
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 February 2021.

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.

If you would like to consult this newsletter from past months, please click [here](#).

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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

- **Data Protection**

France – The strengthening of platform obligations to combat hate content inspired by the Digital Services Act (anti-separatism bill)

The proposal for a bill to strengthen respect for the principles of the Republic, otherwise known as the "anti-separatism bill", adopted by the National Assembly on 16 February, includes provisions to strengthen the obligations of platforms in the fight against the dissemination of so-called "harmful" content. This text is inspired by the Digital Service Act, the European regulation presented in December 2020.

Greater transparency will be required with regard to the policies and means implemented for moderation purposes, such as the internal and judicial remedies available to users. Larger platforms will have to make public their assessment of systemic risks and mitigation measures. Their obligation to cooperate with the French authorities is to be strengthened, for example by the appointment of a single contact person for the authorities.

Finally, the Conseil Supérieur de l'Audiovisuel (CSA) is given powers to supervise the moderation processes put in place by the platforms. To this end, it will be granted access to the operating principles of moderation algorithms. With the power to impose sanctions, the CSA will be able to issue formal notices and then impose financial penalties capped at 20 million euros or 6% of consolidated worldwide turnover.

European Union – Publication of the draft adequacy decision for transfers of personal data to the United Kingdom

On February 19, the European Commission (“EC”) published the [draft decision on the adequate protection of personal data by the United Kingdom](#) (“Draft UK Adequacy Decision”). On the same date, the EC also [published](#) the draft adequacy decision under the Law Enforcement Directive.

The Draft UK Adequacy Decision has been published two months after the EU and the UK concluded, on December 24, 2020, the Trade and Cooperation Agreement (“Agreement”) setting out the framework for the EU-UK relationship after the end of the Brexit transition period on December 31, 2020. Under this Agreement, effective from January 1, 2021, transfers of personal data from the EU to the UK are not considered as transfers to a “third country” under EU law for a “transitory period” ending, at the latest, on June 30, 2021.

This means that the EU has a six-months timeframe decide whether the UK is to be regarded as an adequate jurisdiction for transfers of personal data from the EU Member States, in which case the free flow of personal data will continue at the end of the “transitory period” without the need to implement transfer mechanism such as Standard Contractual Clauses or Binding Corporate Rules. Therefore, although this is not the end of the process, the publication of the Draft UK Adequacy Decision is a major step of an important significance regarding the data transfers between the EU and the UK. Once finalised the UK adequacy decision is likely to be effective for a period of 4years as of its entry into force.

European Union – The Council of the EU takes a stand on the future ePrivacy Regulation

On February 10, 2021, the EU Member States approved a negotiating mandate for the revision of the rules on privacy and confidentiality in the use of electronic communication services.

These updated rules, which will form the future Regulation on Privacy and Electronic Communications (“ePrivacy” Regulation), will define the situations in which service providers may process electronic communications data or access data stored on users' devices.

The Regulation will apply, inter alia, to the content of electronic communications transmitted over publicly available services and networks, as well as the metadata attached to such communication. In addition and in general, interference with electronic communications data by anyone other than the end user will be prohibited, and the rules will apply to end-users located in the EU.

This mandate allows the Council of the EU to start negotiations with the European Parliament on the final text of the ePrivacy Regulation, which will repeal the current ePrivacy Directive and constitute a *lex specialis* that will complement and clarify the GDPR.

- **Finance**

France – Solidarity fund for companies particularly affected by the economic, financial and social consequences of the spread of the covid-19 epidemic

The solidarity fund mentioned in our previous French legal and regulatory updates was amended by [decree n° 2021-129 of 8 February 2021](#) and [decree n° 2021-192 of 22 February 2021](#) in order (i) to extend the solidarity fund scheme until 30 June 2021 (instead of 16 February 2021), (ii) to increase the aid in favour of the wine industry and certain mountain professionals to compensate losses in January 2021, (iii) to exclude from the solidarity fund scheme companies that have violated the sanitary rules and (iv) to make technical modifications to the aid for the month of January (in particular, the reference turnover of certain companies).

