

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 July and August 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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- **Capital Markets**

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

Pursuant to [order dated 21 July 2023](#), the General Regulation of the AMF has been amended in order in particular (i) to improve supervision of loans granted by FIAs and (ii) to incorporate provisions for the so-called "enhanced" registration for digital asset service providers (DASPs) and adapt the provisions of the AMF General Regulation relating to approved DASPs to Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets.

These provisions will come into force on 1 January 2024.

France – Implementation of the so-called "enhanced" registration for digital asset service providers

[Decree no. 2023-787 of 17 August 2023](#) makes the necessary regulatory adjustments to implement the so-called "enhanced" registration for digital asset service providers (DASPs).

These provisions will come into force on 1 January 2024.

Authored by Charlotte Bonsch

- **Commercial**

European Union – Regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe’s semiconductor ecosystem (Chips Act)

On July 25, 2023, the European Parliament adopted the "Chips Act" aimed at strengthening the European Union's position in the global semiconductor market. The Regulation introduces the "Chips for Europe" initiative with the goal of increasing the European Union's share in global semiconductor production to 20% by 2030. To achieve this objective, the Regulation establishes several mechanisms.

- **Establishment of the European Semiconductor Board and the ECIC**

The Regulation establishes the European Semiconductor Board, tasked with advising and assisting the Commission and handling aspects related to security, monitoring and reaction in the event of crisis , and facilitating cooperation among Member States. Furthermore, the Regulation introduces the European Chips Infrastructure Consortium (ECIC), a legal instrument designed to simplify and organise relationships among ECIC members, whether they are public or private entities. This new legal instrument is optional.

- **Monitoring of the semiconductor value chain**

The Regulation establishes a monitoring system for the semiconductor value chain to ensure the availability and integrity of products and services provided by key industry actors, as well as the monitoring of early warning indicators as defined by the Regulation. Member states are required to establish mechanisms and an administrative structure for regularly monitoring this chain and must share relevant observations with the European Semiconductor Board. Additionally, competent national authorities have the power to request information from organisations representing companies involved in the semiconductor supply chain, or directly from these companies, when deemed justified and proportionate.

- **Request for information by the Commission**

Companies participating in the semiconductor supply chain are required to provide to the Commission, upon request, with information regarding their production capabilities and ongoing major disruptions. The Commission's request for information specifies the conditions and deadlines for the transmission of this information. Companies that fail to meet their information obligations or provide intentionally or negligently inaccurate, incomplete, distorted information or, which fail to meet the deadline set by the Commission may face sanctions, including fines of up to €300,000.

- **Priority rated orders**

In times of crisis, the Commission may compel integrated production facilities, open EU foundries, and other semiconductor companies to accept priority orders to ensure the continuity of critical sectors. This obligation takes precedence over existing contractual obligations. If companies intentionally or through serious negligence fail to meet this obligation, they could face penalties capped at 1.5% of their average daily turnover from the previous fiscal year for each business day of non-compliance, starting from the date specified within the decision.

Authored by Charlotte Haddad and Celia Naït Bouda

- **Corporate**

France – Publication of the decree on the reconstitution of net equity share capital (DADUE law no. 2023-171)

Since the publication of [Law no. 2023-171 of March 9, 2023 on various provisions for adapting to European Union law in the fields of economics, health, labor, transport and agriculture](#) (DDADUE III), the practice was expecting a decree for the application of the new regulations established to safeguard companies whose net equity becomes inferior to half of their share capital from potential dissolution.

By means of a number of additions to the regulatory section of the French Commercial Code, [Decree no. 2023-657 of July 25, 2023](#) sets the minimum thresholds above which, depending on the size of their balance sheet, companies are required to reduce their equity capital to a value less than or equal to these thresholds if they have not restored their net equity to over half of the share capital within the legal timeframe following a finding that it is insufficient.

- For SARLs, the threshold corresponds to 1% of the company's balance sheet total at the last financial year-end;
- For other commercial companies, a distinction is made according to the existence of a minimum share capital requirement:
 - No minimum share capital: 1% of the company's balance sheet total at the last balance sheet date;
 - In all other cases: the higher of 1% of the company's balance sheet total at the last balance sheet date, or the minimum share capital required by the company's legal form, whichever is greater (*see C. com., art. L. 224-2 and reg. 2157/2001 for the SE*).

