwise, and subject to certain exceptions, the ARA is confidential (Article 774-3 of the CPC). At the end of the ARA, the parties may request the judge in charge of the ARA to acknowledge their total or partial agreement, and where appropriate, a record of said agreement will be sent to the judge hearing the case (Article 774-4 of the CPC).

The **trial caesura** allows the parties to request a partial ruling on certain claims they have identified (Article 807-1 of the CPC). The aim is to enable them to resolve subsequent points through an amicable settlement or, failing that, to narrow the judicial debate. This is a new category of procedural closing order (*ordonnance de clôture*), partial for the purposes of caesura, which implies the separability of claims so that the future partial judgment is independent of the rest of the matter in dispute.

France – Orientation and Programming Law of the French Ministry of justice for 2023-2027

The [Orientation and Programming Law of the French Ministry of Justice for 2023-2027](#) (“Justice Law 2023-2027”) was published in the French Official Journal on 21st November 2023. It notably reforms French civil and commercial procedure as well as French criminal procedure.

In terms of **civil and commercial procedure**, the Justice Law 2023-2027 creates **French Economic Activity Tribunals** (“TAE”) on an experimental basis for 4 years, in 9 to 12 French Commercial Tribunals to be designated by order of the French Minister of Justice. These TAEs will have extended jurisdiction to notably handle all out-of-court and collective proceedings brought by economic actors, which are normally handled by the French Judicial Tribunal and not the French Commercial Tribunal, except for regulated legal professions (Article 26). A **contribution for economic justice** will be introduced to ensure the operation of these TAEs, paid by the plaintiff, under penalty of being deemed inadmissible. The amount of the contribution will be set by a scale defined by decree, up to a maximum of 5% of the amount of claims accumulated at the stage of initiating proceedings, and up to a maximum amount of 100,000 euros. The contribution will not be due, inter alia, by natural persons, private legal entities employing fewer than 250 employees, or applicants for the opening of amicable or collective proceedings under Book VI of the French Commercial Code concerning insolvency proceedings. The contribution will be treated as legal costs, i.e. it will in principle be borne by the losing party. It will be reimbursed if the parties to the dispute reach an amicable settlement (Article 27).

In terms of **criminal procedure**, the Justice Law 2023-2027 empowers the government to rewrite the French Code of Criminal Procedure, which is considered not sufficiently legible (Article 2). The Justice Law 2023-2027 also introduces a number of new measures, such as a revised status for assisted witnesses, the right of the public prosecutor to decide whether or not to open a judicial inquiry, and the possibility for judges to authorize investigators to remotely activate a connected device to geolocate people in real time in certain investigations (Articles 3 to 24).

Authored by Charles-Henri Caron, Alexis de Kouchkovsky, and Marianne Boukris Pister.

- **Public Law**

France – Update of the handbook on the social aspects of public procurement

The [handbook on the social aspects of public procurement](#) dated September 2022 was updated and published by the DAJ of the French Ministry of the Economy on 22 November 2023.

The new version of the handbook incorporates the extension of the obligation to adopt a scheme to promote socially and economically responsible public purchasing to all purchasers whose total annual purchases exceed €50,000,000 excluding VAT, which extension is the result of [Law 2023-973 of 23 October 2023 on green industry](#).

In addition, it sets out the mechanism for reserving public procurement contracts and concession agreements for companies established in a prison and employing inmates, as set out in [Ordinance no. 2022-1336 of 19 October 2022](#).

The handbook also sets out how the purchaser is to check the declarations made by candidate and winning bidder companies regarding gender equal pay and equal opportunities at work.

Lastly, the handbook sets out the procedures for verifying that a company is a social and solidarity-based economy company.

European Union – European Commission delegated regulations: new European thresholds

Four European Commission delegated regulations dated 15 November and setting the formalized procedure thresholds applicable to public procurement contracts and concession agreements for the years 2024 and 2025 (delegated regulations (EU) 2023/2495, 2023/2496, 2023/2497 and 2023/2510) were published in the Official Journal of the European Union of 16 November 2023.

These thresholds, which will come into force on 1st January 2024, are slightly higher than those set for the years 2022 and 2023.

The threshold applicable to supply and service public procurement contracts awarded by central contracting authorities is set at €143,000 excluding VAT. It rises to €221,000 excluding tax when these contracts are awarded by other contracting authorities. The threshold for supply and service public procurement contracts awarded by contracting entities and for defence or security supply and service public procurement contracts is set at €443,000 excluding VAT. Finally, the threshold applicable to works public procurement contracts and concession agreements is €5,538,000 excluding VAT.

Annex 2 of the French Public Procurement Code was amended by a [notice published in the JORF on 7 December 2023 \(NOR: ECOM2332367V\)](#) to reflect these new thresholds.

Authored by Bruno Cantier, Astrid Layrisse and Aurélie Toujas

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