

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 October 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.

If you would like to consult this newsletter from past months, please click [here](#).

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- **Commercial**

European Union – Adoption of the universal USB-C charger by 2024

The European Parliament and the European Union Council have adopted in October 2022 a directive making USB-C charging mandatory on phones and other small devices by 2024. The law is designed to reduce electronic waste. Establishing a rule around a common charger has been pending for 10 years.

The [Directive](#) will apply to: handheld mobile phones; tablets; digital cameras; headphones; headsets; handheld videogame consoles ; portable speakers; e-readers; keyboards; mice; portable navigation systems; earbuds; laptops.

The Directive has to be signed before it is published in the EU Official Journal. It will enter into force 20 days after publication. Member states will then have 12 months to transpose the rules and 12 months after the transposition period ends to apply them. The new rules would not apply to products placed on the market before the date of application.

Authored by Daghan Ozturk and Léanne Fortuna

- **Data Protection**

France – Decree No. 2022-1327 of 17 October 2022 ordering, in view of the serious and current threat to national security, the retention for a period of one year of certain categories of connection data

Pursuant to decree of 17 October 2022, electronic communications operators and hosts and publishers as defined in Article 6 of the Act of 21 June 2004 are required to retain, for a period of one year, the traffic and location data of their users or subscribers, for the purposes of safeguarding national security. The traffic and location data covered by this injunction are listed in V of Article R. 10-13 of the French Post and Electronic Communications Code and in Article 6 of the decree of 20 October 2021. These include the technical characteristics, date, time and duration of each communication, and technical data enabling the recipient to be identified.

Authored by Anaïs Ligot and Gabriel Privat

- **Employment**

France – Order of September 29, 2022 setting the list of adapted companies selected to conduct the experiment of support for professional transitions using fixed-term contracts concluded in application of Article L. 1242-3 of the Labor Code

[This order](#) updates the list of adapted companies that can conclude a "springboard contract". As a reminder, the "springboard CDD" is an experiment initiated by the State as part of the law for the freedom to choose one's professional future and scheduled to run until December 31, 2022. Concluded for a period of between 4 and 24 months between an approved company and a disabled person, it enables the latter to benefit from individualized support to develop and carry out his or her professional project. The objective is to facilitate the professional transition of disabled workers thanks to the training and experience acquired during this period.

France - BOSS information release of October 10, 2022: increase in the social security ceiling on January 1, 2023

[This information release](#) on the BOSS website confirms an upcoming 6.9% increase in the social security ceiling in 2023. The annual ceiling will be set at €43,992, and the monthly ceiling at €3,666.

As a reminder, the social security ceiling takes into account the evolution of the average wage per capita since 2019, in application of the provisions of Article D. 242-17 of the Social Security Code.

France - Decree no. 2022-1326 of October 14, 2022 amending Decree no. 2021-428 of April 12, 2021 on the calculation of daily sickness and maternity benefits

[This decree](#) postpones the entry into force of Decree 2021-428 of April 12, 2021 to June 1, 2024. As a reminder, the decree of April 12, 2021 provides for new rules for the calculation of daily social security benefits (IJSS) when the employee has not worked and therefore has not received any income from activity during all or part of the reference period. These provisions will apply to work stoppages prescribed as of June 1, 2024; the transitional measures provided for by the 2021 decree remain applicable until May 31, 2024.

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](#) indicates that the gaps in representation between women and men in the company among senior executives and among the management bodies must be reported to the following address: <https://travail-emploi.gouv.fr/demarches-et-fiches-pratiques/formulaires-et-teledeclarations/entreprises/>. The company must also provide various information, such as the reference period used to calculate these gaps. These provisions will allow the communication of this data to the administration as of March 1, 2023.

It should be remembered that the employer was required to publish these differences on the company's website on September 1, 2022 for the year 2021, and then on March 1 of the current year for the year just ended. This information must also be included in the economic, social and environmental database.

As of March 1, 2026, the proportion of women must be 30%, then 40% on March 1, 2029. The first date will be followed by the remote declaration of corrective measures, and the second by the declaration of progress targets.

European Union - Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union

[This European directive](#) aims to contribute to upward social convergence and to reduce wage inequalities. It does not, however, aim to impose the same level of remuneration in each state, and this text is without prejudice to the full respect of the autonomy of the social partners and their right to negotiate and conclude collective agreements.

The directive calls on the member states to promote collective bargaining in the definition of minimum wages. Annual reports will be presented to the European Parliament and Council, and then analysed by the Employment Committee.

Authored by Baptiste Camus and Oussama El Hassani

- **Insurance**

France – French Parliament : Entry into force of the “large risk” decree

The decree dated 20 July 2022 amending the definition of large risks and the threshold of the minimum capital requirement entered into effect on 1st October 2022.

This update which was planned under the Solvency II Directive amends:

- article R. 111-1 French Insurance Code by raising the total amount of the balance sheet from 6.2 to 6.6 million euros and the amount of the turnover from 12.8 to 13.6 million euros.
- article R. 352-29 1 d) French Insurance Code by stating that the threshold of the minimum capital requirement is now set by order of the Minister in charge of the economy.