Essentially, a company required to restore its share capital will be able to do so within an initial 2-year period, and, failing that, to reduce its capital within a second 2-year period to a level equal to or below the "regulatory threshold". The consequence of this amendment is to postpone the risk of judicial dissolution (C. com., art. L. 225-248, para. 6).

Authored by L.-N. Ricard

- **Environment**

France - Enactment of the law aimed at facilitating the implementation of objectives to combat the artificialization of land and to strengthen support for local elected representatives.

[Law no. 2023-630 of July, 20 2023](#) aimed at facilitating the implementation of objectives to combat the artificialization of land and to strengthen support for local elected representatives was published in the Official Journal on July, 21 2023 (J.O no. 0167 of July, 21 2023) (the "**Law**").

As a reminder, land artificialization consists of transforming natural, agricultural or forest land through development operations that may result in partial or total waterproofing, in order to use it for urban or transport purposes in particular. In order to combat such artificialization, [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", sets a twofold objective: (i) to halve the rate of concreting between 2021 and 2031 compared with the previous decade and (ii) to achieve zero net artificialization by 2050, i.e. at least as much renaturated land as artificialized land.

As local authorities are encountering legal and practical difficulties in implementing these objectives, the legislator has sought to facilitate the implementation of objectives to combat the artificialization of land and to provide local elected representatives with greater support.

The main provisions of this Law are as follows:

- The extension of the deadlines set by the Climate and Resilience Act for incorporating targets for reducing land artificialization into urban planning documents. Specifically:
 - the deadline for regional planning, sustainable development and territorial equality schemes (SRADDET), regional development schemes (SAR), the sustainable development plan for Corsica (PADDUC) and the master plan of Ile-de-France region (SDRIF) has been extended to November 2024,
 - for territorial coherence schemes (SCoT), the deadline has been extended to February 2027,
 - for local urban plans (PLU), the deadline has been extended to February 2028;
- The creation of projects of national or European scope. These projects, deemed to be of major general interest, will be listed by ministerial decree and renewed annually. The projects likely to be listed are non-exhaustively enumerated by law (e.g. works or operations declared to be in the public interest by decree in the Council of State or by ministerial order, industrial projects of major interest for national sovereignty or the ecological transition, etc.). For these projects, the consumption of natural, agricultural and forest areas required for their implementation will not be taken into account at regional level, but at national level;
- The introduction of a minimum surface area for the consumption of natural, agricultural and forestry areas of one hectare for all municipalities with a local urban plan, or other document in lieu thereof or a local map ("*carte communale*") prescribed, adopted or approved before August 22, 2026;
- The extension of the urban pre-emption right to "priority sectors to be mobilised" ("*secteurs prioritaires à mobiliser*"), i.e. areas with major land potential to help achieve the objectives of combating the artificialization of land;

- Lastly, provision is made for the possibility of postponing decisions on planning applications when a project leads to the consumption of natural, agricultural and forestry areas and could compromise the achievement of the reduction targets set by 2031. It should be noted that a stay of proceedings cannot be applied to an application where the consumption of space would be offset by the renaturation of an area at least equivalent to the project footprint.

France - Decree no. 2023-722 of August 3, 2023 on classified facilities for the protection of the environment operating under the benefit of acquired rights and covered by Directive 2010/75/EU of the European Parliament and of the Council of November 24, 2010 on industrial emissions

[Decree no. 2023-722 of August 3, 2023](#) on classified facilities for the protection of the environment operating under acquired rights and covered by Directive 2010/75/EU of the European Parliament and of the Council of November 24, 2010 on industrial emissions (integrated pollution prevention and control) was published in the Official Journal on August 5, 2023 (J.O no. 0180 of August 5, 2023) (the "**Decree**").

The Decree is in response to the European Commission's formal notice of July 15, 2022 asking France to bring its national legislation into line with Directive 2010/75/EU on industrial emissions, known as the "IED Directive". Specifically, according to the Commission, "[French legislation, by virtue of the 'anteriority principle', exempts certain facilities from the authorisation requirement under certain conditions](#)".

The anteriority principle referred to here is an exceptional system put in place to protect existing, legally constituted situations. As changes to the nomenclature of classified facilities for the protection of the environment can lead to changes in the regime for existing buildings and activities, the benefit of acquired rights was introduced to allow existing sites to continue to benefit from their previous regime. Therefore, as long as the activity is carried out prior to the change in the nomenclature for industrial emissions, the operator benefits from acquired rights.

To take account of the aforementioned formal notice, the Decree has amended the provisions of articles R. 513-2 and R. 515-58 of the Environmental Code.

