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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 May 2020.

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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- **Commercial**

#### France – Extension of the state of emergency and extension of contractual deadlines

The [Law No. 2020-546](#) of 11 May 2020 extending the state of health emergency and supplementing its provisions was published on 12 May 2020. It extends the state of health emergency until 10 July inclusive, thereby postponing the calculation of the deadlines provided for in Order No. 2020-306 of 25 March 2020. The covered period for the postponement of certain clauses such as the suspension of penalty payments (astreintes) penalty clauses, termination clauses, and forfeiture clauses, when aimed at sanctioning the non-performance of an obligation within a given period, now extends to 10 August 2020 inclusive, i.e. one month after the end of the state of health emergency.

#### France – Support for live entertainment contractors and organizers of sporting events.

[Order No. 2020-538](#) of 7 May 2020 sets out the conditions under which live entertainment contractors and organizers of sporting event may offer their customers a refund in the form of a credit note for an event cancelled during the health crisis. More specifically, these provisions apply in the event of a resolution notified between 12 March 2020 and a date prior to 15 September 2020 inclusive. This credit note will be valid for a period not exceeding six to eighteen months, depending on the case. In any case, at the end of the credit note's validity, the customer may request a refund for services not provided.

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- **Corporate**

#### **France - Time limits applicable regarding financial matters**

[Ordinance 2020-666](#) dated 3 June 2020 clarifies the meaning and scope of Article 2 of Ordinance 2020-306 dated 25 March 2020, which allows, subject to certain exceptions, the postponement of the term and deadline for acts prescribed by law or regulations to be carried out during the legally protected period, i.e. between 12 March and 23 June 2020, by adding the following paragraph: "Where the provisions of this Article apply to a time limit for opposition or contestation, they shall not have the effect of postponing the date before which the act subordinated to the expiry of that time limit cannot be lawfully performed or produce its effects or before which payment cannot be discharged". In other words, the postponement mechanism applied to the time limit for creditors to object has no effect on the date from which these operations may commence.

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- **Data Protection**

#### **France – Suspension by the Conseil d'Etat of the use of drones by the Paris police prefecture to control deconfinement in Paris**

The Conseil d'Etat (*i.e. the French Administrative Supreme Court*) issued an [interim order](#) on 18 May 2020 enjoining the State to cease without delay drone surveillance measures in order to ensure compliance in Paris with the health security rules applicable during the end of containment period. This prohibition will remain in force until the remediation of the serious and manifestly unlawful infringement of the right to privacy:

- through a regulatory text, taken after the opinion of the CNIL, authorizing, in compliance with the provisions of the law of 6 January 1978 applicable to processing operations falling within the scope of the so-called "Police-Justice" directive of 27 April 2016, the creation of a processing of personal data,
- in equipping the equipment used by the Prefecture of Police with technical devices that make it impossible to identify the persons filmed, regardless of the purpose for which these equipment are used.

The Conseil d'Etat considered that, because of the possibility of zooming in and identifying individuals, the devices used by the Paris police prefecture were subject to compliance with data protection rules. The Conseil d'Etat considered that these drones were being used outside the legal framework and constituted a serious and manifestly illegal infringement to the right to privacy.

The CNIL has carried out checks with the Ministry of the Interior concerning the use of drones in several cities. It will take a position on this issue at the end of the ongoing control procedures.

#### **France – Publication of the CNPEN opinion on ethical issues concerning digital tools for deconfinement**

On 30 April 2020, Cédric O and Olivier Véran referred to the Comité National Pilote D'Ethique du Numérique (*National Digital Ethics Steering Committee*- CNPEN) to reflect on the various ethical issues related to the design, implementation and use of digital tools. In [its opinion](#) of 14 May 2020, the CNPEN first of all draws up a panorama of digital tools that could be used in the different phases of termination of containment period and beyond, and then looks at the specific analysis of ethical issues relating to digital tools for tracing people likely to spread the virus, by drawing up recommendations applicable both during the design of these tools and while in operation.

The CNPEN recommends, in particular, that (i) the competent public authorities be given the possibility of activating or deactivating tracing applications that have been voluntarily installed by their users by informing the latter, (ii) the effectiveness of digital tracing tools be evaluated by an independent body, and to audit the code, (iii) to deploy a broad and adapted pedagogy for the entire population on the technical and societal stakes of these tracing applications and (iv) to allow people to go back at any time on their commitment and to allow the erasure of the collected data as well as to allow the interoperability of the tracing applications.

The CNPEN also recommends more information to individuals by providing them with educational and freely accessible devices on the objectives and operation of tracing applications.

### **France – The opinion of the CNIL on the draft decree governing the information systems implemented to monitor COVID-19 patients (SI-DEP and Contact Covid files)**

The CNIL issued [its opinion](#) on Friday 8 May 2020 on a draft decree governing: (i) SI-DEP file and (ii) Covid contact file. These files must make it possible to identify the infected persons, the persons they are likely to have contaminated and the chains of contamination in order to ensure health care and support for persons infected with the virus or likely to be infected, as well as the epidemiological surveillance of the virus. These files will include health and other personal data (identity, accommodation, travel, participation in gatherings, etc.).

