

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 June 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 - Entry into application of the provisions of the amending finance law relating to the tax credit for expenditure on audiovisual and cinematographic creation

The [Decree n°2021-764](#) of 15 June 2021 provides for the date of entry into application of [Article 49 of Law n°2020-935](#) of 30 July 2020 on the tax credit for audiovisual and cinematographic creation expenses, royalties paid to collective management organisations and remuneration paid directly to authors and provided for [in Article 220 sexies A of the General Tax Code \(CGI\)](#).

The European Commission confirmed in a decision of 17 May 2021 addressed to France the compliance of the legislative mechanism introduced with EU law.

Consequently, the provisions of Article 49 came into force on 16 June 2021.

France - Publication of the Decree on-demand audiovisual media services (on-demand AVMS)

On 23 June 2021, the [Decree n°2021-793](#) of 22 June 2021 on on-demand AVMS was published on the Official Journal.

The Decree is taken by application of the [Ordinance n°2020-1642](#) of 21 December 2020 transposing the Directive 2018/1808 "audiovisual media services" of 14 November 2018. It replaces [Decree n°2010-1379](#) of 12 November 2010 on on-demand audiovisual media services.

In addition to the major contribution of this Decree aiming at extending its applicability to foreign AVMS, the Decree also modifies the rules applicable to all SMADs, concerning in particular the introduction of the agreement of services with the High Council for Audiovisual, the thresholds for triggering obligations based on audience and turnover, or the adaptation of contribution rates.

The Decree entered into force on 1 July 2021.

- **Commercial**

France – Transposition of the directive on unfair commercial practices in business-to-business relations in the agricultural and food supply chain.

[Ordinance No. 2021-859](#) of 30 June 2021 on unfair commercial practices in business-to-business relations within the agricultural and food supply chain, published in the [O.J. No. 0151 of 1 July 2021](#), was adopted on the basis of the Law of 3 December 2020 and aims to transpose Directive 2019/633 of 17 April 2019.

Following the so-called EGALIM law of 30 October 2018, this directive, whose initiative was supported by France, proceeds, among other things, to reduce the maximum payment periods for perishable goods.

In addition, the order also specifies the contractual formalism regarding the conditions under which promotional benefits are granted to consumers. The conditions for granting benefits must thus, in certain contracts, be set out in the mandate given to the distributor.

Furthermore, the Ordinance prohibits three new unfair commercial practices specific to the agricultural and food supply chain. They were previously dealt with through the prohibition of a significant imbalance, of an advantage without consideration and of the brutal rupture of commercial relations. These are, the prohibition of the cancellation of an order of perishable goods in a too short time frame, the prohibition of the illicit obtaining, use or disclosure of business secrets and the prohibition of refusing to confirm the conditions of a contract in writing. These practices are punishable by a maximum administrative fine of €75,000 for natural persons and €375,000 for legal persons. They can rise to €150,000 and €750,000 if repeated over a period of two years.

The new provisions come into force on 1 November 2021 and will apply to contracts concluded after the publication of the Ordinance. Contracts in progress on 1 July will have to comply within 12 months from that date.

- **Finance**

Solidarity fund for companies particularly affected by the consequences of the spread of the covid-19 epidemic and measures taken to prevent such spread

The solidarity fund mentioned in our previous legislative and regulatory watches has been modified by [decree n°2021-840 of 29 June 2021](#) in order to, *inter alia*, set up the solidarity fund mechanism for the months of June and July 2021 and provide for a gradual extinction of the fund allowing to support companies during the period where sanitary measures are lifted.

- **Insurance**

France – Life insurance contract: regulatory changes

[Decree 2021-668 of 27 May 2021 on life insurance](#) was published in the French Official Journal on 29 May 2021 (the “Decree”).

The Decree amends Article R. 131-1 of the French Insurance Code listing the eligible assets and liabilities constituting the units of account of life insurance contracts. Therefore, since 30 May 2021, the units of account may consist of associative shares and bonds issued by foundations, as defined in Articles L. 213-8 *et seq.* and L. 212-21-1-A of the French Monetary and Financial Code, up to a limit of 10% of the outstanding amount of the contract. The selection of these units of account is limited to policyholders who are considered, after evaluation, as possessing the necessary experience, knowledge and skills to make their own investment decisions and to properly assess the risks involved.

In addition, the Decree amends, as of 1st June 2021, Article R. 132-3 of the French Insurance Code by deleting its paragraph 3. Henceforth, since 1st June 2021, collective insurance contracts with compulsory adhesion are also subject to an obligation to provide information on the fees charged by the insurance company.

Amendment to Instruction 2016-I-16

The French *Autorité de Contrôle Prudentiel et de Résolution* (the “ACPR”) has published an [Instruction No. 2021-I-04 amending Instruction No. 2016-I-16 on the annual prudential documents to be submitted by undertakings subject to the supervision of the ACPR under "Solvency II" regime](#) (the “Instruction”).