In practical terms, the prefect must now systematically issue an order that complies with the requirements of the Directive for facilities covered by the IED Directive and benefiting from acquired rights. The Decree also stipulates that the prefect may prescribe major modifications to the structure of the facility (e.g. construction provisions) or significant changes to its operating methods if these are necessary to meet the requirements of the Directive.

Authored by Laure Nguyen and Julie Paladian

- **Insurance**

France – Publication by the ACPR of its recommendation 2023-R-01 of 17 July 2023 on the implementation of certain provisions stemming from Directive (EU) 2016/97 on insurance distribution

On 17 July 2023, the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**") published the recommendation 2023-R-01 on the implementation of certain provisions of the Directive (EU) 2016/97 on insurance distribution ("**IDD**"). This recommendation, which follows on from European discussions on the distribution of insurance products particularly with regard to product governance, is the result of a series of inspections carried out by the ACPR that revealed practices that could be detrimental to policyholders' interests. The ACPR is therefore, on the one hand, recommending good practice in the governance and supervision of insurance products, in particular:

- in terms of significant products adaptations, by recommending that manufacturers adopt an analysis grid and objective criteria to characterise the contemplated product adaptations;
- better definition of the target market, using objective criteria (customer knowledge and experience, personal and financial situation, risk tolerance and capacity to incur losses);
- a better definition of the distribution strategy; and
- regular monitoring and review of the insurance products distributed.

On the other hand, the ACPR makes recommendations regarding remuneration policies and the management of conflicts of interest to be implemented by insurance manufacturers and distributors of insurance products. In this respect, the ACPR recommends in particular that remuneration policies should not be introduced which might encourage distributors to favour the offering of one insurance product when another product would be better suited to the policyholder's requirements and needs, and which might therefore have a negative effect on the quality of service provided (*e.g.*, variable remuneration policy based solely on quantitative criteria).

The recommendation will come into force on 1^{er} January 2024.

Source: [ACPR recommendation 2023-R-01 of 17 July 2023 on the implementation of certain provisions of Directive \(EU\) 2016/97 on insurance distribution](#)

European Union - EIOPA publishes its review of product oversight and governance requirements

The European Insurance and Occupational Pensions Authority ("**EIOPA**") has published on 23 July 2023 the results of the assessment it has carried out of the maturity of the European regulators' Product and Oversight Governance ("**POG**") supervisory framework for insurance companies. As part of this review, EIOPA has issued guidance on the points of attention that national regulators should consider when assessing the implementation of POGs by insurance product manufacturers and distributors. In particular, EIOPA recommends that European regulators:

- put in place a defined organisation for the supervision of POGs that is proportionate to the risks of the insurance market, for example by allocating adequate resources with the necessary expertise to supervise POGs;

- have a risk-based supervisory framework to identify the specific risks affecting products and companies that may have an impact on the interests of policyholders;
- define and communicate supervisory expectations to the market, in particular through guidelines or publications;
- conduct systematic supervisory activities such as on-site/off-site inspections of entities manufacturing *Insurance-Based Investment Products* (“IBIPs”).

However, EIOPA highlights that, although there are significant differences between the European regulators, most of them have adapted tailored internal procedures to include supervision of POG requirements, which should nevertheless be improved in the light of the recommendations mentioned above.

EIOPA also states that these recommendations will be subject to a subsequent review to assess the compliance of national regulators in implementing the recommended actions.

Source: [EIOPA - Review of product governance and oversight requirements](#)

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

France – News on accessibility of digital books for people with disabilities

France is finally transposing Directive 2019/882 of the European Parliament and of the Council of April 17, 2019 on accessibility requirements for products and services in Decree no. 2023-778 of August 14, 2023 on the accessibility of digital books and the software required to use them for people with disabilities. The decree was published in the JO of August 15, 2023.

As of June 28, 2025, all new digital books will be commercially available in a natively accessible form, unless there is a "proven and justified disproportionate burden". This means that digital books purchased from an online bookstore will have technical features that enable disabled readers or readers with reading difficulties to set their own parameters or use assistive technology, without any inconvenience or technical hassle. More concretely, for example, e-readers will include functionalities compatible with voice-assist technologies to enable visually impaired readers to enjoy reading.

France - Publication of the 16th edition of the Euro-PCT Guide

According to an EPO press release dated July 10, 2023, the 16th edition of the Euro-PCT Guide has been published. These are guidelines for the euro-PCT procedure, i.e. the procedure for filing a patent application with the EPO under the PCT (Patent Cooperation Treaty).