France – State guarantee with respect to *prêts participatifs* (loans governed by articles L.313-13 et seq. of the Monetary and Financial Code) and subordinated bond issuances

The government [has announced](#) the Rebound (*Relance*) scheme mentioned in one of our previous French legal and regulatory update whereby the French state guarantee will be granted to certain *prêts participatifs* (loans governed by articles L.313-13 et seq. of the Monetary and Financial Code) and subordinated bond issuances made available between April 2021 and 30 June 2022.

This measure will strengthen the balance sheet of certain French companies by mobilizing up to 20 billion euros of private financing. These financing schemes are quasi-equity instruments with a maturity of 8 years and (i) for the *prêts participatifs*, a deferral of principal repayment for 4 years and (ii) for the subordinated bonds, a repayment only at maturity.

- **Insurance**

France – ACPR: Amendment to the Recommendation on funeral insurance contracts

The ACPR published a recommendation 2021-R-01 on the marketing of life insurance contracts linked to funeral planning on 18 February 2021 ("**Recommendation**"), which amends recommendation 2015-R-02 dated 12 February 2015.

These amendments made aim at fostering the improvement by professionals of the clarity of the information provided, including in advertising, and to improve the quality of advice when marketing these products.

The Recommendation will be effective six (6) months from 23 February 2021 and covers marketing activities after that date.

France – ACPR: Prudence required in the distribution of dividends, share buybacks and variable remuneration

On 18 February 2021, the ACPR published a [press release](#) calling the financial institutions subject to its supervision to exercise particular caution with regard to the distribution of dividends, share buybacks and variable remuneration until 30 September 2021 (the “**Press release**”).

The Press release follows recommendations issued in December 2020 by the European Systemic Risk Board, the European Banking Authority, the European Insurance and Occupational Pensions Authority (“**EIOPA**”) and the European Central Bank urging financial institutions to remain careful and to adopt moderate distribution policies consistent with their medium-term capital trajectory until 30 September 2021 in order to continue to preserve their ability to fully support the real economy during the COVID-19 pandemic.

The Press release invites financial institutions to communicate to their usual supervisory team their distribution plans together with the justifications for prudence in a medium-term vision, before taking any decision. These requests will be examined on a case-by-case basis by the ACPR's Secretariat General.

France – Freezing of assets: Extension of the application of the measures on French territory

The [order of 1st February 2021 implementing Articles L. 562-3-1 et seq. of the French Monetary and Financial Code with regard to the freezing of assets](#) published in the Official Journal of the French Republic (“**JOFR**”) on 2nd February 2021 enables the freezing measures adopted by the subsidiary bodies of the United Nations Security Council to enter into force in France without delay. These measures become enforceable upon publication of the identification details of the designated persons in the National Asset Freeze Register.

In addition, the [order of 1st February 2021 implementing Articles L. 713-16, L. 745-13, L. 755-13 and L. 765-13 of the French Monetary Financial Code concerning the freezing of assets in Saint Barthélemy, Saint Pierre and Miquelon, New Caledonia, French Polynesia and the Wallis and Futuna Islands](#) published in the JOFR on 4 February 2021 provides that the asset freezing measures applicable on the basis of certain European regulations (listed exhaustively in this text) come into force in the overseas countries and territories upon the publication of the identification details of the designated persons in the National asset freezing register.

France – Implementation of the cancellation of the civil liability insurance contract relating to a vehicle damaged beyond repair at the time of production

[Decree No. 2021-133 of 9 February 2021 implementing Article L. 211-1-1 of the French Insurance Code was published in the JOFR on 11 February 2021](#) (“**Decree**”). The Decree creates a new Article D. 211-1 into the French Insurance Code, which determines the implementation of Article L. 211-1-1 of the same Code. Article L. 211-1-1 of the French Insurance Code provides that the cancellation by the insured of his civil liability insurance contract relating to a damaged and technically or economically irreparable vehicle is conditional to the production, when the insured refuses the buy-back offer of his insurer, of evidence of (i) the destruction of the vehicle, (ii) its repair or (iii) the subscription of a new insurance contract with another insurer.

