

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 2024.

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- **Environment**

France –Order implementing decree no. 2023-1208 of December 18, 2023 implementing article L. 171-4 of the French Construction and Housing Code and article L. 111-19-1 of the French Urban Planning Code governing car parks.

Order of March 5, 2024 implementing decree no. 2023-1208 of December 18, 2023 implementing article L. 171-4 of the French Construction and Housing Code and article L. 111-19-1 of the French Urban Planning Code governing car parks was published in the Official Journal on March 6, 2024 (the "**Order**").

As a reminder, Decree no. 2023-1208 of December 18, 2023 implementing article L. 171-4 of the French Construction and Housing Code and article L. 111-19-1 of the French Urban Planning Code (the "**Decree**") implements article 101 of [Law no. 2021-1104 of August 22, 2021 on combating climate change and strengthening resilience to its effects](#), also known as the "Climate and Resilience Act", which requires solarization and revegetation measures for roofs and car parks (codified in articles [L. 171-4](#) of the French Construction and Housing Code (the "**CCH**") and [L. 111-19-1](#) of the French Urban Planning Code).

These solarization and revegetation measures apply to:

- the construction, extension or major renovation of buildings or parts of buildings (i) for commercial, industrial or craft use, warehouses, hangars not open to the public and used for commercial purposes, and covered car parks accessible to the public, when they create more than 500 m sqm of floor space, or (ii) for office use where they create more than 1,000 sqm of floor space (art. L. 171-4 of the CCH); and

- Outdoor car parks of more than 500 sqm associated with the above-mentioned buildings, as well as new outdoor car parks open to the public of more than 500 sqm (art. L. 111-19-1 of the French Urban Planning Code).

However, these provisions do not apply when (i) technical, safety, architectural or heritage constraints prevent the installation of the above-mentioned solarization and revegetation measures, or when (ii) the installation of these measures cannot be achieved under economically acceptable conditions.

The economic acceptability of implementing these measures is detailed in the Order.

The provisions of the Order apply to car parks and major renovations related to these car parks falling within the scope of article L. 111-19-1 of the French Urban Planning Code, for which urban planning applications have been submitted since January 1st, 2024, as well as to car parks for which a public service agreement, a service provision agreement or a commercial lease has been concluded or renewed since January 1st, 2024.

Authored by Laure Nguyen and Julie Paladian

- **Insurance**

France - Publication by the ACPR of its review of the Solvency II Directive

On 13 December 2023, the Commission, the Council and the European Parliament reached a provisional agreement on the revision of the Directive 2009/138/EC (Solvency II Directive) and on new rules for the recovery and resolution of insurance and reinsurance undertakings.

In the context of the review of the Solvency II Directive, the final text of which should be submitted to European Parliament in the autumn, and which provisions should come into force in the second half of 2026, the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**") published on 26 March 2024 a review of the revision of the Solvency II Directive as set out in the provisional agreement reached by the Commission, the Council and the European Parliament of 13 December 2023.

In this respect, the ACPR notes that the review covers a wide range of topics, including quantitative measures and risk management measures, particularly those relating to climate change and macro-prudential risks.

Some measures, particularly quantitative ones, are designed to strengthen requirements, while others are designed to soften them. Overall, the ACPR considers that these measures will be favourable to the market, although the authority believes that particular attention should be paid to the development of new level 2 texts (ITS, RTS) and level 3 texts (guidelines). French insurers will soon be called upon to appreciate (as part of an assessment) the impact of the revision of the Solvency II Directive and to assess the sensitivity to the various technical parameters that have yet to be set. The ACPR is also calling on insurers to anticipate the various projects that need to be implemented in order to prepare for the revision of the Solvency II Directive, and has highlighted eight major measures provided for in the revision that will require particular attention from insurers including a review of the method for extrapolating the rate curve, changes to the calculation of the risk margin, provisions to support sustainable finance measures, and a simplification of the requirements under the proportionality regime.

Source: [ACPR review of the revision of the Solvability II directive](#)

France - ACPR presents new anti-money laundering and combating the financing of terrorism questionnaires

ACPR Instruction 2022-I-18 introduces new questionnaires on systems for preventing money laundering and terrorist financing ("AML/CFT") with a view to assess the compliance and effectiveness of financial institutions' AML/CFT systems. The aforementioned instruction came into force on 1st January 2024, and the ACPR explained what was expected at a meeting held for insurance and banking industry professionals on 31 January 2024.