Among the new features of this 16th edition, the list of countries benefiting from reduced filing fees has been modified. Jordan has been added to the list, while Indonesia and El Salvador have been removed. This reduction applies to payments made on or after July 1, 2023.

France - Law on the restitution of cultural property looted during the Second World War published

Law no. 2023-650 of July 22, 2023 on the restitution of cultural property looted in the context of anti-Semitic persecution between 1933 and 1945 was published in the French Official Journal (JO) on July 23, 2023. It adds several articles to the French Heritage Code, notably providing for the withdrawal of several items of spoliated property from French heritage collections.

In addition, a report is to be drawn up every two years by the government for Parliament, listing the cultural assets in public collections that have been returned to their rightful owners or that have been the subject of other forms of reparation.

France - New field of activity eligible for Culture Pass payment

The Order of July 24, 2023 amending the Order of May 20, 2021 implementing Decree no. 2021-628 of May 20, 2021 on the "Culture Pass", published in the JO of July 30, 2023, adds a new field of activity eligible for payment by the Culture Pass.

It concerns scientific, technical and industrial culture. In concrete terms, it aims to facilitate independent access to culture, in particular by enabling young people to attend a variety of events such as exhibitions, visits or even workshops in scientific or cultural practice.

Authored by Anna Revidi and Ambre Cros Coitton

- **Public Law**

France – Derogations to the Public Procurement Code to speed up rebuilding operations

Following the damages to public facilities and buildings resulting from public order and security disturbances that occurred between June 27 and July 5, 2023, [Law no. 2023-656 of 25 July 2023](#), published in the Official Journal of the French Republic (OJFR) on July 26, 2023, has permitted the Government to take any measure by ordinance to speed up or facilitate rebuilding operations.

Based on this authorization, [Ordinance no. 2023-660 of 26 July 2023](#), published in the OJFR on July 27, 2023 and valid for nine months, allows buyers subject to the French Public Procurement Code:

- to use a negotiated procedure without advertising but with prior competitive tendering for works public procurement contracts meeting a need with an estimated value of less than €1,500,000 excluding VAT. This option is also available for lots with an estimated value of less than €1,000,000 excluding VAT, provided that the aggregate value of these lots do not exceed 20% of the total estimated value of all the lots;
- to derogate from the principle of division of public procurement contracts into lots without justification and regardless of the value of the contract;
- to entrust an economic operator with a global mission covering the preparation of studies and the execution of works required for the reconstruction of public facilities and buildings, regardless of the value of the contract.

The French Legal Affairs Division of the Ministry of Economy and Finance has published a [data sheet](#) on this subject.

France - Publication of essential data regarding public procurement

On July 27, 2023, the French Legal Affairs Division of the Ministry of Economy and Finance ("DAJ") published a [data sheet](#) setting out how the publication of essential data regarding public procurement contracts provided for by [Decree no. 2022-767 of 2 May 2022](#) and the Decrees of 22 December 2022 relating to essential data of public procurement contracts and concessions will work.

These texts reinforce the opening up of existing public procurement open data, which aims to prevent and fight against corruption and improve the proper management of public funds, as well as to encourage purchasing management and the economic development of companies, which will be able to use these data to better meet the needs of public purchasers or develop new services.

They apply to public contracts notified on or after January 1, 2024 and to concession agreements entered into on or after the same date. All concession agreements are affected, but only public procurement contracts (including lots) with a value of €40,000 or more excluding VAT are affected.

Essential data must be published on a single platform: the national open data portal (www.data.gouv.fr).

The list of essential data to be provided is detailed and commented in the DAJ datasheet. For public procurement contracts, 24 mandatory data items and 21 conditional data items must be published within two months of notification of the public procurement contract to the contract holder. In the case of concession agreements, the awarding authority must publish 14 mandatory data items and 9 conditional data items before the start of performance of the contract. One of the new features of the [Decree of 22 December 2022 on the essential data for public procurement contracts](#) is the addition of a section on the purchasing technique used for the public procurement contract. Here, the purchaser will enter the purchasing technique used, i.e. the framework agreement, the design contest, the dynamic purchasing system, the qualification system, the electronic catalogue or the electronic auction.

Data relating to first-tier subcontracting are also published whenever the contract holder makes use of subcontracting, at the award stage or during the performance of the contract.