The CNIL considers that the system complies with GDPR, but given the sensitivity of the system, calls for additional guarantees in order to minimize data, limit access to processing to what is strictly necessary, guarantee the rights of individuals over their personal data, and to thorough reflection on appropriate data retention periods.

These requests were taken into account by [Decree No. 2020-551 of 12 May 2020](#). The CNIL also issued a series of recommendations for the implementation of these information systems, particularly with regard to the security of the system and the accountability of persons accessing the files.

The President of the CNIL announced that it would carry out controls in the first few weeks following the implementation of these new files.

### **European Union – EDPB annual report published on 18 May 2020**

The European Data Protection Board (EDPB) has released on 18 May 2020 its [annual report](#) for 2019. The Committee unveils the subjects of its future guidelines: (i) the articulation between the second Payment Services Directive and the GDPR, (ii) the notions of controller and processor, (iii) the rights of data subjects et (iv) the notion of legitimate interest. Respect for the rights of data subjects is a subject identified as a priority by the EDPB.

The EDPB also wants to scale up its work on new technologies, such as connected vehicles, blockchain, artificial intelligence and personal digital assistants.

The EDPB will continue to advise the European Commission on issues such as: requests for cross-border access to electronic evidence data; the review or adoption of adequacy decisions for data transfers to third countries and possible revision of the EU-Canada agreement on passenger name records.

## European Union – The EDPB updated on 4 May 2020 the guidelines on the notion of consent

The Article 29 Working Party (WP29) adopted on 10 April 2018 guidelines on the concept of consent under Regulation 2016/679 (WP259.01), which were endorsed by the EDPB.

The EDPB updated these [guidelines](#) to provide further clarifications with regard to :

- *the validity of the consent provided by the data subject for wall cookies (paragraphs 38 - 41):* a consent based on an alternative option offered by a third party does not comply with the GDPR, which means that a service provider cannot prevent data subjects from accessing a service on the grounds that they do not consent.
- *scrolling and consent (paragraph 86):* scrolling or swiping a web page or similar user activity does not meet the requirement of clear and positive action. The EDPB considers that such actions may be difficult to distinguish from other user activity or interaction. Furthermore, in such a case, the EDPB notes that it is difficult to provide a means for the user to withdraw consent in a way as simple than for granting it.

The paragraphs on these two topics have been revised and updated, while the rest of the document has remained unchanged, except for editorial changes.

**Focus on the StopCovid government application** (an application that is part of the government's overall strategy to terminate the containment measures adopted in the context of the Covid-19 pandemic )

- **CNIL opinion of 25 May 2020 on a draft decree relating to StopCovid**

Following [its opinion](#) dated 24 April 2020 on the roll out of the StopCovid application, the CNIL [issued](#) an urgent ruling on 25 May 2020 on the draft decree relating to data processing known as "StopCovid".

The main recommendations of the CNIL, released in its opinion of 24 April to supplement the guarantees initially provided by the Government, have been followed. Nevertheless, in view of the sensitivity of the application, the CNIL made several additional recommendations in this new opinion, including the following:

- *The improvement of the information provided to users of the application* (conditions of use of the application, procedures for erasing personal data),
  - *The need to provide specific information to minors and their parents,*
  - *Confirmation of a right to object and a right to delete the pseudonymised data stored,*
  - *Free access to the entire source code of the mobile application and server.*
- **Decree of May 29, 2020 creating the StopCovid application, supplemented by the order of 30 May 2020**

[Decree no. 2020-650](#) relating to data processing known as "StopCovid" was adopted on 29 May 2020 and was supplemented by the [order of 30 May 2020](#) defining the criteria of distance and duration of contact with regard to the risk of contamination by the Covid-19 virus for the operation of data processing known as "StopCovid".

The processing is based on the exercise of a mission of public interest (Article 6, 1, e) GDPR) and for reasons of public interest (Article 9, 2, i) GDPR). This decree specifies that the application is installed freely and free of charge by users and can be uninstalled at any time.

The controller is the Minister of Health. The purposes of the processing are to (i) inform users of the application that there is a risk that they have been contaminated by the virus, (ii) make users of the application aware of the symptoms of the virus, the barrier measures and the action to be taken to combat its spread and (iv) adapt, where appropriate, the definition of the parameters of the application to identify contacts at risk of contamination through the use of anonymous statistical data at national level.

The source code of the application must be published on the Minister for Solidarity and Health and the Minister for the Economy and Finance websites, as well as on [www.stopcovid.gouv.fr](http://www.stopcovid.gouv.fr).

The application has been launched on 2 June 2020 and has been downloaded more than 600,000 times in 24 hours. This application is the most downloaded application on iOS and Android. To date, the application has more than one million users.

