

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 May 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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For additional information, please speak to your usual contact.

Contact

Sophie Giono

Hogan Lovells (Paris) LLP
17, Avenue Matignon
CS 60021
75008 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

Hoganlovells.com

- **Audio-visual**

France – Publication of Decree No. 2022-779 of 2 May 2022 amending Decree No. 2013-1196 of 19 December 2013 on the sanctioning procedure implemented by the Higher Audiovisual Council pursuant to Article 42-7 of Law No. 86-1067 of 30 September 1986 on the freedom of communication

On 3 May 2022, [Decree No.2022-779](#) of 2 May 2022 was published on the Official Journal, amending Decree No. 2013-1196 of 19 December 2013 on the sanctioning procedure implemented by the Higher Audiovisual Council pursuant to Article 42-7 of Law No. 86-1067 of 30 September 1986 on the freedom of communication.

This Decree aims at taking into account the change of name of the regulatory body, now the Audiovisual and Digital Communication Regulatory Authority, and to introduce a restricted composition for the cease-and-desist and the sanctions in the field of contribution to production (see [Legal and regulatory update – April 2022](#)).

This panel will be composed of 4 members, including a rapporteur who will decide whether or not to initiate a sanction procedure and who may, at any time during the procedure, ask the respondents to provide the information needed to calculate the financial cap penalty that may be incurred.

The Order came into force on 4 May 2022.

Authored by Anaïs Merires and Mathilde Grammont

- **Capital Markets**

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

Pursuant to [order dated 16 May 2022](#), the General Regulation of the AMF has been amended in order in particular to remove the possibility for UCITS and AIF managers to benefit from turnover fees, except for turnover fees on real estate assets. This abolition can be explained by the risk of conflicts of interest inherent to how such system works. Indeed, the existence of these fees could encourage UCITS and AIF managers to excessively rotate the assets held by the relevant UCITS in order to increase their turnover fees. In order to allow management companies to adapt their system, these changes will apply as of 1 January 2026.

Authored by Charlotte Bonsch

- **Commercial**

France – Entry into force of the Order No. 2021-1734 of 22 December 2021 transposing the OMNIBUS Directive

On May 28 2022, the OMNIBUS directive, transposed into French law by the Order No. 2021-1734 of 22 December 2021, came into force. Please see our [article](#) summarizing the new requirements brought by this Order.

Authored by Daghan Ozturk and Elise Foussereau

- **Competition**

European Union – The European Commission issues new Vertical Block Exemption Regulation

On the 10 May 2022, the European Commission adopted the new Vertical Block Exemption Regulation (“VBER”) together with the Vertical Guidelines. This regulation provides for an exemption for distribution agreements under EU competition law where (i) the parties’ respective market shares are below 30% and (ii) the agreement does not contain hardcore restrictions to competition. The new VBER came into force on 1 June 2022 and replaces the former VBER that had been in force since 2010.

Distribution agreements concluded before 1 June 2022 will continue to be exempted under former VBER for one year, while agreements concluded after that date will have to comply with the new rules.

The following key changes are worth noting:

- **Exclusive distribution** – In exclusive distribution, the supplier may restrict active sales into the exclusive territory (or to a customer group), which it has reserved for itself or for exclusive distributor. The new VBER allows suppliers to have up to five exclusive distributors per territory (or customer group). It also allows suppliers to require their direct distributors to pass active sales restriction onto their own resellers. However, such pass-on of restrictions does not extend past direct clients and thereby does not affect the whole distribution chain.
- **Selective distribution** – The new VBER clarifies that suppliers operating a selective distribution network may prevent sales to unauthorized resellers within any selective distribution territory and that such restriction may be passed-on all along the distribution chain (i.e., to direct and indirect customers).
- **Online sales restrictions** - The VBER and the Vertical Guidelines clarify that suppliers may not impose *de facto* prohibition to use online sales channels. However, they may restrict the way products are sold online. For instance, they may not limit the ability of resellers to bid on keywords on search engines or require hand-in delivery of purchased products. However, they may (i) set different prices for online and offline sales (“dual pricing”); (ii) create different criteria for online and offline sales channels in SDN; or (iii) prohibit distributors from using marketplaces.
- **Re-assessment of rules applicable to dual distribution** - Dual distribution is where a supplier both sells its products directly to clients and relies on retailers to do so. The VBER and Vertical Guidelines provide that in such scenario, exchanges of information between supplier and distributor should be limited to what is directly related and strictly necessary to the implementation of the distribution agreement as they entail a potential risk of horizontal coordination.
- **Parity clauses** – Parity clauses are provisions that require a supplier to offer the same or better conditions to other parties as those that are offered either on third-party sales channels (wide parity clauses) or on the supplier’s own sales channels (narrow parity clauses). The new VBER clarifies that wide parity clauses across online platforms are no longer covered by the exemption and that such agreements must be analysed on a case-by-case basis.

