

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 September 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 - ARCOM adopts a recommendation on consumer information for audiovisual and digital services and their greenhouse gas emission equivalents linked to the use of these services

On September 13, 2023, [ARCOM's recommendation](#) to better inform consumers about the environmental impact of consuming audiovisual content was published in the Journal Officiel.

The first recommendation is to provide the public with "*general, accessible and educational information on the environmental impact of audiovisual content consumption*".

Still on the subject of information provided to customers, the Arcom recommendation aims to specify the actions implemented by platforms to reduce their environmental impact. The possibilities are numerous: more efficient codecs, cache servers, commitments on advertising, development of sustainable infrastructures, etc. It also talks about "*levers available to users, preferably in the form of an 'energy-saving' feature, the default proposal on the service or platform of an energy-saving image quality, etc.*".

Europe – A European Bill on media freedom has been proposed by the European Commission

On September 7, 2023, at the European Parliament, the Culture and Education Committee adopted its [report](#) on the [European Media Freedom Act](#).

This Act responds to growing concerns in the EU about the politicization of the media, as well as the lack of transparency around media ownership and the allocation of state advertising to media service providers. It aims to put in place safeguards to combat political interference in the editorial decisions of public and private service media providers, protect journalists and their sources, and guarantee media freedom and pluralism.

Authored by Iris Accary, Laura Chen

- **Commercial**

France – Draft law on emergency measures to reduce inflation in consumer goods

On October 9, 2023 the French National Assembly adopted, in the first reading, the bill on emergency measures to combat inflation in consumer goods.

The French Commercial Code regulates commercial relations between suppliers and distributors of fast-moving consumer goods (FMCG). Each year, the negotiations take place between December 1st and March 1st.

In anticipation of a prices decrease of many consumer goods, the government proposed to pass a law to advance the annual cycle of commercial negotiations by six weeks.

Introduction of a derogation system for commercial negotiations

This exceptional regime, derogating from the provisions of the French Commercial Code, is set forth solely for the year 2024 and applies to any distributor of fast-moving consumer goods (FMCG) products in its commercial relations with any supplier, as well as to any agreement between a supplier and a distributor relating to products or services marketed on French territory, with the exception of those concluded with a pharmacy or a group of pharmacists.

These provisions are mandatory and any dispute arising from their application falls under the exclusive jurisdiction of French courts.

With regard to the conclusion of agreements, the following provisions apply :

- For suppliers whose annual turnover (excluding taxes) in France during the last closed financial year exceeds or is equal to €350 million: agreements must be signed by January 15 at the latest, with an effective date no later than January 16 2024. Agreements in force on the date the law comes into force and signed before September 1 2023 shall automatically terminate on January 15 2024 if they expire after January 16 2024.

- For suppliers whose annual turnover (excluding taxes) in France during the last closed financial year does not exceed €350 million: agreements must be signed by December 31 2023 at the latest, with an effective date no later than January 16 2024. Agreements in force on the date of entry into force of the law and signed before September 1 2023 will automatically terminate on December 31 2024 if they expire after January 1 2024.

With regard to the communication of the general terms and conditions of sale ("GTCS") by the supplier to the distributor, it is provided that :

- For suppliers whose annual turnover (excluding taxes) in France during the last closed financial year exceeds or is equal to €350 million: the GSCs must be communicated no later than two months before January 15, 2024.
- For suppliers whose annual turnover (excluding taxes) in France during the last closed financial year does not exceed €350 million: the General Terms and Conditions must be communicated no later than December 31, 2023.

The distributor has fifteen days from receipt of the terms and conditions to either give explicit and detailed reasons, in writing, for rejecting them or to specify the clauses of the terms and conditions that it wishes to negotiate, or to notify its acceptance.

Penalties for non-compliance with the provisions of the bill

In the case of a failure to comply with the provisions relating to the conclusion of agreements within the statutory period, the last paragraph of article L.441-6 of the French Commercial Code provides for an administrative fine of a maximum of €200,000 for an individual and €1,000,000 for a legal entity.

According to paragraph 1 of the same article L. 441-6, non-compliance with the provisions related to the General Terms and Conditions is punishable by an administrative fine of a maximum of €75,000 for an individual and €375,000 for a legal entity.

The Senate will examine the bill in public session on October 26, 2023.

Authored by Charlotte Haddad and Clara Mazannek

- **Environment**

France – Ministerial instruction on the provision of potentially sensitive information that could facilitate the commission of malicious acts against classified facilities for the protection of the environment

[The Ministerial Instruction NOR: TREP2320597J of September, 12 2023](#) relating to the provision of potentially sensitive information that could facilitate the commission of malicious acts against classified facilities for the protection of the environment was published in the Official Bulletin on September, 22 2023 (the "**Instruction**").

This Instruction – which replaces the previous instruction of November, 6 2017 – aims to update the procedures for communicating to the public and accessing information concerning Classified Facilities for the Protection of the Environment (ICPE).