In addition, a Covid-19 control and liaison committee is in charge of monitoring the StopCovid application as well as the Covid Contact and SI-DEP files. This committee is attached to the Ministry of Health and its General Directorate of Health. Its mission is to evaluate, thanks to feedback received from health teams, the real contribution of digital tools to their action and to determine whether or not they are likely to make a significant difference in the treatment of the epidemic, as well as to check throughout these operations the respect of guarantees surrounding medical secrecy and personal data protection. The members of the Covid-19 Control and Liaison Committee, who work on a voluntary basis, were appointed by the [Order of 26 May 2020](#).

With regard to the security of the application and the personal data collected and processed, the application was first tested and audited by then ANSSI, and subject to a bounty bug entrusted to YesWeHack to ensure the reliability of the application, thanks to the mobilization of a community of independent cybersecurity experts.

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- **Employment**

#### **Covid-19 pandemic**

##### **France - Publication of [law n°2020-546 of 11 May 2020 extending the health emergency period and completing its provisions](#)**

Article 6 of the law introduces an Article L1226-9-1 into the Labour Code, under the terms of which an employee who is the subject of a quarantine measure benefits from the same protection as an employee whose employment contract is suspended due to an occupational accident or disease.

##### **France - Publication of [Ordinance n° 2020-507 of 2 May 2020 temporarily adapting the applicable deadlines for consultation and information of the Social and Economic Committee in order to deal with the covid-19 pandemic](#)**

Article 1 of the ordinance provides for an amendment to article 9 of Ordinance n°2020-460 of 22 April 2020 on the arrangements for informing and consulting the Social and Economic Committee ("SEC") when the employer takes measures to deal with the economic, financial and social consequences of the spread of Covid-19.

The ordinance thus reduces from 3 to 2 calendar days the time limit for transmitting the agenda of the SEC meetings and from 8 to 3 calendar days for transmitting the agenda of central-SEC meetings (in multi-SEC companies).

It should be noted that these deadlines apply to deadlines starting between 3 May 2020 and 23 August 2020 and do not apply to the information and consultation procedures implemented in the context of redundancies of more than 10 employees over 30 days, or in the context of collective performance agreements.

**France - [Publication of Ordinance n°2020-560 of 13 May 2020 setting the deadlines for various procedures during the health emergency period](#)**

Article 9 of the Ordinance amends the provisions of Ordinance n° 2020-389 of 1 April 2020, which had suspended certain time limits applicable to electoral processes. Thus, the operations and time limits applicable to professional elections are suspended until 31 August 2020 (instead of 10 October 2020).

**France - [Publication of Decree n°2020-508 of 2 May 2020 temporarily adapting the deadlines for consulting and informing the Social and Economic Committee in order to deal with the consequences of the spread of the covid -19 pandemic](#)**

The decree supplements the provisions of Order n°. 2020-507 of 2 May 2020 relating to the time limits applicable to consultation of the SEC on employer decisions aimed at dealing with the economic, financial and social consequences of the spread of the Covid-19 pandemic.

This text adapts in particular the deadlines for consultation in the event of the intervention of an expert as well as the modalities of such an expertise.

Likewise the ordinance of 2 May 2020, the provisions of the decree are not applicable to consultations implemented in the context of redundancies of more than 10 employees over 30 days, or in the context of collective performance agreements.

**France - [Publication of Decree n°2020-522 of May 5, 2020 supplementing Decree n°2020-435 of April 16, 2020 on emergency measures for partial activity](#)**

The decree specifies the methods for calculating the allowance and the partial activity allowance, particularly for flight personnel. It also defines the terms and conditions applicable in terms of partial activity for senior executives, employees on permanent contracts and share-paid fishermen.

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- **Finance**

**France – Loans guaranteed by the French State**

The system of loans guaranteed by the French State established by [order dated 23 March 2020](#) has been amended by several orders. The [order dated 2 May 2020](#) provides that certain derogations may be made to the legal regime for large companies (*grandes entreprises*) such as the amortization, the amount of the guarantee and the payment characteristics of the guarantee, the [order dated 6 May 2020](#) allows in particular the extension of the government scheme to lenders participating in a crowdfunding transactions and it amends the exceptions relating to civil real estate companies and insolvent companies, and finally, [order dated 26 May 2020](#) provides that the waiting period of two months to call the guarantee may be reduced for guarantees subject to an individual decision by the European Commission.