The Instruction replaces Annex A of Instruction 2016-I-16 and applies to collections due as from financial years ending after 31 December 2021.

ACPR notices on security and governance of information and communication technologies

The ACPR has published two (2) notices in furtherance of with the guidelines on information and communication technology security and governance published by the European Insurance and Occupational Pensions Authority (“EIOPA”) in October 2020 [see [Legislative and Regulatory News – October 2020](#)] (the “ICTSG Guidelines”):

- a [notice on how insurance undertakings and supplementary pension institutions can implement the ICTSG Guidelines for insurance and reinsurance undertakings](#) (the “Insurance Undertakings Notice”); and
- a [notice relating to the implementation by supplementary pension schemes \(“SPSBs”\) of the ICTSG Guidelines](#) (“SPSBs Notice”),

(together, the “Notices”).

The Insurance Undertakings Notice provides that the ACPR intends to comply with the ICTSG Guidelines and the SPSBs Notice provides that SPSBs must also implement the ICTSG Guidelines.

The Notices are applicable from 1st July 2021.

European Union – PEPP: Dissemination of information for monitoring purposes

On 4 June 2021, the following were published in the Official Journal of the European Union:

- [Commission Delegated Regulation \(EU\) 2021/896 of 24 February 2021 supplementing Regulation \(EU\) 2019/1238 of the European Parliament and of the Council with regards to additional information for the purposes of convergence of supervisory reporting](#) (the “**Delegated Regulation**”). The Delegated Regulation specifies the additional information, referred to in Article 40(1) to (5) of Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (“**PEPP Regulation**”), that providers of pan-European Personal Pension Product (“**PEPP**”) must report to their national competent authority (“**NCA**”) for supervisory purposes;
- [Commission Implementing Regulation \(EU\) 2021/897 of 4 March 2021 laying down technical implementing standards for the application of Regulation \(EU\) 2019/1238 of the European Parliament and of the Council with regard of supervisory reporting to the competent authorities and the cooperation and exchange of information between competent authorities and with the European Insurance and Occupational Pensions Authority](#) (the “**Implementing Regulation**”). The Implementing Regulation specifies in particular the format of the information to be reported by PEPP providers for supervisory purposes and provides the templates to be used by PEPP providers to transmit annually the information referred to in Article 1 of the Delegated Regulation to their NCA.

The Delegated Regulation and the Implementing Regulation entered into force on 24 June 2021.

European Union – EIOPA Guidelines on PEPP supervisory reporting

In accordance with the PEPP Regulation, the EIOPA published on 4 June 2021 its Guidelines on PEPP supervisory reporting (the “**PEPP Guidelines**”).

The purpose of the PEPP Guidelines is to ensure a common, uniform and consistent application of European Union law in the PEPP supervisory reporting. Thus, EIOPA specifies in seven (7) guidelines the frequency with which PEPP providers should communicate the monitoring report to NCAs, the deadlines for the communication of annual quantitative information and the monitoring report as well as the content of the PEPP supervisory report.

NCAs now have two (2) months to inform EIOPA if they intend to comply with the PEPP Guidelines and, if not, to explain the reasons for non-compliance.

The PEPP Guidelines are applicable from 22 March 2022.

European Union – EIOPA – Annual Report 2020

EIOPA has published its [Annual Report 2020](#) (the “**Report**”). The Report highlights EIOPA's actions, particularly as a result of the COVID-19 pandemic, concerning, inter alia, the implementation of measures to enable business continuity, compliance with obligations towards policyholders and beneficiaries and the provision of information to policyholders and to consumers. EIOPA underlines some of the actions undertaken in the supervision of the insurance sector, such as the publication of the opinion on the Solvency II review, and in the pension sector with the finalisation of the PEPP regulation. Finally, the Report concludes on the importance of the role of insurers and pension funds in the post-COVID-19 economic recovery to foster the green and digital transitions and to encourage a “union” of capital markets.

European Union – EIOPA – Reinforcement of cooperation between NCAs

On 30 June 2021, EIOPA published a revised version of its [decision on the collaboration of the insurance supervisory authorities of the Member States of the European Economic Area](#) (the “**Decision**”).

The Decision strengthens and improves cooperation between NCAs in relation to cross-border activities by:

- the introduction of three (3) new notification requirements for NCAs relating to (x) the approval of a company with cross-border activities, (y) in case of deterioration of financial conditions or other emerging risks that may have cross-border effects of a company with cross-border activities and (z) in case of serious and substantiated consumer protection concerns;
- an enhanced role for EIOPA in the exchange of information to enable the identification of potential risks at the earliest possible stage and to facilitate proactive monitoring and timely supervisory action; and
- clarifying the role of NCAs and EIOPA in the process of setting up and managing cooperation infrastructures.