The Decree comes into force on 21st July 2021 and applies to contracts in force on that date.

France – Unclaimed supplementary pension contracts

[Law No. 2021-219 of 26 February 2021 on unclaimed supplementary pension contracts \(1\)](#) was published in the JOFR on 27 February 2021 ("**Law**").

The Law creates a new article L. 224-7-1 in the French Monetary and Financial Code allowing any person who has subscribed to pension savings products to benefit from free information relating to the products subscribed during their lifetime. The information will be accessible at any time on a website called *info.retraite.fr* managed by the *Groupement d'intérêt Public Union Retraite* ("**GIP UR**"). The Law provides that the information provided in the website is to be transmitted by the products managers concerned, *i.e.*, insurance companies, mutual insurance companies or unions, provident institutions or unions, supplementary occupational pension organisations, credit institutions, investment companies or institutions authorised to carry out activities relating to the conservation or administration of financial instruments.

The Law specifies that the products managers and GIP UR must enter into an agreement specifying the type of information sent to GIP UR and the terms and conditions of exchange with the products managers.

In addition, the Law creates a new Article L. 132-9-6 in the French Insurance Code, which requires insurance companies to provide the information necessary to implement the provisions of Article L. 224-7-1 of the French Monetary and Financial Code at least once a year.

The pension savings products concerned by this provision as well as the date of entry into force of Article L. 224-7-1 of the French Monetary and Financial Code will be specified by decree, and at the latest eighteen (18) months after the promulgation of the Law.

European Union – EIOPA: Measures to improve the insurability of business interruption risk

EIOPA published on 12 February 2021 a [staff paper](#) on measures to improve the insurability of business interruption risks in light of pandemics (the "**Staff Paper**").

In the Staff Paper, EIOPA (i) highlights that a key element of shared resilience solutions is prevention and (ii) analyses options relating to prevention measures to reduce losses, capital markets risk transfer, and multi-peril solutions for systemic risk. The Staff Paper also addresses general challenges related to modelling and triggers for claim in the context of pandemics.

EIOPA also states that prevention can be supported by regulatory incentives as well as public-private initiatives for data sharing.

European Union – EIOPA: new strategic supervisory priorities for national supervisors

According to Article 29 (a) of Regulation 1094/2010 of 24 November 2010 establishing EIOPA (as amended), EIOPA shall determine, at least every three (3) years, by 31 March at the latest, up to two (2) important priorities for the Union as a whole which should reflect future developments and trends. In this respect, EIOPA has identified in a document entitled "[Union-wide Strategic Supervisory Priorities](#)", published on 19 February 2021, that business model sustainability and appropriate product design are two Union-wide strategic priorities to which national competent authorities ("**NCA**s") should pay attention.

NCA's are therefore required to take these priorities into account when drawing up their work programmes and shall notify EIOPA accordingly. In particular, NCA's will have to focus their supervisory activities on monitoring the impact of the prolonged low-yield environment and the COVID-19 crisis on the business model sustainability and development of insurers and institutions for occupational retirement provision. In addition, NCA's will need to ensure that product and oversight governance requirements, consumer protection and business conduct obligations are properly implemented to address the deficiencies that emerged during the crisis.

European Union – Proposal to amend the Key Information Document (KID)

EIOPA, the European Banking Authority, and the European Securities and Markets Authority have submitted to the European Commission [draft regulatory technical standards amending the Key Information Document](#) ("KID") for retail and insurance-based investment products ("PRIIPs").