## France - Supporting the cash flow of companies weakened by the Covid 19 crisis through an aid scheme

Under [article 23 of law n° 2020-473 dated 25 April 2020](#) of the amended finance law for 2020, a system of aid in the form of repayable advances and loans at subsidized rates for companies affected by the Covid-19 crisis has been set up. The regime of this scheme was set by [decree n° 2020-712 dated 12 July 2020](#) which in particular the following:

- the conditions to be fulfilled by small and medium-sized enterprises to be eligible for this scheme and in particular that they could not obtain a loan guaranteed by the French State of an amount sufficient to finance its business and not to be in insolvency proceedings as of 31 December 2019 ;
- the limitations of the amounts of such aids and in particular, for companies created before 1 January 2019, to 25% of the turnover (excluding tax) for 2019 or the last financial year available;
- certain terms of these financings depending on whether the amount of aids is less than or greater than € 8,000,000 and in particular, for aids of less than or equal to € 800,000, it will take the form of a repayable advance with an amortization limited to ten years (with a deferred capital amortization limited to 3 years), will be drawdowned until 31 December 2020 and at a fixed rate at least equal to 100 basis points. A decree is expected to specify the regime of this article; and
- the request is addressed to the departmental committee in charge of examining the problems of financing of the companies and the decisions to allocate such aids are taken by decree of the minister in charge of the economy, after opinion of the departmental committee in charge of examining the problems of financing of the companies .

## 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 (*fonds de solidarité*) was established by [ordonnance n° 2020-317 dated 25 March 2020](#) for a three month period. [Decree n° 2020-371 dated 30 March 2020](#) specifies the conditions to be met by companies to benefit from such scheme.

[Ordonnance n° 2020-460 dated 22 April 2020](#) amended the regime of this solidarity fund in particular to extend it until 31 December 2020 and [decree n° 2020-552 dated 12 May 2020](#) which in particular modifies the criteria applicable to companies in order to benefit from this scheme.

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- Insurance

### France – ACPR: AML-TF questionnaire for insurance brokers

The *Autorité de Contrôle Prudentiel et de Résolution* initiated a [survey](#), in the form of a questionnaire, to be filled in by insurance brokers, as well as banking and payment services brokers who receive funds as agents of the parties, in order to improve its knowledge of their activity and to assess the money laundering and terrorist financing risks these actors face.

The questionnaire consists of some fifteen questions relating to the activity, the customers and the procedures implemented by these brokers to fight against money laundering and in relation to asset freeze measures and must be completed online before 12 June 2020.

## European Union – EIOPA: Publication of the list of Internationally Active Insurance Groups in the EU

The European Insurance and Occupational Pensions Authority (“EIOPA”) published, on 12 May 2020, the list of internationally active insurance groups (“IAIG”) headquartered in the European Union. This list was established using the information provided by the different national supervisory authorities and based on the criteria provided by the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame 23.0.a and 23.0.b) developed by the International Association of Insurance Supervisors (“IAIS”) (see [Legislative and regulatory news of November 2019](#)), the two criteria used being related to the carrying out of an international activity by the group and its size.

The [list](#), which was updated on 18 May 2020, includes seventeen (17) insurance groups with their headquarters in the European Union.

## International – IAIS: a player in facilitating global coordination on financial stability and policyholder protection during the Covid-19 crisis

The IAIS published on 7 May 2020 a [press release](#) detailing the steps taken to encourage financial stability and the protection of policyholders/ insureds within the specific context of the Covid-19 pandemic and crisis. In particular, the IAIS:

- indicates that it closely monitors developments and actively coordinates with other standard-setting bodies and the Financial Stability Board (“FSB”) related to the assessment of the impact of the Covid-19 crisis on the insurance sector globally;
- indicates that it favorably welcomes the variety of proactive measures taken by supervisory authorities and insurance undertakings in favor of policyholders and insureds;
- highlights the importance of an efficient management of claims and of a clear communication with policyholders/ insureds regarding claims arising from Covid-19, in order to encourage trust in the insurance sector and longer-term economic recovery;
- cautions against initiatives taken to require insurance entities to retroactively cover losses linked to Covid-19, such as business interruption, if they are specifically excluded from existing insurance policies. Indeed, the IAIS states that the cost of such losses was not built into the premiums paid by the policyholders and that the cover by insurers of such claims could jeopardize the payment by insurers of other types of losses, and ultimately threaten the protection of policyholders and the stability of the sector, further aggravating the financial and economic consequences of Covid-19;
- underlines that the crisis related to Covid-19 highlights the limits on the types of coverage that the insurance sector can offer on its own and encourages efforts to seek potential solutions to protect businesses and individuals against these types of risks. The IAIS states that it stands ready to help facilitate discussions at the international level.

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- **Intellectual Property**

## France – INPI (Industrial Property National Office)

The Government has once again modified the time limits' extensions by virtue of the [Ordinance no. 2020-306](#) (consolidated version of 15 May 2020).

All time limits expiring between 12 March and 23 June 2020 included are now postponed to:

- 23 July 2020 if the initial time limit amounted to one month;
- 23 August 2020 if the initial time limit amounted to two months or more.

As per the previous provisions (see Legislative and Regulatory Newsletter – [March & April 2020](#)), the extensions apply to all deadlines established by the Intellectual Property Code except those resulting from international agreements or European texts.

