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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 April 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.

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- **Audio-visual**

### France - Modification of the compensation system for interruption, postponement or abandonment of shooting of flow programs due to the covid-19 epidemic

On 29 April 2021, [Decree No. 2021-512](#) of 28 April 2021 amending [Decree No. 2020-1794](#) of 30 December 2020 on the creation of a compensation fund for interruption, postponement or abandonment of shooting of flow programs due to the covid-19 epidemic was published on the Official Journal.

The Decree extends the compensation fund set up by the Decree of 30 December 2020 until 31 August 2021. In addition, it modifies the maximum amount of subventions as well as its base.

The Decree entered into force on 30 April 2021.

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- **Automotive**

### France – A new regulation of digital intermediation platforms in public road transport.

The [Ordinance n° 2021-487 of 21 April 2021](#) relating to the exercise of the activities of digital intermediation platforms in various sectors of road public transport published in the OJ. of 22 April 2021 takes measures to regulate the activity of digital intermediation platforms operating in the public road transport of passengers and goods. An operator of a digital intermediation platform refers to any professional who, through a service provided online puts public road transport companies in relation with passengers or groups of passengers on the one hand. On the other hand, as for transport of goods, the platform puts people in contact with each other with a view to carrying out a road transport operation for another person. This includes for example, tourist trips as well as heavy freight transport.

A different regime is provided for depending on whether or not the digital intermediation platform is involved in the commercial relationship between the customer and the carrier. When it does, it is obliged to register in a national registry and must meet the conditions of financial guarantee and creditworthiness. Otherwise, when it does not intervene in the commercial relationship, it is required to declare its activity to the administrative authority. Furthermore, by the mere fact of its participation in the conclusion of the contract, the commercial relationship operator is liable to the customer. In addition, he should not engage in anti-competitive practices concerning carriers. As for Operators not established in France, they will have to appoint a representative on the national territory. The Ordinance comes into force on 1 January 2022 and at the latest on 1 June 2023 for provisions requiring an additional implementation period

### **France – An initial framework for the circulation of autonomous delegated driving vehicles**

The Ordinance No. [2021-443](#) of 14 April 2021 regarding criminal liability regime applicable in the event of circulation of a delegated driving vehicle and its conditions of use, pursuant to Article 31 of Law No. [2019-1428](#) of 24 December 2019 on the orientation of mobilities, has been adopted and published in the Official Journal (“Ordinance Art. 31”).

Ordinance Art. 31 sets the framework for (i) the respective criminal liability of the driver and the manufacturer of the automated driving system, (ii) the information obligations towards drivers and consumers, and (iii) the rules for the safety of the automated road transport systems.

Ordinance Art. 31 provides for an adjustment of the criminal and pecuniary liability between the driver and the manufacturer of the automated driving system, mainly depending on the activation of the automated driving system and the performance of the dynamic control of the vehicle. However, the driver must always be able and in a position to respond to a request to regain control from the automated driving system and will be liable for failure to comply with law enforcement orders and the rules regarding the priority right of way of vehicles of general interest.

Ordinance Art. 31 contains also provisions on access to certain data from the delegated driving status data recording device which complement those contained in the Ordinance Art. 32 (see below).

In addition, Ordinance Art. 31 contains provisions on the conditions of use of these vehicles and information obligations. Thus, the automated driving system is subject to conditions of use defined by the manufacturer, the content of which is subject to a pre-contractual information obligation on the part of the trader vis-à-vis the consumer. When the automated driving system is activated by the driver and the operating state of the system no longer allows it to perform dynamic control of the vehicle (e.g. the conditions of use are or are likely to be no longer fulfilled), the automated driving system must alert the driver and request that the driver take back control.

Ordinance Art. 31 sets out the framework for road transport of passengers or goods, when carried out by means of an automated road transport system. The organiser of the service or the operator is subject to the same rules of pecuniary liability as the manufacturers of delegated driving vehicles.

The modalities of application of the obligations and requirements provided for by the Ordinance Art. 31 are not yet specified and therefore will require implementing decrees which are currently being prepared.

Unlike the other provisions of the Ordinance which have entered into force directly, the provisions relating to automated road transport systems will enter into force on the day of the ratification of the amendments to the Vienna Convention on Road Traffic or at the latest on 1 September 2022.