Source: [Large risk decree dated 20 July 2022](#)

France – French Council of Ministers: Publication of a decree to regulate the days, hours and frequency of telephone canvassing .

A new decree relating to the regulation of the days, hours and frequency of unsolicited commercial telephone calls was published on 13 October 2022 in the Official Journal and will come into force on 1st March 2023.

It applies to all sectors (including the insurance sector) and provides in particular :

- a restriction to unsolicited commercial telephone calls: which are authorized only from Monday to Friday, from 10 a.m. to 1 p.m. and from 2 p.m. to 8 p.m., and a prohibition on Saturdays, Sundays and public holidays; and
- that the consumers cannot being contacted by telephone for commercial purposes more than four times a month (a period of thirty calendar days) by the same professional or by a person acting on his behalf.

Source : [Decree to regulate the days, hours and frequency of telephone canvassing](#)

France – ACPR: Clarification on the conduct of hearings before the ACPR's Sanctions Committee

On 20 October 2022, the ACPR has clarified that hearings before the Sanctions Committee will take place in closed hearings only if the entity being prosecuted can justify special circumstances.

Source: [ACPR's clarification on the conduct of hearings before the Sanctions Committee](#)

European Union – EIOPA: Report on the members of the administrative, management and supervisory bodies

EIOPA has published on 12 October 2022 a report describing to what extent the National Competent Authorities (NCAs) have implemented the recommended actions addressed to them as a result of the peer review on propriety of Administrative Management and Supervisory Body (“**AMSB**”) members and qualifying shareholders in 2019.

Appendix I lists the recommended action per country.

For France the reports highlights the two following actions which need to be implemented:

- ongoing verification of operating condition in relation to propriety of qualifying shareholders: the ACPR is encouraged to verify the suitability of qualifying shareholders on a continuous basis; and
- supervisory database: the ACPR is recommended to disclose information in the database (*i.e.* the online portal) that are related to the nature and circumstances which led to the withdrawal of authorization for future assessments, including those relating to non-executive AMSB members.

Source: [EIOPA report on members of administrative, management and supervisory bodies](#)

European Union – EIOPA: Publication of a methodology to assess the value for money in the unit-linked market

This methodology published on 31 October 2022 and addressed to National Competent Authorities aims to define a common approach within the European Union in determining which unit-linked products may offer poor or no value requiring close monitoring by national competent authorities to ensure that risks are sufficiently identified, monitored and mitigated.

A process based on three levels of analysis is put in place, with an indication for each of them of the different tools and information on how to perform the analysis:

- a market assessment;
- an in-depth product analysis; and
- an assessment of the product oversight and governance (POG) process and documentation.

A possible revision of the methodology will be considered in order to take into account rising inflation, emerging risks and challenges that will affect certain unit-linked products.

Source: [EIOPA's methodology on the assessment of the price-performance ratio in the unit-linked products market](#)

European Union – EIOPA: Warning to bancassurers on (i) the level of high commissions and (ii) the compatibility of the IDD directive with the joint sale of insurance and credit products

On 4 October 2022, EIOPA warned insurers and banks about high remuneration and conflicts of interest arising from the sale of credit insurance products.

It recalls that credit insurance must be designed to meet the needs of the identified target market and that prudential measures may be taken if this is not complied with.

Banks and insurance companies must take action to:

- resolve the problems associated with high remuneration paid by insurance producers to insurance distributors for the sale of credit protection insurance products;
- prevent harmful conflicts of interest from arising in the context of bancassurance business models; and
- ending certain practices such as price dispersion, limited choice and barriers to purchase, termination and switching problems.

Source: [EIOPA calls for better value for money in bancassurance](#)

Authored by Ghina Farah, Mohamed Boukesra and Maxime Kaya

- **Intellectual Property**

European Union - The Unified Patent Court (UPC) announces the official appointment of 85 judges and the composition of its Presidium

In a [statement](#) issued on 19 October 2022, the UPC confirmed the appointment of the 85 judges who will be divided into 34 legally qualified judges and 51 technically qualified judges.

The Court also announced the composition of its Presidium, which will be led by Mr. Klaus Grabinski (DE), as President of the Court of Appeal, and Ms. Florence Butin (FR), as President of the Court of First Instance.

European Union - Amendment of the Rules of the European Patent Convention to support digital transformation

During its 172nd session held on 13 October 2022, the Administrative Council of the EPO adopted amendments on a number of rules of the European Patent Convention. These amendments are intended to support the ongoing digitalization of the EPO's patent granting procedure and will enter into force in two packages.

The first package will enter into force on 1 February 2023 and will change the requirements for the presentation of documents in order to adapt to the digitalization of the procedure and reduce paper consumption. The second package will enter into force on 1 November 2023 and will change the interpretation and calculation of time limits. In particular, the "ten-day rule" will be abolished, documents will be deemed to be delivered on the date they bear.