Authored by Eric Paroche, Pierre Chellet and Síoфра Collins

- **Employment**

- **France – Revaluation of the French minimum wage (known as “SMIC”)**

- The SMIC has been revalued by 2.65% as of Sunday 1 May 2022. The net monthly SMIC in mainland France has thus risen from €1,269 to €1,302.64 for full-time work, an increase of €34 per month.

France - Apprenticeship contracts: recruitment aid extended until the end of 2022

The current apprenticeship scheme, which has been in force since July 2020 and was due to expire on 30 June, is to be extended until at least the end of 2022. The aid is paid for the first year of the contract and amounts to €5,000 for the hiring of a minor and €8,000 for the hiring of an adult.

In order to encourage companies to hire young people on apprenticeship contracts, the third amending finance law for 2020 introduced exceptional financial aid for contracts concluded between 1 July 2020 and 28 February 2021.

Its benefit was extended a first time for contracts signed between 1 and 31 March 2021, for those concluded between 1 April and 31 December 2021 and finally, for contracts concluded until 30 June 2022. In view of the large number of apprentices taken on in recent months, the Ministry of Labour has therefore indicated that financial aid to companies for signing apprenticeship contracts will be extended at least until the end of 2022.

A decree is expected to formalise this extension.

France - Compliance of health and provident schemes

In accordance with interministerial instruction No. DSS/3C/5B/2021/127 of 17 June 2021 specifying the methods for assessing the collective and compulsory nature of supplementary social protection schemes in the event of suspension of the employment contract, most companies will be obliged to bring their health and provident schemes set up by unilateral decision of the employer into compliance by 30 June 2022 at the latest.

Authored by Marion Guertault, Alexandra Tuil et Kankouba Camara

- **Insurance**

France - CCSF: agreement to simplify the termination of insurance contracts and to extend the cancellation period for affinity insurance contracts

On 5 May 2022, the CCSF [has published](#) an opinion including the following proposals: (i) the introduction as from 1st July 2023 of a termination right at any time after one year for policyholders and adherents for all individual insurance contracts or collective insurance contracts with optional membership covering natural persons insured acting outside the scope of their professional activities, except for contracts covering specific risks, (ii) the information of the insured at each annual renewal date of the possibility to terminate at any time the insurance contract and (iii) the extension of the withdrawal period from 14 to 30 days for affinity insurance contracts as well as the removal of the condition of double coverage from 1st July 2023.

France - ACPR: call for distributors of life insurance policies to comply with their duty to advise

The ACPR has published on 3 May 2022 a document identifying certain shortcomings by distributors of life insurance policies with respect to their duty to advise towards financially vulnerable customers. These statements follow onsite inspections conducted by the ACPR which reminds distributors that they must ensure in particular that the contract is appropriate to the customer's financial situation, requirements and needs, and to its knowledge and experience in financial matters.

France - ACPR: new recommendation on complaints handling

The ACPR has published on 9 May 2022 a [Recommendation 2022-R-01](#) on complaints handling which will replace Recommendation 2016-R-02 as of 31 December 2022. This new recommendation (i) extends the scope of complaints to persons who are not clients of the professional, (ii) allows the claimant to refer the matter to the Ombudsman after two months following its initial written complaint, (iii) requires that the complaint be made in writing, (iv) requires the professional to avoid multiplying the channels and persons involved in dealing with the claimant, and (vi) requires the professional to draw up an analysis of the quality of its complaints handling system and a description of any shortcomings observed.