### **France – A new framework regarding access to vehicle data**

The Ordinance No. [2021-442](#) of 14 April 2021 on access to vehicle data, pursuant to Article 32 of Law No. [2019-1428](#) of 24 December 2019 on the orientation of mobilities, has been adopted and published in the Official Journal (“**Ordinance Art. 32**”).

Ordinance Art. 32 defines the regime and modalities of access to certain vehicle data by authorised third parties and also provides for the means of telematic correction of safety defects.

The manufacturer of the delegated driving vehicle may have access to data collected by the automated driving system which are necessary to enhance the safety of the automated driving systems. In particular, he/she may access vehicle data characterising the operation of systems, components or technical units in order to correct by telematic means any defects in the latter which are likely to seriously compromise the safety of the vehicle, its occupants or third parties. The manufacturer shall also guarantee the integrity of the data of the delegated driving status data recording device and access of such data to authorised persons, such as law enforcement officials in the event of a fine or accident and insurance companies for the purposes of determining the necessary compensation.

Some of the data produced by the electronical communications systems integrated in a vehicle are also transmitted to authorised persons for specific purposes, such as road infrastructure managers, police and gendarmerie, and fire and rescue services.

Ordinance Art. 32 provides for a strengthening of the cybersecurity requirements in this field. The manufacturer of a vehicle will be obliged to notify the authority responsible for the type-approval of the vehicles of any electronic attacks that are likely to affect the information systems contributing to the operation or safety of the vehicle.

The modalities of application of the obligations and requirements provided for by the Ordinance Art. 32 are not yet specified and therefore will require implementing decrees which are currently being prepared.

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- **Competition**

### **European Union – The Commission presents its proposal for the control of foreign subsidies.**

The European Commission (the "Commission") presented on 5 May 2021 its [proposal for a regulation to control foreign subsidies](#). This text follows the White Paper it published on the subject in June 2020 and is part of its broader policy of economic sovereignty. This proposal comes after several legislative initiatives that all go in the direction of strengthening controls applicable to economic operators. In addition to the Foreign Investment Screening Regulation that came into force in October 2020, the Commission has also proposed a Digital Markets Act to better control digital platforms and has recently announced a paradigm shift in its approach to merger control (see [Legal and Regulatory Update March 2021](#)).

The proposed regulation on foreign subsidies relies on three main tools to better control their impact on the internal market:

- **Merger control.** In addition to the general merger control regime implemented by regulation no. 139/2004, certain transactions will require prior notification to the Commission when (i) the target's EU turnover exceeds EUR 500 million and (ii) the parties have received foreign subsidies of at least EUR 50 million in the last three years;
- **Control of public procurement.** Candidates in public procurements who have received foreign subsidies over the past three years will have to inform the public contractor when the estimated value of the public procurement exceeds EUR 250 million. The public contractor will send the notification to the Commission so that it can decide on the compatibility of these foreign subsidies with the internal market;
- **Investigation powers.** The Commission will have powers similar to those already existing in the context of antitrust investigations in order to review any other situation, merger or public procurement. It will be able to require the notification of foreign subsidies, adopt interim measures and impose sanctions on companies that refuse to cooperate with its investigations.

The Commission will have to qualify foreign subsidies according to criteria similar to those it already applies to state aids. The proposed regulation defines a foreign subsidy as a financial contribution granted by a third country which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.

If the Commission finds that a foreign subsidy is not compatible with the internal market, it may require structural or behavioural remedies or prohibit the transaction in question, whether it is a merger or the award of a public contract.

The proposed regulation must now be discussed and approved by the European Parliament and the Council of the European Union.

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- **Insurance**

#### **France – Brokerage - Publication of the law relating to the reform of insurance brokerage**

The [law 2021-402 of 8 April 2021 relating to the reform of insurance brokerage and banking transactions and payment services brokerage](#) has been published in the Official Journal of the French Republic on 9 April 2021 (the "**Law**").