The Decision entered into force 11 June 2021 and applies with effect from 1st July 2021.

- **Intellectual Property**

France - Continuation of the examination of the Government Bill on the regulation and protection of access to cultural works in the digital age in an extraordinary session of Parliament

The [Decree of 14 June 2021](#) gathering the Parliamentary chambers in extraordinary session was published in the Official Journal of 15 June 2021.

The Decree provides in particular for the continuation of the examination of the Government Bill on the regulation and protection of access to cultural works in the digital age during the extraordinary session (see [Legislative and Regulatory News - March 2021](#)).

France - Adoption of the private copy levy for reconditioned smartphones

As part of the review of the [Parliamentary Bill](#) to reduce the environmental footprint of digital technology in France, the National Assembly approved, on 11 June 2021, the application of the private copy levy on reconditioned smartphones.

The Parliamentary Bill, as adopted, provides for a levy of 35% based upon the margin made on the sales of reconditioned tablets and 40% based upon the margin made on the sales of reconditioned smartphones. This remuneration obligation is limited to resales in France and does not subject foreign stakeholders to this private copy levy.

The Parliamentary Bill provides that the amount of remuneration set for reconditioned devices may not be changed before 31 December 2022.

The Parliamentary Bill has been sent to the Senate for a second reading.

France – Publication of Ordinance transposing Directive 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions

By virtue of the grant set in [Law no. 2020-1508](#) of 3 December 2020, the [Ordinance no. 2021-798](#) of 23 June 2021 transposing [Directive 2019/789](#) of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmission of television and radio programmes was published on the Official Journal on 24 June 2021.

It mainly provides for the facilitation of rights acquisition for the cross-border provision of an ancillary online service by broadcasters or under their control and responsibility, the "direct injection" technique.

The provisions of the Ordinance apply as from 7 June 2023 for contracts in force on 7 June 2021 for the authorization of acts of performance and communication to the public of works on an ancillary online service. Remaining provisions of this Ordinance shall enter into force on 1 September 2021.

European Union - Unified Patent Court - German Supreme Court rejects constitutional appeal

By a [Decision](#) of 9 June 2021, the German Constitutional Court rejected the appeal against the ratification of the Agreement on a Unified Patent Court ([Legislative and Regulatory News - December 2020](#)).

Following the Decision, the Preparatory Committee of the UPC assumed that the Agreement would be ratified in early autumn, so as to achieve and make such a court functional by the end of 2022 or early 2023.

- **Public Law**

France – “Conseil d’Etat” ‘s public activity report

France’s highest administrative court (the “Conseil d’Etat”) released its public report on June 16, 2021 on the jurisdictional and advisory activity of French administrative courts in 2020, in which it reviews the health crisis and its impact on both normative production (many laws aimed to fight against the epidemic and its economic and social consequences) and activity of the courts.

Regarding the advisory activity of the “Conseil d’Etat” on economic and finance matters, as an example, three finance plans examined in March, April and June 2020 allowed the openings of massive credits required to support the economic sectors that are the most affected by the health crisis.

Regarding the contentious/litigation activity of the “Conseil d’Etat”, the amount of cases registered in 2020 increased by 4.4% compared to the previous year (10 541 files in 2019 and 11 007 in 2020). Excluding serial disputes, this number is decreasing slightly. Finally, the average adjudication time for “ordinary” cases (i.e. excluding summary procedures in particular) is slightly increasing (1 year and 23 days in 2020, against 1 year and 11 days in 2019).

- **Real Estate**

France - Tertiary sector decree - The obligation to declare 2020 consumption data postponed to September 30, 2022

All owners and lessors of private and public tertiary buildings of more than 1,000m² had to declare the energy consumption data of their building for the year 2020 by September 30, 2021.

Given the health crisis, the government proposes to postpone this deadline by one year, so that the energy consumption of years 2020 and 2021 will have to be declared on the Opera platform on September 30, 2022 at the latest.

The publication of the decree ratifying this extension of the deadline is expected soon.

France - Publication of the decree specifying the conditions of application of the authorization regime for the rental of commercial premises as furnished tourist accommodation

Municipalities can now set up a rental authorization on their territory when the premises housing a furnished tourist accommodation are used for commercial purposes. This authorization must be issued with regard to the objectives of protecting the urban environment and the balance between employment, housing, shops and services.

The decree n°2021-757 of June 11, 2021 specifies that the authorization procedure may be applied in a differentiated manner on the territory of the municipality according to the particular situation of certain districts, as well as the procedures applicable depending on whether the transformation of the premises into a furnished tourist accommodation requires an urban planning authorization or not.

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