The ACPR states that the list of entities subject to the submission of questionnaires (*i.e.*, relevant financial institutions established in France) remains unchanged, and that this reporting must always be submitted to the ACPR in electronic form via a dedicated portal. It must be signed by a person in charge of the effective management of the entity, or by delegation by the head of AML/CFT. The information given in the various tables in the questionnaires is based on data as at 31 December of the previous year. The questionnaires must be submitted by 31 March of each year at the latest.

The main new feature of ACPR Instruction 2022-I-18 is the introduction of sector-specific questionnaires, with simplified versions for certain activities (notably surety, factoring and certain insurance companies). This new approach makes it possible to tailor the questions more closely to the size of the organisation and the money laundering risk associated with its business.

The questionnaires are an important part of the ACPR's ongoing AML/CFT control (*contrôle permanent*) of financial institutions. The ACPR's ongoing control departments will use the answers provided to assess the money laundering risk of the reporting entities. In the event of an on-site inspection, the ACPR will check the accuracy of the answers provided in the questionnaires. The ACPR specifies that the answers to the questions must be sincere, objective and consistent with the AML/CFT system, procedures and controls in place within the entity or, where applicable, the group.

Source: [ACPR presentation of new anti-money laundering questionnaires and terrorist financing](#)

France - Publication of ACPR Instruction 2024-I-01 of 10 January 2024

ACPR Instruction No. 2024-I-01 of 10 January 2024 repeals and replaces Instruction No. 2022-I-24 of 14 December 2022 on the annual documents to be submitted by insurance undertakings and supplementary occupational pension schemes subject to the provisions of Article 29 of Law No. 2019-1147 on energy and climate and the provisions of Article 4 of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on the publication of sustainability information in the financial services sector.

ACPR Instruction 2024-I-01 reiterates and clarifies the technical procedures set out in instruction No. 2022-I-24 on the submission by certain insurance undertakings carrying out life insurance and capitalisation activities, reinsurance undertakings and supplementary occupational pension schemes of the annual report provided for in V. of Article D. 533-16-1 of the Monetary and Financial Code on information relating to environmental, social and governance criteria (*e.g.* information relating to the undertaking's general approach, the resources deployed by it, *etc.*).

The Instruction specifies the structure that the report must follow depending on the entity's total balance sheet and the information that must be provided in the report. In addition to this report, entities with a total balance sheet exceeding €500 million are required to submit additional information on the proportion of outstanding amounts relating to activities in compliance with the technical review criteria defined in the delegated acts relating to Articles 10 to 15 of Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to promote sustainable investment. There are also additional disclosure requirements for entities that insure or reinsure insurance-based investment products.

ACPR Instruction 2024-I-04 henceforth also requires now reporting entities to submit to the ACPR, within six (6) months of the end of the financial year, the "Summary" tab of Appendices C-D-E-G of this instruction.

ACPR Instruction 2024-I-01 came into force the day after its publication.

Source: [ACPR Instruction no. 2024-I-01 of 10 January 2024](#)

France - Publication of the Order of 7 March 2024 simplifying the procedures for evidencing and checking compulsory motor third-party liability insurance

The order of 7 March 2024 clarifies the procedures for evidencing and checking compulsory motor third-party liability insurance for owners of unregistered motor vehicles. Decree no. 2023-1152 of 8 December 2023 changed the methods of evidencing and checking that owners of registered motor vehicles are covered by compulsory insurance, so that they are no longer required to produce a certificate of motor insurance when being controlled or to affix an insurance certificate (*vignette verte*) to their vehicle.

The Order of 7 March 2024 specifies the format of the insurance certificate and the information it must contain (*e.g.* chassis or serial number). The Order also specifies the format of the insurance certificate and where it must appear on the vehicle (*e.g.* in white on the outside of the vehicle).

The provisions of the Order of 7 March 2024 came into force on 1^{er} April 2024.