The DAJ also warns of the precautions to be taken when publishing data. For example, the data must not infringe the requirements of public order or business secrecy.

Finally, the DAJ points out that published essential data may be reused subject to certain conditions, including not altering the data or distorting its meaning, indicating its sources and the date it was last updated, and complying with regulations on personal data.

France - Replacement of "standard" advertising forms by eForms

On August 4, 2023, the French Legal Affairs Division of the Ministry of Economy and Finance ("DAJ") published an [explanatory note](#) on the new advertising notice forms, "eForms", resulting from [implementing regulation 2019/1780/EU of 23 September 2019](#).

With regards to the implementation timetable, the DAJ points out that "standard" forms will no longer be accepted by the Publications Office of the European Union after October 24, 2023, after which date only eForms may be used.

There are six standard forms, each corresponding to a particular stage in the contract award process (planning, competition, direct award prenotification, results, contract modification and change).

Within these forms, forty notices are available. They correspond to the different types of contract concluded and the different directives applicable, namely [Directive 2014/23/EU](#) (concession contracts), [Directive 2014/24/EU](#) (traditional sectors), [Directive 2014/25/EU](#) (special sectors) or [Directive 2009/81/EC](#) (defence and security contracts).

Finally, the explanatory note details the type of information to be provided in eForms, distinguishing between mandatory and optional fields.

Authored by Bruno Cantier, Astrid Layrisse and Aurélie Toujas

- **Real Estate**

France – Provisional reinstatement of the cap on the annual variation in rental indices

Law no. 2023-568 of 7 July 2023 maintains the 3.5% cap on rent increases for tenants of residential or mixed leases, subject to the rent reference index (IRL), and for SMEs, subject to the commercial rent index (ILC), until 31 March 2024.

Specific ceilings are set for the IRL in overseas territories (2.5%) and Corsica (rate set by decree at 1.99%).

France – Confirmation of the energy renovation obligation schedule

The Climate Resilience Act adopted on 22 August 2021 introduces an energy performance threshold for renting out decent housing from 1 January 2025. Derogations are provided for in the event of architectural or heritage constraints.

On 18 August 2023, decree no. 2023-796 specified the minimum energy performance levels for renting out decent accommodation from 2025:

In mainland France :

- From 1 January 2025 - to class F
- From 1 January 2028 - to class E
- From 1 January 2034 - to class D

In Guadeloupe, Martinique, French Guiana, Réunion and Mayotte :

- From 1 January 2028 - to class F
- From 1 January 2031 - to class E

Architectural or heritage constraints that prevent this energy decency criterion from being met are also specified.

Authored by Margot Derumaux and Marion Lequien

- **Technology**

- **European Union - DSA now applicable to very large platforms and search engines**

Since August 25, 2023, very large online platforms and online search engines must comply with the provisions of the Digital Services Act ("DSA"), and in particular with the specific rules arising from Section 5 of the DSA, applicable only to these "very large" digital services.

As a reminder, the DSA is a European regulation on digital services, imposing, *inter alia*, content moderation obligations. The regulation applies to online intermediaries offering their services within the European internal market, and in particular to intermediaries qualified as "very large online platforms" and "very large online search engines".

To qualify as such, the platform or engine must have an average monthly number of users in the EU equal to or greater than 45 million, and be formally designated by the European Commission.

To date, the following have been [designated by decision of the Commission](#):

- 17 "very large online platforms": Alibaba AliExpress, Amazon Store, Apple AppStore, Booking.com, Facebook, Google Maps, Google Play, Google Shopping, Instagram, LinkedIn, Pinterest, Snapchat, TikTok, Wikipedia, X (formerly Twitter), YouTube and Zalando; and
- 2 "very large online search engines": Bing and Google Search.

Zalando, and more recently Amazon, have taken their case to the European General Court to challenge their designation as a "very large online platform".

However, since August 25th, the services of these two companies, like the 17 other services designated by the Commission, are obliged to comply with the provisions of the DSA. In particular, they must comply with the "additional obligations" of transparency and accountability set out in section 5 of the DSA. For example, companies providing very large online platforms or search engines must carry out an analysis of the systemic risks generated by their services, keep a public register of advertising, or grant the competent authorities access to the data needed to monitor and assess their compliance with the DSA.

As for the other online intermediaries offering their services in the EU but not listed in the above-mentioned Commission decision, the DSA will not apply to them until early next year, on February 17, 2024.

Authored by Joséphine Beaufour and Amjad El Hafidi

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