European Union – EIOPA: ESAs call for improvements in product description for retail investors

The European supervisory authorities [have issued](#) on 10 May 2022 a joint statement identifying a series of bad practices in relation to the description of products for retail investors. The statement aims to improve the quality of descriptions provided by PRIIPS manufacturers and enhance the protection of retail investors by providing illustrative examples and good practices recommendations that the professionals are invited to implement to remedy such shortcomings.

European Union – EIOPA: blockchain and insurance

EIOPA [has published](#) on 6 May 2022 a summary of the public consultation on blockchain and insurance. On the one hand, blockchain is described as a way to speed up transactions and claims processing, reduce operational costs and improve traceability. On the other hand, negative aspects are pointed out, such as inadequate training of staff, security problems with encryption and the risks arising from incorrect coding.

As a result of this public consultation, EIOPA is committed to further consider the use of blockchain in supervision and regulation processes.

Authored by Ghina Farah and Mohamed Boukesra

- **Intellectual Property**

France – Measures implemented following the Report on the financing of the production and distribution of photographic works

On 16 May 2022, the Ministry of Culture published a [Press release](#) listing 13 operational measures that will be implemented before the end of 2022 in favor of the photography sector and photographers (see [Legal and regulatory update – February/March 2022](#)).

These measures will notably allow to :

- prevent the abusive use of the reserved rights mention and thus allow a good identification of the photographers who are the authors of the images;
- support and encourage the development of marking and traceability tools for the use of images on the internet;
- support the author's agencies in photography;
- support the constitution, indexation and digitization of the photojournalists' patrimonial funds.

The Ministry of Culture has indicated that working groups will soon be set up with professionals in the sector to examine these measures in greater depth.

France - Signature of an Agreement relating to performers' compensation for streaming

On 16 May 2022, the French Ministry of Culture published a [Press release](#) indicating the signory, on 12 May 2022, of an [Agreement](#) setting a minimum compensation guarantee.

This Agreement is concluded between the professional organisations and collective management organisations representing performers, on the one hand, and the professional organisations and collective management organisations representing phonogram producers exercising this activity on a principal basis, on the other hand.

This Agreement aims at implementing the minimum compensation guarantee provided for in [Article L.212-14 of the Intellectual Property Code](#).

It sets, for performers receiving proportional royalties, royalty rates higher than 10%. It also creates a right for systematically receiving a minimum advance from the producer and sets a maximum rate and duration of authorised discount. Finally, it establishes the principle of a rate bonus in case of major success.

For musicians, the Agreement provides that they will receive a specific lump sum for streaming and additional compensation each time certain levels of success are reached.

European Union – Decision of the Court of Justice of the European Union of 26 April 2022 in the Case C-401/19, Republic of Poland v. European Parliament and Council of the European Union

On 26 April 2022, the Court of Justice of the European Union issued its [Decision](#) in the Case C-401/19, opposing the Republic of Poland to the European Parliament and Council of the European Union on the compatibility of Article 17 of [Directive \(EU\) 2019/790](#) of 17 April 2019 on copyright and related rights in the digital single market with the freedom of expression and information provided for in Article 11 of the [Charter of Fundamental Rights of the European Union](#).

The Court, judging Article 17 compatible with the Charter, dismissed the request for revocation of this provision presented by the Republic of Poland.

The Decision considers that the liability regime established in Article 17, paragraph 4, represents a restriction of the freedom of expression and information which is non excessive. Indeed, Member States are obliged to take numerous internal guarantees into account when transposing Article 17 in national law.

European Union - Publication of the Guide to the unitary patent

On 29 April 2022, the European Patent Office published the [Guide](#) to the Unitary Patent. This Guide aims at giving companies and inventors an overview of the procedure to obtain a unitary patent at the European Patent Office.

European Union - Signature of a Memorandum of Understanding between the European Patent Office and the European Institute of Innovation and Technology

On 5 May 2022, the European Patent Office issued a [Press release](#) highlighting the signing of a Memorandum of Understanding with the European Institute of Innovation and Technology to establish a general framework for cooperation activities between the two organisations.

The Memorandum aims at sharing knowledge and expertise of both organisations in order to support innovation actors, SMEs and European companies and to help them protect and exploit intellectual property. This cooperation will also allow better access to patent information.

Finally, four main areas of cooperation are identified:

- Business support activities;
- Technology trends and economic studies;
- Education and training;
- Awareness raising and promotion.

Authored by Anaïs Merires and Mathilde Grammont

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