Source: [Order of 7 March 2024 simplifying the procedures for evidencing and checking compulsory motor third-party liability insurance](#)

France - Publication of the Order of 20 March 2024 on the list of bodies authorised to receive information contained in the file of insured land motor vehicles

The Order of 20 March 2024 relating to the list of bodies that may receive information contained in the file of insured land motor vehicles supplements the Order of 14 January 2019. The Order of 20 March 2024 adds to the list of bodies that may receive this information, the concessionary or operating companies of motorways and engineering structures under the concession contracts binding them to the French state in order to facilitate their recourse against the insurers of vehicles that have caused damage to the public motorway estate under their management following a traffic accident.

The provisions of the Order of 20 March 2024 came into force on 1^{er} April 2024.

Source: [Order of 20 March 2024 on the list of bodies authorised to receive information contained in the land motor vehicle file](#)

European Union - Publication of the provisional agreement of the Council and the European Parliament on certain measures in the legislative package adopted by the European Commission in July 2021 to strengthen the fight against money laundering, terrorist financing and circumvention of sanctions

The Council and the European Parliament have published the compromise texts concerning the proposed 6th anti-money laundering directive ("**AMLD6**") dated 12 February 2024 and the proposed Regulation concerning anti-money laundering and terrorist financing ("**AMLR**") dated 13 February 2024 following the announcement of the provisional agreement on 18 January 2024.

The compromise text relating to AMLD6 provides in particular for access to information on beneficial owners to be more extensive by allowing, in addition to public and supervisory authorities and reporting entities, members of the public with a legitimate interest (*e.g.* press, civil society) to have access to registers of beneficial owners. In addition, the compromise text relating to the AMLD6 provides for a strengthening of the powers of financial intelligence units to analyse and detect cases of money laundering and terrorist financing and to suspend suspicious transactions.

The compromise text on the AMLR provides for an extension of the list of entities subject to the AMLR by including new entities such as cryptoasset service providers, professional football clubs and agents. The text also provides for the introduction of a harmonised European ceiling for cash payments set at EUR 10,000 and the introduction of specific enhanced due diligence measures for cross-border correspondent relationships with regard to cryptoasset service providers and high-net-worth individuals for all financial institutions.

These texts will have to be formally adopted before they can be published in the Official Journal of the EU and come into force.

Source :

- [Publication of the compromise text on the proposal for a Directive of the European Parliament and of the Council on mechanisms to be put in place by Member States to prevent the use of the financial system for the purpose of money laundering or terrorist financing and repealing Directive \(EU\) 2015/849 ;](#)
- [Publication of the compromise text on the proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.](#)

European Union - European anti-money Laundering and combating the financing of terrorism authority to be based in Frankfurt

In a vote on 22 February 2024, the Parliament and Council of the European Union designated Frankfurt as the host city for the new European anti-Money laundering and combating the financing of terrorism authority ("**AMLA**").

The new European anti-money laundering authority will play a supervisory role in the Member States. It will also play an active role in harmonising regulations and coordinating the various players involved in the fight against money laundering and terrorist financing (**AML/CFT**).

The creation of the AMLA follows the provisional agreement of the Council and the European Parliament on the various draft European AML/CFT regulations, including in particular:

- a draft sixth anti-money laundering directive, which aims in particular to strengthen the role of financial intelligence units (*i.e.* Tracfin in France) and their cooperation, and endorses the need for competent authorities to have access to a register of beneficial owners;
- a single European regulation dedicated to AML/CFT which would directly reinforce the regulatory requirements at European Union level, including various provisions on customer due diligence and reinforcing the requirements for certain entities, certain practices and certain products;
- a regulation, known as the AMLA regulation, specifically concerning the creation of the AMLA, which has supervisory and investigative powers.

The AMLA Regulation has now to be adopted by the European Parliament and Council before the new authority can begin operations in 2025.

Source: [European Anti-Money Laundering and Combating the Financing of Terrorism Authority based in Frankfurt](#)

European Union - Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council concerning a framework for access to financial data and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554

The European Economic and Social Committee ("EESC") has published on 5 March 2024 an opinion on the draft Regulation concerning a framework for access to financial data ("**FIDA Regulation**").

