
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 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.

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- **Automotive**

France - Autonomous driving allowed for autonomous vehicles since September 1, 2022

Since Thursday 1 September 2022, the new provisions applicable to automated driving systems in Decree No. 2021-873 of 29 June 2021 have come into force. As a result, the circulation of autonomous vehicles is authorised under certain conditions. In other words, the owners of semi-autonomous cars including the functionalities allowing these vehicles to benefit from autonomy capabilities can let their vehicle circulate autonomously in certain specific driving situations on French roads.

Autonomous vehicles allow drivers to let their car manage its own driving during motorway driving, in a car park or even in the middle of traffic jams, depending on the driving situations supported by each model.

However, the decree specifies that "the automated driving system must be able to be deactivated at any time by the driver taking control of it". In addition, the system cannot be activated above 60km/h and can only operate on lanes with a central divider and where pedestrians and cyclists are not allowed.

Authored by Gabriel Lecordier and Gabriel Privat

- **Commercial**

France - Law on emergency measures to protect purchasing power: consumer protection

The Law No. 2022-1158 of 16 August 2022 on emergency measures to protect purchasing power was published in the Official Journal on 17 August 2022 - [see our June 2022 Newsletter](#) on the draft bill.

The law has a threefold objective: the protection of the standard of living of French households, the protection of consumers and energy sovereignty.

The objective of the protection of consumers is materialized through amendments to the French Consumer Code facilitating the termination of subscription contracts (e.g. insurance, energy, internet, mobile, audio-visual and video on demand) by consumers, in particular with respect to the modalities and conditions of such terminations / cancellations.

Some of the provisions of the law are effectively immediately, for example the possibility to cancel an audio-visual media services on demand subscription after its first tacit renewal, free-of-charge and at any moment, if the consumer changes his/her residence or his/her tax household is modified.

Most of the provisions will be applicable to contracts concluded after 1 January 2023, for instance those relating to the termination of electronic communication services contracts.

Finally, an implementing decree, which will be adopted at the latest by 1 June 2023, will determine the technical framework that would enable consumers to terminate and/or cancel their contract easily online, if such contract can be effectively entered into online with the provider in question.

France : Generalization of electronic invoicing: the reform schedule confirmed

The timetable for the mandatory switch to electronic invoicing has been specified through the adoption of the Amended Finance Act for 2022, No. 2022-1157, published in the Official Journal on 17 August 2022.

The size of the companies will be taken into account to make it easier for them to meet their obligations. It will apply:

- from 1 July 2024, in reception, to all taxable persons;
- from 1 July 2024, for transmission, to large companies;

- from 1 January 2025 to medium-sized companies;
- from 1 January 2026 to small and medium-sized companies and microenterprises.

The deployment of the obligation to transmit data to the tax administration will follow the same schedule.

To comply with the above, companies will be free to choose to use either a third-party dematerialization platform “approved” by the tax administration, or the public invoicing portal, which will be based on the Chorus Pro platform (which has already been providing dematerialized exchange of invoices for transactions with the public sector since 2017).

Authored by Daghan Ozturk, Gabriel Privat and Glorify Ndombaxe

- **Data Protection**

European Union – EDPB and EDPS have issued a joint opinion on the Data Governance Act and the Data Act

On 5 May 2022, the European Data Protection Committee and the European Data Protection Supervisor adopted an opinion on the proposed European data regulation (“Data Act”). This opinion follows the one of March 2021 on data governance (“DGA”).

The Data Governance Act and the Data Act are part of the European Commission's European Data Strategy to develop a single market for data by supporting responsible access, sharing and re-use, while respecting the values of the European Union and in particular the protection of personal data. More generally, this initiative is part of the Commission's action plan to ensure Europe's digital sovereignty by 2030.

Among the points raised in this opinion:

- The need to ensure consistency of the future provisions with the current data protection framework, in particular the GDPR;
- The relevance of designating national data protection authorities as authorities for the supervision of the DGA in order to ensure the efficient and effective application of the different legal frameworks and to ensure their readability for the citizens and economic actors concerned.

European Union – EDPB statement on data transfers to Russia

The European Data Protection Board (EDPB) issued on 12 July 2022 a statement on data transfers between EU Member States and Russia. As Russia is no longer a contracting party to the Council of Europe's legal frameworks and protocols following the sanctions related to the war in Ukraine, the EDPB considers that this could have a significant impact on the level of protection of data subjects, especially in the context of data transfers.

As Russia does not benefit from an adequacy decision of the European Commission, data transfers to Russia shall be based on one of the instruments provided for in Chapter V of the GDPR.