This Instruction applies to Seveso facilities and, more generally, to all ICPE whose activities are particularly sensitive (in terms of safety requirements), as well as to all ICPE under the authority of the Ministry of Defense.

In essence, this Instruction:

- lists in Appendix I examples of information that can be disclosed to the public without difficulty. Examples include: the name of the operator, the address of the site, a general description of the activities carried out, the classification of the facility under the ICPE nomenclature, maps, photos or plans of the area surrounding the site, subject to certain precautions;
- specifies in Appendix II the list of sensitive information that must not be disclosed to the public. This includes, for example, a description of the site's monitoring system, the quantities of hazardous substances actually on site, or maps, photos or plans of the site enabling the precise location of a hazardous substance to be identified. However, Annex II specifies that certain information may be communicated to the public on written request. This is the case, for instance, with the identity of directors or the maximum quantities of dangerous substances likely to be present on the site;
- underlines in Appendix III the way in which the documents transmitted to the administration or intended for the public should be organized. Non-disclosable information may be grouped together in a specific appendix. The Instruction specifies that it is up to operators to identify sensitive information and to organize the documents they send to the authorities accordingly (hazard studies, environmental impact studies, etc.). It should be noted that as part of the public inquiry, only the version of the file that can be communicated will be put online and made available to the public.

Authored by Laure Nguyen and Julie Paladian

- **Intellectual Property**

France - A bill to regulate artificial intelligence through copyright has been published

On September 12, 2023, a new bill to regulate artificial intelligence (AI) through copyright was tabled. ([Proposition de loi n° 1630 visant à encadrer l'intelligence artificielle par le droit d'auteur](#)).

The text aims to "complete" the intellectual property code to offer better protection and remuneration to artists.

Article 1 amends article L. 131-3 of the French Intellectual Property Code: "*The integration by artificial intelligence software of intellectual works protected by copyright in its system, and a fortiori their exploitation, is subject to the general provisions of the present code, and therefore to authorization by the authors or successors in title*". Thus, if a work is created by an AI without direct human intervention, "*the only holders of rights are the authors or assignees of the works which enabled the said artificial work to be conceived*". This management of rights could be carried out either by societies of authors or by other collective management organizations, empowered to represent rights holders and to collect remuneration for the exploitation of copies of works, in accordance with the rules laid down by the statutes of these societies.

France - A questionnaire for companies on essential patents and standards has been published

On April 27, 2023, the European Commission presented a "[patent package](#)" comprising a set of measures on intellectual property in Europe. In particular, this "patent package" aims to establish new rules for standards-essential patents (SEPs).

With this in mind, on September 6, 2023, INPI put a [questionnaire](#) online with the aim of gathering the opinions of the various stakeholders, in particular to indicate whether the measures envisaged :

can contribute to greater transparency on patent declarations considered essential to a standard;

are to strike a fair balance between BEN holders and BEN users in that limitations on the exercise of patent rights remain proportionate.

European Union - Guidelines from the European Commission on the draft revision of design protection in the European Union

The European Commission's project to revise design protection in the European Union, presented on November 29, 2022, was examined by the European Union's Competitiveness Council (Internal Market and Industry) on September 25, 2023 (see the press release [here](#)). On this occasion, two general guidelines were adopted, [one](#) on the [proposal for a directive](#) to recast [Directive 98/71/EC of October 13, 1998](#), and the [other](#) on the [proposal for a Commission regulation](#) amending Regulation (EC) no. 6/2002 of December 12, 2002 on Community designs and repealing [Regulation \(EC\) no. 2246/2002 of December 16, 2002](#).

These Council positions are in line with the general objectives of the Commission's texts, and in particular with the "**repair clause**", which aims to harmonize design protection for **spare parts** used to repair complex products such as body parts. They also propose a number of improvements, details of which can be found on the Council's website.

Once the European Parliament has adopted its position on the draft revision, negotiations will be launched with the EU Council. These could lead to a trialogue in January 2024, with the revision **coming into force in the first half of 2024**.

European Union - Members of the European Parliament approve new rules for geographical indications for craft and industrial products in the European Union

On September 12, 2023, the European Parliament [approved](#) new EU rules for safeguarding geographical indications (GIs) for craft and industrial products, inspired by the existing rules for agricultural products.

The new rules extend protection to locally renowned non-food products, such as lace, glass, natural stones, jewelry and porcelain, throughout the European Union and worldwide.

The aim of this regulation is to harmonize the various national systems, raise consumer awareness and boost the competitiveness of producers.

The Council must now formally approve the agreement. The regulation will enter into force twenty days after its publication in the Official Journal of the EU, and its application should begin two years later.

International - Moroccan Industrial Property Office (OMPIC) and INPI sign PPH agreement

On September 5, 2023, INPI signed a [Patent Prosecution Highway](#) (PPH) agreement with OMPIC.