The EESC notes that the European Commission's objective is to improve the economic outcomes of financial services customers by encouraging the EU financial sector to undergo its digital transformation and by encouraging it to adopt sound business models.

However, the EESC has identified some shortcomings in the draft regulation and recommends in particular:

- to establish a clear regulatory framework to govern data sharing, ensuring in particular that reciprocity is established for all parties concerned, including those outside the European Union;
- that particular attention be paid to data protection in the drafting of the FIDA Regulation and therefore suggests to apply the principle of data minimisation as set out in the General Data Protection Regulation (GDPR);
- to mandate the European Banking Authority ("**EBA**") and the European Insurance and Occupational Pensions Authority ("**EIOPA**") to draw up guidelines on the processing of consumer data for products and services relating to their creditworthiness and the assessment of the risks they present, as well as in the case of products relating to life insurance or those concerning health care and illness;
- to accept the proposal to establish summaries or dashboards by data holders to enable customers to make decisions that will protect their positions;
- legislators to consider extending by a further six months the implementation period for technical specifications under the European Union's legal framework for access to financial data.

Source: [Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council concerning a framework for access to financial data](#)

European Union - Adoption by the European Commission of the delegated regulations relating to Regulation (EU) 2022/2254 of 14 December 2022 on the digital operational resilience of the financial sector

The European Commission has adopted on 22 February and 13 March 2024 five (5) delegated regulations relating to Regulation (EU) 2022/2254 of 14 December 2022 on the digital operational resilience of the financial sector ("**DORA Regulation**"):

- Commission Delegated Regulation supplementing Regulation (EU) 2022/2554 of 22 February 2024 by determining the amount of oversight fees to be charged by the Lead Overseer to critical ICT third-party service providers and the way in which those fees are to be paid;

- Commission Delegated Regulation supplementing Regulation (EU) 2022/2554 of 22 February 2024 by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities;
- Commission delegated regulation supplementing Regulation (EU) 2022/2554 with regard the regulatory technical standards specifying ICT risk management tools, methods, processes and policies and the simplified IT risk management framework;
- Commission Delegated Regulation supplementing Regulation (EU) 2022/2554 with regard to the regulatory technical standards specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions provided by ICT third-party service providers.

Commission delegated regulation supplementing Regulation (EU) 2022/2554 with regard to the regulatory technical standards specifying the criteria for the classification of ICT related incidents and cyber threats, setting out materiality thresholds and specifying the details of reports of major incident. The delegated regulations will enter into force upon their publication in the Official Journal of the European Union.

Source: [Publication of delegated regulations by the European Commission](#)

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

Europe - Entry into force of the 2024 Guidelines for Examination in the European Patent Office

The new editions of the EPC and PCT Guidelines, which came into force on March 1, 2024, are available in electronic format in the EPO's three official languages (English, French and German) on the [EPO website](#). They replace the previous editions of March 2023. A public consultation was launched with the aim of improving the new editions of the EPO's EPC and PCT Guidelines. Users were able to submit their comments via an online form until April 4, 2024.

Europe – Entry into force on April 1st, 2024 of the new schedule of fees and charges for the European Patent Office

As of April 1st, 2024, a [new schedule of fees and charges applicable to European patent applications](#) at the EPO came into force.

Authored by Anna Revidi

- **Public Law**

France – Extension of the essential data declaration regime to contract performance measures

Orders n°[ECOM2404396A](#) and n°[ECOM2404387A](#) of 18 March 2024 amending the orders of 22 December 2022 regarding respectively essential data for public procurement contracts and concession contracts, published in the OJFR on 22 March 2024, extend the essential data declaration regime to contract performance measures taken after 1st January 2024, but relating to public procurement contracts notified, and concession contracts entered into, before that date. Thus, essential data regarding modifications, special subcontracting acts and amending subcontracting acts (for public procurement contracts), and to modifications and performance data (for concession contracts) will have to be transmitted and published under the conditions set out in the aforementioned orders of 22 December 2022. The orders of 18 March 2024 will enter into force on 1st May 2024.