### **France - Intellectual Property litigation**

(See [Legislative and Regulatory Newsletter - Litigation](#))

### **France - Adoption of the Avia Law on hateful contents**

(See [Legislative and Regulatory Newsletter -Telecom](#))

### **France - Examination of the inventive step for French patent applications**

French patent applications filed from 22 May 2020 onwards are subject to an inventive step review conducted by the INPI, pursuant to provisions of [Article L. 612-12 of the Intellectual Property Code](#), as defined in [Law no. 2019-486 of 22 May 2019 on growth and transformation of companies](#), the so-called PACTE Law (see Legislative and Regulatory Newsletter – [April & May 2019](#)).

### **France - Unconstitutionality of the provisions concerning documents and data that can be required by the HADOPI in the event of copyright and neighboring rights infringement**

Pursuant to [Paragraph 3 and 4 of Article L. 331-21 of the Intellectual Property Code](#), members of the commission for the protection of rights within the High Authority for the Communication of Works and Protection of Rights on the Internet (HADOPI) and sworn public agents authorised by the President of the HADOPI can, for the purposes of the procedure, obtain communication and copy of all documents, whatsoever the medium, including data stored and processed by electronic communications service providers, Internet service providers and hosting providers.

On 20 May 2020, the Constitutional Council declared, in a [Decision](#), that these provisions as well as the word "*in particular*" included in Paragraph 5 of the same Article were contrary to the Constitution since they disregarded the right to privacy.

Indeed, this right of communication concerns "*any documents, whatsoever the medium*", without limitation, and can include any login data held by electronic communications service providers which provide details on the privacy of the individuals at stake. Further, these individuals about whom this right may be exercised are not specified. Additionally, these documents and data do not necessarily present a direct relation with the breach of obligation set out in [Article L. 336-3 of the Intellectual Property Code](#).

The Constitutional Council has delayed the repeal of these provisions until 31 December 2020.

### **France - Deepening of the Joint Mission related to recognition tools for contents and works on content-sharing platforms**

Following a first study prepared by the High Council for Literary and Artistic Property (CSPLA), the Government launched, on 29 March 2019, a Joint Mission composed of the CSPLA, the HADOPI, and the National Center for Cinema and Motion Picture aiming at conducting an in-depth analysis upon protected contents' recognition tools used by online content-sharing platforms. The [Report](#) was published on 29 January 2020.

On 28 April 2020, the Ministry for Culture announced, in a [Press Release](#), the launch of a new mission aiming at communicating on the conclusions drawn from the Report and to further explore the possible solutions in terms of contents recognition tools in the various areas of creation of such contents, from music to audiovisual and from image to text. This initiative falls within the last paragraph of [Article 17 of the Directive 2019/790 of 17 April 2019](#), the so-called DSM Directive, providing in particular that the European Commission shall organize "*stakeholder dialogues to discuss best practices for cooperation between online content-sharing service providers and rightholders*".

#### **France - Amendment to the tax regime applicable to transfers and licenses of intangible assets**

Following the open consultation set from 17 July to 15 September 2019, the [Finance Law for 2020 no. 2019-1479 of 28 December 2019](#) established an optional tax regime applicable to operations on patents and similar intangible assets set out in Articles [238](#) and [223 H](#) of the General Tax Code (see [Legislative and Regulatory Newsletter – January 2019](#)).

The Finance Law sets in particular the ability to allocate the tax deficit for a business year upon the positive net income resulting from an assignment, a license or a sub-license of patents and similar intangible assets, for intra-group transactions as well as transactions between third-parties (Article [50](#)).

The above information was published on the Public Finance Official Journal on 22 April 2020.

#### **European Union - EPO (European Patent Office)**

All deadlines expiring on or after 15 March 2020 were extended to 2 June 2020 by a [Notice of 1<sup>st</sup> May 2020](#). This extension applies to all deadlines established by the European Patent Convention, the Patent Cooperation Treaty and to those directly established by the EPO, in particular regarding the payment of annual fees for patents applications.

However, the EPO, acknowledging the persistence of hardship after 2 June 2020 sought to underline, in a [Notice of 27 May 2020](#), the legal remedies in case of non-observance of time limits established by the EPC. Furthermore, by a [Notice of 29 May 2020](#), the EPO temporarily suspended the additional fee for late payment of a renewal fee for a European patent application until 31 August 2020.

By a [Notice of 21 May 2020](#), the EPO has also decided to postpone all hearings before the Opposition Divisions up to 14 September 2020, except if the oral proceeding by videoconference had already been confirmed or if the oral proceeding will be held by videoconference with the parties' consent under the project initiated by a [Decision of 14 April 2020](#).

Oral proceedings before the Examination Divisions for which the summons were served from 2 April 2020 onwards and those supposed to be held after 17 April 2020 and for which the use of videoconference was decided will continue to be held by videoconference, pursuant to [Decision of 1<sup>st</sup> April 2020](#).

#### **European Union - EUIPO (European Union Intellectual Property Office)**

On 18 May 2020 lapsed all the extended deadlines in view of the COVID-19 health outbreak.

The Office has however recalled, by a [Guidance Note of 15 May 2020](#), the way to extend some procedural deadlines, to continue or stay the proceedings resulting from the Regulations relating to European Union trademarks or to Community designs.