This agreement will come into force on November 1, 2023, to enable applicants to request an accelerated grant procedure for a second patent filing at OMPIC, whether a national filing or a Moroccan national phase PCT filing, provided that the latter contains claims sufficiently similar to those mentioned in the examined application and recognized as patentable by INPI.

Reciprocally, this PPH agreement will apply to applicants wishing to benefit from accelerated processing of patent applications in France, whether they claim priority from a Moroccan national application or a PCT application.

This agreement will enable applicants to benefit from a new, time-saving way of obtaining a Moroccan patent.

International - Madrid Protocol: implementing regulations (modification); European Union, Canada (modification of individual fee)

The proposed amendments to the Regulations under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks made at the fifty-seventh session (twenty-fifth ordinary session) of the Madrid Union Assembly (July 6-14, 2023) will enter into force on either November 1, 2023 or November 1, 2024 (see [here](#) notice no. 26/2023 of September 19, 2023).

In addition, the amounts of the individual fee payable under the Protocol relating to the Madrid Agreement concerning the international registration of marks, when the European Union or Canada are designated in an international application, have been modified. This applies to a designation subsequent to an international registration and to the renewal of an international registration in which the EU or Canada has been designated.

These new amounts will apply from October 12, 2023 for [the European Union](#) and January 1, 2024 for [Canada](#).

Authored by Iris Accary and Laura Chen

- **Public Law**

France – Implementation of regulation on foreign subsidies distorting the internal market

A [new DAJ datasheet](#), published on 4 September 2023, presents the European Commission's two tools for controlling foreign financial contributions in public procurement procedures resulting from [Regulation \(EU\) 2022/2560 of 14 December 2022 on foreign subsidies distorting the internal market](#), namely the prior notification or declaration and the ex officio review.

On the one hand, purchasers must give prior notification to the European Commission of the information that companies are required to provide when they tender for public procurement contracts meeting two cumulative conditions:

- (i) the estimated value of the public procurement contract or the concession agreement net of VAT is equal to or greater than €250 million; and
- (ii) the economic operator submitting the tender, including its subsidiary companies without commercial autonomy, its holding companies and, where applicable, its main subcontractors or suppliers involved in the same public procurement procedure was granted financial contributions equal to or greater than four million euros per third country over the three years prior to notification.

If the notification threshold of four million euros is not reached, the economic operator submitting the tender will only be required to make a simplified declaration.

The notification or declaration obligation applies from 12 October 2023.

On the other hand, in addition to the first control instrument, the European Commission has a general market investigation tool.

It can carry out an ex officio review of all public procurement contracts after they have been awarded, including those with an estimated value below the notification threshold. This mechanism has been implemented since 12 July 2023.

European Union – Recast of the directive on energy efficiency

[Directive \(EU\) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation \(EU\) 2023/955](#), published in the Official Journal of the European Union on 20 September 2023, aims to reduce the final energy consumption of the Member States of the European Union.

Final energy consumption must be reduced by at least 11.7% by 2030 compared with the energy consumption forecasts for 2030 drawn up in 2020.

The public sector will have an exemplary and driving role to play in achieving this target. The total final energy consumption of all public combined will have to be reduced by at least 1.9% each year, compared with 2021. In addition, at least 3% of the total floor area of heated and/or cooled buildings belonging to public bodies will have to be renovated each year so as to convert them into nearly zero-energy or zero-emission buildings.

Moreover, several provisions are aimed at contracting authorities and contracting entities.

Among the measures taken, the Directive provides that when contracting authorities conclude public procurement contracts and concession agreements with a value equal to or greater than the European thresholds, they must only acquire products, services, buildings and works with high energy performance, unless this is not technically feasible. They will also have to apply the principle of primacy of energy efficiency.

When awarding public procurement service contracts with a significant energy component, they will study the feasibility of concluding long-term energy performance contracts that ensure long-term energy savings.

In addition, Member States may require contracting authorities and contracting entities to take account of aspects relating to sustainability and the social, environmental and circular economy in their procurement practices in order to achieve the Union's decarbonisation and "zero pollution" objectives.

Authored by Bruno Cantier, Astrid Layrissé and Aurélie Toujas

- **Real Estate**

France – Commercial rents in Q2 2023: ICC, ILAT and ILC rise sharply

In the second quarter of 2023, the index of rents for tertiary activities (ILAT), the index of commercial rents (ILC) and the construction cost index (ICC) rose sharply.

In the second quarter of 2023:

- the Commercial Rent Index (ILC) stands at 131.81 (an increase of 6.60% over a year)
- the Tertiary Rent Index (ILAT) stands at 130.64 (an increase of 6.51% over a year)
- the Construction Cost Index (ICC) stands at 2,123 (an increase of 7.99% over a year)

The variation of the ICC exceeds 25% over nine years, which could lead to requests for rent revision, from both lessee and lessor, under the conditions set out in article L.145-39 of the French Commercial Code.

Authored by Margot Derumaux and Marion Lequien

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