France – Update of the French Council of State's Guide of economic action tools

The [Guide of economic action tools](#) drawn up by the Council of State for public bodies was updated by the Council of State on 26 February 2024. The guide, which aims to provide public bodies with a better understanding of the economic action tools available to them, has been amended to take into account the changes in domestic and European legislation and case law. It is comprised of 24 factsheets divided into 8 "families": tax incentives, financial assistance, public property, economic activities, public companies and shareholdings, economic legislation and regulations, public statements and economic support.

France – Solarisation and greening of car parks: clarification on exemption in case of economically unacceptable conditions

Order n°[TREL2323577A](#) of 5 March 2024 implementing decree n° 2023-1208 of 18 December 2023 implementing article L.171-4 of the construction and housing code and article L.111-19-1 of the urban planning code governing car parks, published in the OJFR of 6 March 2024, specifies one of the exemptions that allow car park owners to waive the obligation to install a shading system and a rainwater management system when creating or carrying out major renovation work on their car park. The exemption in question concerns cases where the obligation cannot be met under economically acceptable conditions due to technical constraints.

In order to determine whether or not this exemption applies, it is necessary to calculate the ratio between, on one hand, the total cost of the work involved in complying with these obligations and, on the other hand, (i) for new parks and those undergoing major renovation, depending on the facility, the total cost of the creation or renovation work, including the implementation of the obligation, without any particular technical constraints, or not including the implementation of the obligation, and (ii) for existing car parks for which a contract or lease has been signed or renewed, the market value of the car park on purchase or sale at the time the exemption is requested.

The order stipulates that meeting these obligations is economically unacceptable when the calculated ratio is greater than 15% for car parks to be built or undergoing major renovation, or greater than 10% for existing car parks for which a contract or lease has been signed or renewed.

It applies to car parks and major renovations to car parks for which planning authorisation has been granted on or after 1st January 2024, as well as to car parks for which a public service contract, service provision contract or commercial lease has been signed or renewed on or after 1st January 2024.

France – Public procurement contracts: amendment of the Department of Legal Affairs guide on rating methods of the price criterion

On 15 March 2024, Ministry of the Economy's Department of Legal Affairs published an amended version of its [guide](#) on the rating methods of the price criterion in public procurement contracts, which it had published last January in order to respond to the questions raised by this tool when it was published. Among the modifications to be noted, the mention questioning the legality of certain selection criteria such as the commercial methodology, the organization of the candidate, or the human and technical resources allocated to the contract has been removed. In addition, the Department of Legal Affairs recommends that the "linear" method of rating should be rejected when sourcing may have indicated that few candidates would wish to take part in the competitive bidding procedure.

Authored by Bruno Cantier and Astrid Layrisse

- **Real Estate**

France – Commercial rents in Q4 2023 : ILAT, ILC and ICC rise sharply

In the fourth 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 fourth quarter of 2023:

- the Tertiary Rent Index (ILAT) stands at 133.69 (an increase of 5.55% over a year)
- the Commercial Rent Index (ILC) stands at 132.63 (an increase of 5.22% over a year)
- the Construction Cost Index (ICC) stands at 2,162 (an increase of 5.36% 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.

France – Order of February 20, 2024 amending the order of April 10, 2020 on obligations to reduce final energy consumption in tertiary buildings

The ministerial order of February 20, 2024 amending the order of April 10, 2020 on obligations to reduce final energy consumption in tertiary buildings was published in the Official Journal on March 14, 2024 (the “**Order**”)

The Order, also known as the “Absolute Values IV” order, defines the targets expressed in absolute values for the first decade (by 2030) for several categories of activity (“ambient temperature” logistics, “industrial” laundries, hospitals, prisons, medico-social establishments, judicial protection for young people, and sports).

The main provisions of the Order are as follows:

- clarification of certain definitions (notably those relating to the reference year, the energy consumption surface and the collection and monitoring platform OPERAT);
- clarification of the methods used to (i) determine reference energy consumption and (ii) adjust it for climatic variations;
- clarification of the methods used to determine and modulate consumption levels expressed in relative and absolute values;
- clarification of the “reference year”, which must be between 2010 and 2022, or correspond to the first full year of operation;

It is worth noting that the Order specifies that in the absence of information on the reference year before September 30, 2027, the reference consumption corresponds to the consumption for the first full year of operation.

Authored by Julie Paladian and Thomas Ntometane

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