The draft aims to thoroughly review the application of the PRIIPs framework, including:

- how to achieve better alignment between PRIIPs, Directive No. 2016-97 on insurance distribution and Directive No. 2014/65/EU on markets in financial instruments with regard to the provisions on cost disclosure ;
- the scope of products as set out in Regulation 1286/2014 on PRIIPs;
- how to ensure that the KID contains the key information needed by retail investors while avoiding that these investors receive too much or too complex information;
- how to enable the creation of a digitalised KID allowing layered information and the revision of the default paper KID documentation, taking into account the specific challenges of different product types (*e.g.* multiple option products);
- the need for a more tailored approach, such as for multi-option products, to maximise the understanding and use of information, while continuing to allow comparability of similar products.

- **Intellectual Property**

France – New customs plan to fight counterfeiting

On 22 February 2021, the Minister delegate in charge of public accounts presented a [Customs Action Plan to fight counterfeiting for the 2021-2022 period](#).

The purpose is to respond to the challenges of counterfeiting from the public health and consumer protection perspectives and the right holders protection perspective, even though the latest figures show a large increase in the volume of seized goods.

The Action Plan develops 4 main axes:

- Cooperation between all the concerned stakeholders, both institutional and private;
- Improvement of the gathering and processing of information;
- Increased control and improved investigation to fight against networks;
- Effort concerning sanctions.

It should be noted that this new Custom Action Plan is part of the European effort launched by the new Commission (Legislative and Regulatory News - [September](#) & [October 2020](#)).

In this context, it will be possible to file applications for intervention requests and their renewal via an EU one-stop shop by the end of the year.

France - Parliamentary question concerning the creation of an anti-counterfeiting unit within the national police force

In a [Written Parliamentary Question](#) submitted on 22 September 2020, the Ministry of the Interior was asked about the possibility of creating an anti-counterfeiting unit within the national police force.

In his reply of 9 February 2021, the Minister in charge listed the EU and French bodies involved in the fight against counterfeiting. He also recalled the creation in 2020 of the national anti-fraud inter-ministerial operational group dedicated to the fight against counterfeiting, in which certain subdivisions of the judicial police are represented.

That said, he did not make any recommendations or express a desire to create a specialized division, despite the various lines of development put forward by the Court of Auditors in its March 2020 report ([Legislative and Regulatory News - March 2020](#)).

European Union – Entry into force of the China/European-Union Agreement on Geographical Indications

The [Agreement](#) between the European Union and the Government of the People's Republic of China on cooperation in the field of geographical indications and their protection of 14 September 2021 was the subject of a notice of entry into force published in the Official Journal on 9 February 2021.

It entered into force on 1 March 2021.

European Patent Office - Referral to the Enlarged Board of Appeal regarding the legality of the obligation to hold hearings by video conference before the Boards of Appeal

On 8 February 2021, one of the Boards of Appeal of the European Patent Office referred a [Question to the Enlarged Board of Appeal](#) regarding the legality of the new mandatory procedural arrangements adopted since spring 2020 before the Boards of Appeal.

Since then, hearings before the Boards of Appeal have been almost exclusively dematerialised.

However, the European Patent Office seems to want to make these new arrangements the norm with regard to the [new Article 15a](#) of the Procedural Rules of the Boards of Appeal adopted on 10 December 2020.

- **Telecom**

European Union - The EU Commission has proposed new Regulation to ensure EU travellers continue to benefit from free roaming

The European Commission has proposed a new regulation that will extend for ten years the current rules allowing citizens to roam without additional charges when travelling in the EU. Roaming is the service that allows the subscriber of a mobile operator to continue to use his cell phone to call, be called and have an Internet connection on the network of another operator when he is abroad. The current rules pursuant to Regulation n°531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, that are due to expire on 30 June 2022. According to the review reports, "fair-use" policies, or measures that operators can take to prevent the abuse of roaming, have been successful in avoiding negative effects on national markets, operators and consumers.

The new regulation will improve the quality of services so travellers in the EU maintain the same network speed they normally enjoy in their home country. The new rules will also ensure efficient access to emergency services, and increase consumers' awareness of possible charges for using value-added services while roaming. To ensure the sustainability of roaming for operators, provisions have been included to ensure that price caps between operators are set at a level that allows them to recover the cost of providing roaming services in order to preserve incentives to invest in their networks.

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