The EDPB also recalls that, pursuant to the Schrems II decision of the European Court of Justice, data exporters must assess whether, in the context of the transfer, the content of the law and/or practices in force in Russia (in particular with regards to access to personal data by Russian public authorities, especially for criminal law enforcement and national security purposes) could affect the effectiveness of the appropriate safeguards provided by Russian authorities. If this is the case, data exporters should identify and implement additional measures that are necessary to ensure that data subjects benefit from an adequate level of protection substantially equivalent to the one guaranteed within the European Economic Area. If this assessment concludes that compliance is not (or is no longer) assured and no additional measures can be identified, data exporters shall suspend data transfers.

France - The CNIL provides its opinion on so-called "augmented" or "intelligent" cameras

In a communication published on 19 July 2022, the CNIL indicates that the deployment of "augmented cameras" in public spaces presents new risks for privacy. An uncontrolled generalisation of these devices, which are intrusive, would lead to a risk of general surveillance and analysis in the public space, and could have the effect of modifying people's behaviour.

The CNIL calls for a rationalised use of these tools in the public space, whatever the use is or its justification. The authority recommends setting boundaries to prevent these cameras from being used to "rate" people.

To date, French law does not authorise the use, by public authorities, of "augmented" cameras for the detection and prosecution of offences, whether they are dedicated or associated devices coupled with pre-existing video protection cameras.

According to the CNIL, public authorities must ensure that the use of "augmented" cameras is limited to the most legitimate cases, in order to avoid a disproportionate multiplication of these devices, which would change our relationship with public space. For example, the CNIL mentions certain legitimate uses: devices counting pedestrians, cars or cyclists on the public highway for infrastructure development purposes, adapting public transport capacities according to their use, analysing use and occupation to adapt energy consumption, etc.

Moreover, as it is generally not possible for the persons concerned to exercise their rights under the GDPR (e.g. the right to object to being analysed by the camera), these uses are only lawful when they have been authorised by public authorities, which must adopt a text (regulatory or legislative) to waive this right.

When "augmented" cameras are used to produce statistics, consisting of anonymous data and not having an immediate operational purpose, they can already be deployed without any specific framework according to the CNIL.

From an operational point of view, the CNIL has made the use of "augmented" cameras a priority in its 2022-2024 strategic plan.

Authored by Sihem Hassani, Emma Gellé and Gabriel Privat

- **Employment**

France – Law n° 2022-1158 of August 16, 2022 on emergency measures to protect purchasing power

[This law](#) aims to limit the impact of current high inflation for the French.

The value-sharing bonus replaces the exceptional 'prime macron' introduced in 2019. The maximum amount of the bonus is tripled, up to €3,000 - or even €6,000 if a profit-sharing agreement has been put in place at company level. This bonus remains exempt from social security contributions (but subject to income tax), paid in one or more instalments within a limit of once per quarter.

This law also strengthens profit-sharing agreements. Profit-sharing agreements may now be concluded for a period of up to 5 years (as opposed to 3 before), and may be tacitly renewed several times if the provisions so specify. Controls have also been lightened: for instance, as of January 1, 2023, the DREETS will no longer be able to control the exterior structure the agreement. Finally, collective profit-sharing may be implemented by DUE (Unilateral Employer Decision) for companies with less than 50 employees not covered by a branch agreement and without trade union delegates or CSE, or which have not succeeded in concluding an agreement after negotiations with the CSE or the trade union delegates.

On amendment of the Senate and only for companies between 20 and 249 employees, a reduction of employer's contributions for overtime (up to an amount to be set by decree) and for days of rest given up by the employee in annual day package beyond 218 days (up to 7 times the defined amount) will apply from 1st October 2022.

In addition, it will be possible until December 31 for any employee who wishes to do so to unlock his or her employee savings without being taxed, provided that the total amount does not exceed €10,000.

France – Law Rectifying Finances n°2022-1157 of August 16, 2022

[This law](#) complements the purchasing power law and includes other anti-inflation measures.

In its social part, Article 5 of the Law allows the buyback of ‘RTT’ (=reduction in the number of working hours) paid at the same rate of the first hour of overtime defined in the company, or at the hourly wage rate increased by 10% at least). Those bought back by the employer will be exempt from income tax and social security contributions in the same way as overtime hours, from 1st January 2022 to 31st December 2025, although they will be subject to ‘CSG’ and ‘CRDS’ contributions and included in the amount of reference tax income. The tax exemption ceiling has also been raised from €5,000 to €7,500 for hours worked since 1st January 2022; overtime or additional hours are also counted in this ceiling, under the same conditions.