The Law introduces in the French Insurance Code ("**FIC**") a new article L. 112-2-2 imposing new obligations on insurance distributors contacting a potential policyholder or adherent by telephone with a view to the conclusion of an insurance contract that does not fall within the scope of his/her commercial or professional activity. This article provides, in particular, that

- insurance distributors must obtain the prior consent of the prospective policyholder or adherent to the pursuit of the telephone communication;
- insurance distributors shall not execute the contract on behalf of the policyholder or member;
- insurance distributors must record, store and ensure the traceability of all telephone communications prior to the conclusion of the insurance contract for a period of two (2) years;

- breaches of the obligations set out in Article L. 112-2-2 of the FIC may be observed and sanctioned by the *Autorité de Contrôle Prudentiel et de Résolution* ("ACPR") as well as by the *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* (French General Department for Competition, Consumption and Fraud Control – "DGCCRF").

In addition, the Law introduces seven (7) new articles into the FIC, Articles L. 513- 3 to L. 513-9, imposing on insurance or reinsurance brokers and their representatives to adhere to a professional association approved by the ACPR for the purpose of their registration with the French Register for insurance intermediaries (ORIAS). This professional association is in charge of verifying the conditions of access to and exercise of the activity of its members as well as compliance with their professional and organisational requirements, and offers a support service to its members.

The law enters into force on 1<sup>st</sup> April 2022.

### **France – Amendment of the Mutual Code following the publication of the law on improving the health system through confidence and simplification**

The [law 2021-502 of 26 April 2021 aiming to improve the healthcare system through confidence and simplification](#) was published in the OJFR on 27 April 2021 (the "Law").

The Law amends the French Mutual Code ("FMC"), in particular:

- Article L. 113-2 now provides that the merger of several mutuals, unions or federations (i) is only possible between organisms governed by the FMC and (ii) must result from concordant deliberations of their general meetings. Consequently, a merger between a mutual organism governed by the FMC and a mutual insurer governed by the FIC is now prohibited;
- Article L. 114-13, which allows, under certain conditions and unless otherwise provided for in the articles of association, participation in general meetings by videoconference or telecommunication; and
- Article L. 310-1, which limits participation to mutual organisms and unions carrying out the operations mentioned in 2° and 3° of I of Article L. 111-1 of the FMC to public service missions.

The Law came into force on 28 April 2021.

### **European Union – EIOPA – Publication of a IDD Single Rulebook**

The European Insurance and Occupational Pensions Authority ("EIOPA") announced on 8 April 2021 that it has published an [IDD Single Rulebook](#) (the "IDD Single Rulebook"), an online documentation tool. The Single DDA Rulebook aims to improve access to European regulatory texts on insurance distribution such as Directive (EU) 2016/97 European Parliament and Council on insurance distribution (DDA) and related delegated and implementing regulations.

The objective of the DDA Single Rulebook is to improve the understanding of the applicable rules on insurance distribution and to promote the European internal market.

The publication of the DDA Single Rulebook follows EIOPA's publication in July of the Solvency II Single Rulebook (see [Legislative and Regulatory Updates - July 2020](#)).

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- **Intellectual Property**

**France – First overview further the entry into force of the procedures for trademark nullity and revocation before the French Intellectual Property Office**

One year further the entry into force, on 1<sup>st</sup> April 2020, of the new administrative procedures for trademark revocation and nullity before the French Office (the “*INPI*”), pursuant to [Ordinance No. 2019-1169](#) of 13 November 2019 implementing [Directive 2015/2436](#), the INPI published a first overview with respect to their implementation.

Almost 400 claims were presented to the INPI in twelve months, divided almost equally between claims for nullity and claims for revocation.

Additionally, 131 decisions have already been issued leading to the dismissal of the application for inadmissibility related to the lack of jurisdiction or lack of use of the senior mark, ruling on the claim for nullity or revocation or even noting the end of the proceedings.

The INPI notes that a decision can be released in a little more than one semester from the filing of the claim. It nonetheless specifies that the decisions rendered following subsequent reply briefs between the parties are still outnumbered, implying that this average duration is probably ought to lengthen.

**France - Decision of the INPI Executive Officer creating an accelerated patent grant procedure in the fight against Covid-19**

By [Decision No. 2021-65 of 21 April 2021](#), the INPI Executive Officer, in the context of the fight against Covid-19, wished to offer an accelerated grant procedure.

Any patent or utility certificate application relating to innovations related to anti-COVID treatments or devices or participating in the diagnosis or treatment of COVID, which has given rise from a competent authority, to a clinical trial request or in particular to a marketing authorization request, is eligible for this accelerated procedure.