European Union - Montenegro becomes the 39th State Party to the European Patent Convention

Montenegro succeeds Albania and Serbia, which joined in 2010, and thus becomes the 39th Member State of the EPO.

As of 1 October 2022, European patent applications will include the designation of this new contracting state. In addition, the EPO will assume the functions of receiving Office under the Patent Cooperation Treaty (PCT) and act as the PCT International Searching and Preliminary Examining Authority on behalf of Montenegro.

European Union - European Commission updates rules on State aids for research, development and innovation

The European Commission adopted on 19 October 2022 a [Communication](#) updating the rules on State aids for research, development and innovation. The aim of this update is to contribute to the EU's strategic objectives relating to the ecological and digital transitions. In particular, the Communication updates the definitions of research and innovation activities eligible for State support, such as digital technologies and digitization-related activities.

Authored by Eleonore Salles, Jessica Seray and Adrien Bonnet

- **Privacy**

European Union – Adoption of the Digital Services Act

The Digital Services Act (DSA) was finally adopted on 19 October 2022 by joint signature of the Council and the European Parliament.

The DSA aims to protect online users from harmful and illegal content and applies to online intermediaries providing services in the European Union (EU). This includes search engines, web hosts and social networks, and their obligations will be proportionate to their size.

Thus, platforms will have to be transparent about their content moderation policies and advertising, protect minors through measures and guarantee users' rights by offering them the possibility to report content and make complaints.

The obligations will apply within 15 months of the entry into force of the text.

International - President Joe Biden signed his Executive Order to frame data transfers between the European Union and the United States

On October 7, 2022, U.S. President Joe Biden signed an Executive Order on the new transatlantic data protection framework, which will succeed the Privacy Shield invalidated by the CJEU in 2020.

This Executive Order implements several commitments made by the United States in the agreement in principle reached with the European Commission last March to regulate data transfers between the two continents. The Executive Order introduces "new binding safeguards to limit access to data by U.S. intelligence authorities to what is necessary and proportionate to protect national security." It also provides for the creation of "an independent and impartial review mechanism, including the creation of a new Data Protection Review Court," the press release said.

On the basis of this text, the Commission will prepare a draft adequacy decision and launch its adoption procedure. The GDPR requires the Commission to seek the opinion of the European Data Protection Committee (EDPS) before adopting a potential new adequacy decision

Authored by Anaïs Ligot, Théophile Tsimaratos and Emma Gellé

- **Real Estate**

France – Modifications of the Risk report (état des risques) for leases and acquisition of real property

As of January 1, 2023, the state of risks and pollution will become the state of risks and will now include information on sea level rise. More importantly:

- any advertisement relating to the sale or rental of a property will have to specify how to access the information contained in the risk report (by a simple link to Géorisques?);
- the risk report must be communicated at the first visit of the property;
- for residential buildings, the withdrawal period provided for in favour of the purchaser will only begin to run from the delivery of the risk report, if the latter has not been communicated on the day of signing the promise to sell (or the deed, if applicable);
- the information on the claims having given rise to compensation pursuant to article L. 125-2 or article L. 128-2 of the Insurance Code must be made directly in the inventory of fixtures.

Authored by Margot Derumaux

- **Technology**

European Union - The MICAR (Markets in Crypto-Assets Regulation) has been officially approved by the European Council

On October 5, 2022, the Council of the European Union approved the proposed Regulation on Markets in Crypto-Assets (or "MiCA"). The text aims to create a regulatory framework to protect investors and preserve the financial stability of the EU single market, while enabling innovation and promoting the attractiveness of the crypto-asset sector.

The MiCA regulation will protect consumers from certain risks associated with investing in cryptoassets and help them avoid fraudulent schemes. To achieve this, the text introduces an obligation to comply with consumer law disposition for cryptoasset service providers. In case of any violation of these provisions, their liability may be incurred in case of loss of crypto assets belonging to investors.

This text comes in a context of instability on the market of "stablecoins" (which are cryptocurrencies indexed to the price of a traditional currency such as the dollar or the euro) that has demonstrated once again the risks incurred by investors in the absence of regulation.

According to the MiCa regulation, each holder of "stablecoins" each holder of "stablecoins" will be able to request, at his or her discretion and without delay, a refund from the provider. To increase confidence in this market, the text also provides that cryptoasset service providers will have to be authorized by the AMF to operate in France.

Authored by Anaïs Ligot and Théophile Tsimaratos

- **Telecom**

France - Decree No. 2022-1359 of 26 October 2022 authorising the judicial police and territorial intelligence services of the territorial directorates of the national police to use certain intelligence techniques and to receive information from investigation or prosecution procedures

The decree of 26 October 2022 authorises the territorial directorates of the national police created in Guadeloupe, Martinique, Reunion and French Polynesia to use certain intelligence gathering techniques under the conditions set out in the French Internal Security Code, and to receive or request communication of elements contained in criminal proceedings. It specifies, for each technique that may be authorised, the services attached to these territorial directorates of the national police that may use them and the purposes for which they may be used.

Authored by Anaïs Ligot and Gabriel Privat

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