Concerning transport, the Parliament also voted to increase the maximum for the sustainable mobility package (up to 800 € per year) and the maximum for the exemption of the fuel bonus paid by employers (from 200 to 400 € - and it is now cumulative with the exemption for public transport in order to take into account intermobility). Finally, Parliament has decided that the tax and social security exemption applicable to the compulsory payment of public transport costs by the employer will be extended to the optional part (thus bringing the total exemption up to 75% of the price of the tickets).

France - Decree no. 2022-958 of June 29, 2022 extending the one-time bonus to employers of apprentices and employees on ‘professionalization contracts’

[This decree](#) extends until December 31, 2022 the exceptional state bonus for the recruitment of a student on an apprenticeship or on a ‘professionalization contract’. The amount the employer will receive is €5,000 for a student under 18 years of age and €8,000 for the recruitment of a student aged at least 18 and under 30 preparing a degree up to a master’s.

Authored by Baptiste Camus & Oussama El Hassani

- **Finance**

France – Loans guaranteed by the French State

Article 23 of [law n° 2022-1157 of 16 August 2022](#) provides that the French state guarantee may benefit to loans which are made available by credit institutions until 31 December 2022 instead of 30 June 2022.

Authored by Charlotte Bonsch

- **Insurance**

France – ACPR / DGCCRF: formalization of a cooperation protocol between the two authorities

The *Autorité de Contrôle Prudentiel et de Résolution* ("ACPR") and the *Direction générale de la Concurrence, de la Consommation et de la Répression des Fraudes* ("DGCCRF") have formalised their cooperation in an agreement on strengthening the coordination of their actions in the field of customer protection in the banking and insurance sectors.

The two authorities were already working together before the signing of the protocol and were carrying out joint actions such as the one on cold calling, which led to the introduction of a new mechanism enacted through Law No 2021-402 of 8 July 2022,2 which prohibited "one-shot" sales.

Source : [Press release from the ACPR and the DGCCRF on the signing of a protocol aimed at strengthening the coordination of their actions in the field of customer protection in the banking and insurance sectors](#)

France - Adoption of the law n°2022-1158 of 16 August 2022 on emergency measures to protect the purchasing power

On 16 August 2022, the Parliament adopted the law n°2022-1158 on emergency measures to protect purchasing power. On the one hand, Article 17 of Law No. 2022-1158 provides for the compulsory implementation by insurers of a facilitated termination by internet. Thus, from 1st August 2023, if the insurance contract covering natural persons (outside their professional activities) has been concluded electronically or by another means and the insurer, on the day of termination by the policyholder, offers the policyholder the possibility of concluding contracts electronically, then termination will be made possible using this same procedure. On the other hand, the termination period for affinity insurance is extended from fourteen (14) to thirty (30) days.

Source: [Enactment of the law n°2022-1158 of 16 August 2022 on emergency measures to protect purchasing power](#)

European Union - Delegated Regulation 2022/975 postponing the date of application of certain obligations relating to PRIIPS

The European Commission has extended the exemption period for the pre-contractual communication of a standardised key information document to retail investors when marketing packaged retail and insurance-based investment products (PRIIPS). The exemption period has been extended from 1 July 2022 to 1 January 2023.

Source : [European Commission publishes Delegated Regulation postponing the date of application of certain PRIIPS obligations](#)

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

France - Publication of the order of July 29, 2022 repealing the order of December 11, 2018 setting the terms and conditions for calculating the storage, handling, transport and destruction costs of suspected counterfeit goods

On August 6, 2022 was published in the Official Journal the [order of July 29, 2022](#) repealing the order of December 11, 2018 setting the terms and conditions for calculating the storage, handling, transport and destruction costs of suspected counterfeit goods.

As a result of the repeal of this order, the process of billing the rightsholder for the costs incurred by Customs following the detention and possible destruction of suspected infringing goods is now abandoned.

The order entered into force of August 7, 2022.

International - EUIPO Communication on the registration of trademarks for goods and services to designate virtual goods, non-fungible tokens and the metaverse

On June 23, 2022, the European Union Intellectual Property Office (EUIPO) published its approach regarding the classification of virtual goods, non-fungible tokens and other goods and services related to the metaverse.

If the term "virtual goods" is too vague and requires a precision on the type of virtual goods in question, they fall in any case under class 9 insofar as they are considered as digital contents or images.

For the EUIPO, the term "non-fungible token" is too vague, the type of digital element authenticated by the NFT must be specified.

International - European Patent Office and Saudi Arabian Intellectual Property Authority establish expedited patent examination

On July 1st, 2022, the European Patent Office and the Saudi Arabian Intellectual Property Authority launched the "Patent Prosecution Highway" pilot program to accelerate the examination of patent applications in both territories. The two offices will also share existing work results and data in order to increase efficiency and reduce costs for users.