Through this accelerated procedure, the INPI undertakes a grant within 24 months from the filing of the patent or utility certificate application. This duration is without prejudice to any notifications of irregularities or the implementation of other provisions of the Intellectual Property Code.

The grant of this reserved procedure is carried out upon request via the electronic platform of the INPI within 10 months from the filing of the application under penalty of inadmissibility. Along with the request, the documents justifying the applicability of this procedure to the application in question and a request for early publication of the patent shall be submitted

This new procedure is applicable to any patent or utility certificate application filed as of 1<sup>st</sup> June 2020.

### **France - Opening of public data concerning court decisions**

A [Decree](#) of 28 April 2021 issued in application of Article 9 of [Decree No. 2020-797](#) of 29 June 2020 relating to making available to the public the decisions of the judicial and administrative courts was published on 29 April 2021 on the Official Journal.

The Decree specifies the timetable for opening up court decisions as public data.

The Decree thus sets that on:

- 30 September 2021, the decisions of the Court of Cassation shall be available to the public;
- 30 April 2022, those of the Courts of Appeal; and
- 30 September 2025, those of the Tribunals.

### **France - Publication of the Decree setting out the composition and operating procedures of the specialized committee for determining the remuneration due to journalists for their copyright**

On 2<sup>nd</sup> May 2021, [Decree No. 2021-539](#) of 29 April 2021 relating to the committee provided for in Articles L. 132-44 and L. 218-5 of the Intellectual Property Code was published on the Official Journal (see Legislative and Regulatory Updates - [June](#) and [July 2019](#)).

The Decree creates a specialized committee, replacing the commission created by [Decree No. 2010-994](#) of 26 August 2010, codified in Articles R. 132-18 to R. 132-27 of the Intellectual Property Code by greatly increasing its missions.

More specifically, the committee will be responsible for both facilitating the conclusion of agreements relating to the remuneration due to journalists under copyright and, failing this, setting the bases and methods of calculating this remuneration, a task already devolved to the committee created in 2010, but also facilitating the conclusion of agreements relating to the sharing of the remuneration received by publishers and press agencies for their related rights for the benefit of journalists, and failing this, to set the terms of this distribution.

As such, the Decree provides for the composition and functioning of this new committee as well as the means and time limits for appealing against decisions issued by the committee.

The Decree entered into force on 3 May 2021.

### **France - Abolition of aid for innovation and the digital transition of recorded music**

On 29 April 2021, [Decree No. 2021-511](#) of 27 April 2021 was published on the Official Journal repealing Decree No. 2016-1422 of 21 October 2016 establishing aid for innovation and the digital transition of recorded music.

The Decree abolishes aid for innovation and the digital transition of recorded music, thus acknowledging the missions granted to the National Music Centre created in 2019 in this area (see [Legislative and Regulatory Updates - October 2019](#)).

This deletion became effective on 30 April 2021.

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- **Real Estate**

**France – A ministerial response clarifies that the preemption right of article L.145-46-1 of the Commercial code applies only to premises used for commercial or craft purposes**

In a written question n°21155 published at the Official Bulletin of the Senate on 25 February 2021 Mr. Hervé Marseille calls the attention of the Minister of Economy, Finance and Recovery to obtain a clarification on the preemption right of article L. 145-46-1 of the Commercial code, which states inter alia that "*when the owner of premises for commercial or craft use plans to sell it, he shall inform the tenant by registered letter with acknowledgement of receipt, or hand-delivered against receipt or signature.*"

He wishes to have confirmation that the sale of a building whose main use corresponds to one or more of the sub-uses provided for in paragraph 5° of article R. 151-28 of the Planning code (other activities in the secondary or tertiary sectors: industry, warehouse, office, convention and exhibition center), does not fall under the provisions of this article.

In an answer published at the Official Bulletin of the Senate on 22 April 2021, the Ministry of Economy, Finance and Recovery reminds that "*the right of preference being a limit to the right of ownership, the conditions of exercise must follow a strict interpretation. Thus, only the tenant of a lease on the commercial or craft premises can benefit from it. [...] it does not cover premises with uses other than commercial or craft use*".

For the Ministry, if the case law (as it stands, not very significant) does not confirm this interpretation, it will be up to the legislator to specify the text in this sense.

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