A [Notice of 22 May 2020](#) also reminds that trademarks applications filed since 9 March 2020 shall be published progressively and that correspondences shall progressively resume.

### **European Union - Final agreement relating to the EU-Mexico Trade Agreement strengthening the protection of intellectual property rights**

On 28 April 2020, the European Union (EU), through the European Commission, and Mexico reached a [Final Agreement](#) with respect to the last elements still subject to discussion in the frame of the negotiations on the modernization of their trade agreement.

A [Memorandum of Understanding](#) had already been reached on the latter in April 2018.

This Agreement restates the intellectual property law applicable in the EU and Mexico, in particular trademark law, patent law and designs law as well as trade secret law, and encourages Mexico to comply with international standards with respect to copyright law.

It also provides for the protection of 340 additional EU geographical indications in Mexico.

This Agreement shall now be scrutinized from a legal perspective, translated into the various EU languages and then enacted by the EU Council and the European Parliament.

### **European Union - Unpatentability of products exclusively obtained by means of an essentially biological process**

In its [Opinion](#) dated 14 May 2020, the Enlarged Board of Appeal (EBA) of the EPO decided that animals and plants exclusively obtained by means of an essentially biological process are not patentable. All pending proceedings before the EPO Examination and Opposition Divisions which decisions depended entirely on the outcome of this Opinion had been stayed since 9 April 2019 (see [Legislative and Regulatory Newsletter – June 2019](#))

As a reminder, [Article 53b\) EPC](#) provides that a European patent is not granted for an essentially biological process to obtain plants or animals. In 2015, the EBA considered that this provision could not apply to products obtained by means of such processes. On 1<sup>st</sup> July 2017, the EPO board adopted [Rule 28\(2\) EPC](#) by virtue of which plants or animals exclusively obtained by means of an essentially biological process are not patentable. In 2018, a Technical Board of Appeal considered that Rule 28(2) EPC had no consequences upon the interpretation of Article 53(b) EPC.

This new interpretation of Article 53(b) EPC shall not apply retroactively on European patents granted earlier than 1<sup>st</sup> July 2017 or on EP applications filed earlier than the said date.

### **World - ICANN veto towards the transfer of the <.org> gTLD to a private undertaking**

On 30 April 2020, the ICANN Board (Internet Corporation for Assigned Names and Numbers), the body in charge of regulating domain names rejected the transfer of the <.org> extension to a private company by a unanimously adopted [Resolution 2020.04.30.01](#).

The Board believed that the transfer of the third largest generic top level domain would have infringed public interest and would have jeopardized legal safety with respect to the future of this extension.

## World - Creation of the trusted digital evidence system WIPO PROOF

On 27 May 2020, the World Intellectual property organization (WIPO) launched its trusted digital evidence platform called [WIPO PROOF](#).

This digital service enables to obtain a digital tamper-proof fingerprint for any kind of works, protectable or not by a registrable intellectual property rights (creative work, research data, source code, algorithms, etc.) to establish the evidence that a creation existed at a given point in time at a reasonable price (from 20 Swiss Francs).

This service can be used in any jurisdictions which recognize digital evidence.

## World - WIPO – New time limits extension with respect to payment of PCT fees and implementation of a tracking service of exceptional measures taken by the Contracting Parties

In a [Notice dated 25 May 2020](#), the International Office has postponed to 30 June 2020 the deadline for sending notices considering the international patent applications to be withdrawn due to a payment failure of the adequate fees in the provided time limit set by virtue of the Patent Cooperation Treaty (PCT), given the worldwide outbreak due to COVID-19.

WIPO encourages PCT receiving offices to do likewise if they found it is appropriate.

In the context of measures taken by the International office as a response to the outbreak, WIPO also launched on 5 May 2020, by a [Press Release](#), an IP policy [Tracker](#) with respect to the COVID-19 pandemic.

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- **Litigation**

### France – The Order no. 2020-595 of 20 May 2020 amending the Order no. 2020-304 of 25 March 2020 relating to the adaptation of the rules applicable to French Courts ruling in non-criminal matter

As a reminder, the [French Order no. 2020-304 of 25 March 2020](#) organizes the functioning rules applicable to the French Civil Courts of first instance and appeal during the period of "*state of health urgency*".

It provides notably for a adaptation of the territorial jurisdiction of the courts of first instance, of the bench of judges, of some trial hearings (in particular by videoconference or by telephone) or to provide for the conduct of the proceedings without a trial hearing.

[The French Order no. 2020-595 of 20 May 2020](#) extends the application of these specific rules until **10 August 2020 included** to facilitate the resumption of Court activity despite the health emergency measures taken to slow the spread of Covid-19.

Furthermore; this Order provides for new provisions such as the possibility for the Judge in Charge of Procedural Matters to conduct alone the trial hearing, without the parties having any right to object, or the possibility for the heads of the French Courts to limit the conditions of access to the Court, courtrooms and services open to the public in order to ensure compliance with health rules.