Authored by Etienne Barjol, Emilia Grenier and Jessica Seray

- **Litigation**

France – Decree no. 2022-973 of 1st July 2022 amends the procedure relating to controls conducted by French administrative agents in charge of competition and consumer law

Decree no. [2022-973](#) of 1st July 2022, which entered into force on 4 July 2022, slightly amends the procedure relating to controls conducted by the French administrative agents in charge of competition and consumer law.

The decree notably provides the possibility for food and animal feed business operators to request a second analysis under the conditions provided for in Article 35 of the amended Regulation no. 2017/625 on official controls along the agri-food chain and the possibility of appointing contractors to represent the administration at hearings. The decree removes the requirement for the signature of minutes by the person concerned by the investigations, with the exception of minutes where the person is heard.

European Union – The European Union and Ukraine become parties to the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

On 29 August 2022, the European Union acceded to the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (so called “Judgments Convention”) (available [here](#)). The European Union hence became the first contracting party to the Convention.

Ukraine also ratified the Convention shortly thereafter.

The Convention now has two contracting parties, triggering its entry into force on 1st September 2023.

The Judgments Convention allows the recognition and enforcement of foreign judgments that meet specific requirements (Art. 5 and 6) and addresses the grounds to refuse recognition and enforcement of a judgment (Art. 7). The Convention applies to the recognition and enforcement of judgments in civil and commercial matters (Art. 1) and excludes certain matters from its scope (Art. 2). The European Union also excluded from the scope of the Convention non-residential leases of immovable property situated in the European Union.

The Judgements Convention applies to all Member States of the European Union, except Denmark, without Member States having to sign or ratify the text.

Authored by Alexis de Kouchkovsky and Bertille Ibled

- **Public Law**

European Union – Sanctions against Russia: clarifications of the Commission

The European Commission published, on last 26 August, an update of its [frequently asked questions](#) on the sanctions against Russia in the field of public procurement contracts. As a reminder, since 9 April 2022 and pursuant to regulation (EU) 2022/576, it is prohibited to award or continue the execution of any public procurement contract or concession contract exceeding the European thresholds to Russian natural or legal persons (see on this subject our [Legislative and Regulatory Update of May](#)). The updated FAQ includes, compared to the first version of 12 May, 8 new questions asked by member States. In particular, we learn that the sanctions apply to all Russian citizens and that, consequently, dual citizenships with Russian citizenship do not escape these sanctions. In contrast, the sanctions do not apply to Russian nationals with refugee status, nor, furthermore, to goods acquired by the public procurement contract or concession contract holder from Russian entities before 9 April 2022 and before the submission of its bid or the award of the contract. Moreover, the competent national authorities may grant exemptions for the award of certain groups or types of contracts.

Authored by Bruno Cantier and Astrid Layrissé

- **Real Estate**

France – Limit on the increase of the commercial rent index to 3.5% for one year

In order to protect certain businesses from rent increases in the current inflationary context, Article 14 of Law no. 2022-1158 of August 16, 2022 on emergency measures to protect purchasing power imposes a limit on the variation of the commercial rent index (*ILC*).

The Law provides that the variation of the *ILC* index taken into account for the revision of the rent cannot exceed 3.5% for the quarters between the second quarter 2022 and the first quarter 2023. The Law specifies that the cap on the annual variation is definitive. Thus, the increase or decrease in rent resulting from a subsequent revision may not take into account the portion of the variation in the *ILC* index exceeding 3.5% over this same period.

However, this limitation is only applicable to small and medium-sized companies, i.e., companies that employ less than 250 people and whose annual turnover does not exceed 50 million euros or whose balance sheet total does not exceed 43 million euros.

Lessors will therefore be able to continue to index commercial rents using the *ILC* index, but the one-year variation in this index between the second quarter of 2022 and the first quarter of 2023 may not exceed 3.5%.

Authored by Alice Houdart

- **Technology & Telecom**

France - Publication by the National Anti-Scam Task Force of its new prevention guide

The National Anti-Scam Task Force bringing together government departments and supervisory authorities publishes a new prevention guide and calls for vigilance against online frauds and scams in particular.

The Task Force, created in April 2020, at the beginning of the Covid crisis, at the initiative of the Ministry of the Economy, Finance and Industrial and Digital Sovereignty, bases its guide on the success of the complaints platform for internet scams, THÉSÉE, which was launched last March and has already received 23 000 reports.

The Task Force has therefore published an updated guide in order to strengthen the protection of consumers and businesses against scams. The practices identified online are mainly related to phishing operations, theft of bank details or fake administrative sites.

Furthermore, the Task Force calls for increased vigilance when purchasing or subscribing to services promoted on social networks.

Authored by Sihem Hassani and Gabriel Privat

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