## France - Order of 29 May 2020 relating to the organisation of the activity of the Paris Civil Court for the period from 2 June to 10 July 2020 handed down by the President of the Paris Civil Court

The French Order of 29 May 2020 organizes the resumption of the activity of the Paris Civil Court according to the health situation, by applying the specific rules provided for by the French Order no. 2020-304 of 25 March 2020 above-mentioned.

First, all trial hearings scheduled during the period from **2 June to 10 July 2020 included** before some Civil Chambers of the Paris Civil Court have been cancelled in order to be instead conducted under the [proceedings without a trial hearing](#)<sup>1</sup>. This applies to cases on the merits and on incidental plea scheduled for a trial hearing during this period in the scope of written proceedings where the representation by Counsel is mandatory. However, the parties still have 15 days to lodge an appeal against such decision by electronic means, via the Virtual Private Counsel's Network ("*Réseau Privé Virtuel des Avocats (RPVA)*").

Furthermore, in the scope of summary proceedings, such as Expert proceedings (including medical Expert proceedings) and personal injury proceedings, the oral pleadings seem to be mostly maintained. However, the Order provides that they also might be conducted without a trial hearing, it being specified that the parties cannot lodge an appeal against such decision.

Finally, during this period, status hearings will take place exclusively by electronic means, via the Virtual Private Counsel's Network ("*Réseau Privé Virtuel des Avocats (RPVA)*") depending on the number of Judges and the Court staff in light of the restrictions related to the state of health crisis.

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- **Public Law**

### European Union – Adjusting of port infrastructure charges

The [regulation](#) (EU) 2020/697 of the European Parliament and of the Council of 25 May 2020 amending Regulation (EU) 2017/352, so as to allow the managing body of a port or the competent authority to provide flexibility in respect of the levying of port infrastructure charges in the context of the COVID-19 outbreak, published in the OJEU dated 27 May 2020, allows port authorities to adapt the collection of the port infrastructure charges for the period from 1<sup>st</sup> March to 31 October 2020. Consequently, port authorities can decide to waive to collect, to suspend, to reduce or to defer the payment of such charges. As a reminder, these charges are collected for the use of infrastructure, facilities and services, including the waterway access to the port concerned, as well as access to the processing of passengers and cargo, but excluding land lease rates and charges having equivalent effect.

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<sup>1</sup> Recently, the President of the Paris Civil Court adopted an Order dated 5 June 2020 allowing the resumption of some trial hearings as from 15 June 2020; however this remains very limited in light of the number of proceedings currently pending before the Paris Civil Court. Trials hearing by videoconference are also tested in some Civil Chambers.

- **Real Estate**

**France – Publication of the law extending the winter truce (housing protection) on evictions**

Article 10 of [Law No. 2020-546](#) of 11 May 2020 extending the state of health emergency and supplementing its provisions extends the winter truce (housing protection) until 10 July 2020 included; this was initially extended till 31 May 2020.

**France - Publication of the Order extending the validity of authorizations, permits and approvals expiring between 12 March and 23 June 2020**

[Article 1 of the Order n°2020-560 of 13 May 2020](#) setting the timelines applicable to various procedures during the period of health emergency amends Article 3 of the Order n°2020-306 of 25 March 2020 and provides that authorizations, permits and approvals expiring between 12 March and 23 June 2020 are extended for a period of three months from 23 June 2020, so that they remain valid until 23 September 2020.

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- **Restructuring**

**France - Adoption, pursuant to the emergency enabling law n°2020-290 of 23 March 2020 to deal with the Covid-19 epidemic, of ordinance n°2020-596 of 20 May 2020 (hereinafter the "Ordinance").**

In order to respond to the economic consequences of the health crisis linked to the Covid-19 epidemic, a cyclical adaptation of the rules governing both amicable and collective proceedings was made by an ordinance n°2020-596 of 20 May 2020, which complements the first ordinance n°2020-341 of 27 March 2020.

The main purpose of the first ordinance was to encourage recourse to preventive proceedings and to extend the time limits for collective proceedings.

It was supplemented by a second Ordinance No. 2020-596 of 20 May 2020, which aims in particular to enhance the effectiveness of the conciliation procedure, to relax the conditions of eligibility for the accelerated safeguard and to facilitate the adoption and implementation of safeguard and recovery plans. It also introduces a new privilege for the benefit of persons who would make cash contribution during the observation period or as part of a plan.

The Ordinance also modifies the rules for extending the time limits provided for in the previous Ordinance of 27 March 2020: the duration of extensions is now fixed and no longer depends on the end date of the state of health emergency.

More specifically, the Ordinance provides for the following:

- **Reinforcement of the auditor's right to raise the alarm;**
- **The strengthening of the protection of the debtor in conciliation with the:**
  - the possibility for the judge to pronounce measures of suspension of proceedings / postponement of deadlines during the conciliation procedure;
  - flexibility of the use of grace periods.
- **The adaptation of collective procedures with the:**
  - suppression of the threshold conditions for the opening of an accelerated safeguard;
  - relaxation of the procedures for consulting creditors on the draft plan and the substantial modification of the plan;
  - introduction of a privilege for the benefit of contributors of new money during the observation period or within the framework of a plan;
  - relaxation of the conditions of eligibility for simplified judicial liquidation and professional recovery;
  - possibility to request a new judicial extension of the duration of the safeguard and recovery plans (in addition to the extensions already introduced by the previous ordinance) for a maximum additional period of 2 years, at the request of the Public Prosecutor's Office or the Commissioner for the execution of the plan ;
  - modification of certain provisions applicable to the disposal plan :
    - the possibility for the judicial administrator and the debtor himself to apply directly to the Court for authorisation to draw up the assignment plan for the benefit of the *de jure* or *de facto* managers of the debtor company (the initiative of the derogatory authorisation of the Court is therefore no longer reserved solely to the public prosecutor's office);
    - the reduction of the period for convening the contracting parties to eight days.
- **The fixing in time of the extensions of time limits introduced by Ordinance n°2020-596 of 27 March 2020;** whereas the extensions of time limits provided for by the first Ordinance were linked to the duration of a state of health emergency, the Ordinance fixes them precisely in time:
  - possibility to request a new judicial extension of the duration of the safeguard and recovery plans (in addition to the extensions already introduced by the previous ordinance) for a maximum additional period of 2 years, on request of the Public Prosecutor or the Commissioner for the execution of the plan;
  - up to and including 23 August 2020, the state of cessation of payments shall be assessed in the light of the debtor's situation on 12 March 2020; extension of safeguard plans and recovery plans, at the request of the plan commissioner, can now be ordered for a period of five months;
  - 2-month period provided for in Article L.631-15 I of the French Commercial Code at the end of which the Court rules on the continuation of observation periods is inapplicable until 23 June 2020.

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- Tax

#### **France – Mergers between "sister" companies are exempted from registration duties**

In line with the law of 19 July 2019 on the simplification, clarification and updating of corporate law, known as the "Soilihi law", the Finance Law of 28 December 2019 for 2020 has extended the preferential tax regime for mergers to transactions without any exchange of shares.

The French tax authorities' [guidelines](#) already specified that the exemption from registration duties under [Article 816 of the French tax code](#) should also apply to such mergers.

The [decree of 22 May 2020](#) confirms this position by amending [Article 301 F of Annex 2 of the French Tax Code](#), thus extending the benefit of the exemption to mergers between "sister" companies.

#### **France - First case law on the compensation of tax "whistleblowers"**

On 5 March 2020, in case No. 1808248, the Montreuil Administrative Tribunal ruled for the first time on the implementation of the compensation mechanism for whistleblowers in cases of international tax evasion.

Pursuant to this scheme, set-out under [Article L. 10-0 AC of the French tax proceedings code](#), the French tax authorities must compensate informers who have provided information leading to the discovery of certain law violations. The Finance Law for 2020 (i) extended the scope of this mechanism to (i) VAT fraud and, (ii) on an experimental basis, to all types of fraud when the fraud amount exceeds €100,000.

The Montreuil Administrative Tribunal ruled that the tax authorities couldn't justify a refusal of compensation on the sole grounds that the information had already been revealed to the press (in less detail and without any supporting evidence) or transmitted to the public prosecutor. Indeed, the French tax authorities couldn't establish that the information would have been discovered only on the basis of the press articles or through a transmission from the public prosecutor prior to the whistleblower's transmission.

#### **France - Further clarifications on the net financial expenses: the French tax authorities updated their guidelines**

In their [final comments published on 13 May 2020](#) relating to the deductibility of financial expenses, the tax authorities provided several clarifications, notably regarding elements to be taken into account in the calculation of net financial expenses, "fiscal" EBITDA and the overall debt and financial autonomy ratios of the consolidated group.

The French tax authorities also clarified that the application of the additional deduction of 75% for the benefit of "autonomous" companies (not members of a consolidated group and without any establishment outside of France) applies automatically, with no option of renunciation.

- **Telecom**

### **France - Censorship by the Constitutional Council of the Avia Law to fight against hate content on the Internet**

On 13 March 2020, the National Assembly adopted the law to fight against hate content on the Internet (known as the "Avia Law").

On 18 May 2020, the Avia Law was referred to the Constitutional Council by more than 60 senators. The senators criticized the Avia Law for disproportionately restricting freedom of expression. In Decision No. 2020-801 DC of 18 June 2020, the Constitutional Council largely censured the new law.

Paragraphs I and II of Article 1 of the Avia Law, which reduced the time limit for hosting providers and publishers to withdraw child pornography and content inciting or condoning terrorism to 1 hour instead of 24 hours and a withdrawal within 24 hours for a series of offences, were censured.

Articles 4 and 5 of the Avia Law, which provided for new obligations for operators, were also censored.

Article 7, which gave the CSA the competence to ensure compliance with the obligations to which platforms are subject was also censored.

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