Hogan Lovells

Paris International Litigation Bulletin no. 5

OCTOBER 2013

Contents

Recent developments

French proceedings 1

French law 5

Features

Are jurisdiction clauses provided to the benefit of only one party valid? 6

Actions for declaratory judgments of non-liability in matters relating to tort: *forum shopping* is now also available for the presumed author of an offence 9

A further step towards the damage to the environment being recognised by the law 12

French anti-corruption agency advocates in favour of a new French Bribery Act 14

Interview

Mediation, Situation in France - Interview with Sophie Henry, General Delegate of the Centre for Mediation and Arbitration of Paris (CMAP) 18

In Practice

CARPA 22

Translator's corner

Arrêté, décret, ordonnance 24

Further information

If you would like further information, please contact a person mentioned below or the person with whom you usually deal.

Thomas Rouhette
Partner, Paris
thomas.rouhette@hoganlovells.com

Christelle Coslin
Senior Associate, Paris
christelle.coslin@hoganlovells.com

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

Recent developments

FRENCH PROCEEDINGS

- **Criminal liability of legal entities: how far must the identification of the author of the facts go?**

Until 1994, French criminal law only admitted a single type of criminal liability, that of individuals, who were considered to be the only ones who could commit offences. The entry into force of the new French Criminal Code has extended the concept of criminal liability to legal entities with the creation of Article 121-2, which provides, in its first paragraph, that "*legal entities, with the exception of the State, shall be held criminally liable, pursuant to the distinctions of Articles 121-4 to 121-7, for the offences committed, on their behalf, by their bodies or representatives*".

Therefore, in order to hold a company liable, this Article requires the courts to ensure that the offence has indeed been committed on behalf of the company by one of its bodies or representatives. Yet, it is not specified whether, and to what extent, the body or representative having committed the facts on behalf of the legal entity must be precisely identified.

By decision dated 20 June 2006, the Criminal Chamber of the French Supreme Court provided a first answer to that question by deciding that courts could hand down a ruling against a legal entity "*without specifying the identity of the author of the breaches constituting the offence, insofar as that offence* [could] *only have been committed, on behalf of the company, by its bodies or representatives*" (French Supreme Court, Criminal Chamber, 20 June 2006, Bull. Crim., no. 188). A legal entity could thus face a negative ruling for actions committed, on its behalf, by its representatives or bodies, without said representatives or bodies being precisely identified. This solution has enabled to seek nearly automatically the liability of legal entities, which is the reason why it has been criticised rather virulently by some legal authors.

The French Supreme Court, by decision dated 11 October 2011, seemed to have made way for a change of case law by holding that the court which had ruled "*without providing further explanations as to the effective existence of a delegation of powers or as to the status and remit of the agents in question that could make them representatives of the legal entity, within the meaning of Article 121-2 of the French Criminal Code*" had not justified its decision against the legal entity (French Supreme Court, Criminal Chamber, 11 October 2011, Bull. Crim., no. 202). This isolated decision did, however, not enable to know whether the Criminal Chamber thus wished to completely discard its solution of 2006 or if both decisions had to be combined.

Many authors have later opined that this latter decision should be seen as having reversed the decision of 2006 based on the review of subsequent decisions of the French Supreme Court, in particular two decisions handed down in 2012 and one decision in early 2013, and more specifically a decision of 2 October 2012 (French Supreme Court, Criminal Chamber, 2 October 2012, Bull. Crim., no. 205).

In this case, during works in a school, two workers who were installing a structure had been injured when the structure collapsed. One of the two employees died as a result of his injuries. Two companies in charge of the works had been referred before the Criminal Court that had sentenced them on the ground of manslaughter and unintentional harm. The Court of Appeal had later upheld the decision by indicating that "*the lack of seriousness that governed the performance of the works, without any of the two companies in question remedying the situation, by complying with both legal and contractual provisions constituted a wrongful breach, which was directly and immediately related to the occupational accident*".

The French Supreme Court quashed this decision on the ground "*that, by ruling as such, without further examining whether the observed breaches resulted from the failure of one of the bodies or representatives of the accused companies, and whether they had been committed on behalf of these companies, within the meaning of Article 121-2 of the French Criminal Code, the Court of Appeal did not justify its decision*". This is the exact replica of the justification adopted by the Criminal Chamber in a decision of 11 April 2012 (French Supreme Court, Criminal Chamber, 11 April 2012, *Pourvoi* no. 10-86.974), not published in the Bulletin, in which it had quashed the decision of the Court of Appeal on the ground of insufficient explanations.

In January 2013, a new decision of the French Supreme Court adopted a similar solution by quashing a decision where the Court of Appeal had insufficiently established a case of negligence (in relation to the design of a construction site where an accident occurred) by attributing such negligence to a legal entity without, notably, explaining how the offence had been committed "*on behalf of* [this company]*, by one of its bodies or representatives*" (French Supreme Court, Criminal Chamber, 22 January 2013, Bull. Crim. to be published, *Pourvoi* no. 12-80.022).

However, two recent decisions handed down almost on the same day showed that the solution of 2006 had not been discarded at all and had to be combined with the subsequent decisions. In the first decision dated 18 June 2013, the Criminal Chamber of the French Supreme Court refused to quash an appellate decision which did not "*specify the identity of the author of the breaches constituting the offence, insofar as the offence could only have been committed, on behalf of the association, by its president, in charge of safety, in the absence of an internal delegation*" (French Supreme Court, Criminal Chamber, 18 June 2013, Bull. Crim. to be published, *Pourvoi* no. 12-85.917). The association in question was, in this case, blamed for not taking sufficient safety measures when organising a skiing competition, during which one of the competitors suffered a fatal accident.

In the second decision, however, the same Chamber quashed another appellate decision on the ground that the court should have "*further examined whether the litigious facts had been committed, on behalf of the legal entity sued, by one of its bodies or representatives*" (French Supreme Court, Criminal Chamber, 19 June 2013, Bull. Crim. to be published, *Pourvoi* no. 12-82.827). Indeed, the appellate decision remained very brief on this issue insofar as it merely stated that the representatives of the entity in question had an interest in committing the offence. In this case, a legal entity committed fraud by trying to obtain a court order based on false pretences: the legal entity claimed that a document, which it had been ordered to disclose, did not exist, because such document, if disclosed, would have had a very negative impact in the civil proceedings.

What conclusion can we draw from all these case law developments? First of all, courts must ensure that the litigious facts have indeed been committed on behalf of the legal entity by one of its bodies or representatives before ruling against this entity. This principle, which derives from the very wording of Article 121-2 of the French Criminal Code, applies in all cases, regardless of whether the offences in question are intentional (as in the case of the decision obtained by false pretences) or not (careless or negligent action).

Yet, in some situations, this requirement can be met without precisely identifying the offending body or representative and without bringing proof of any personal involvement. Indeed, in some cases, the offence can only have been committed by one of the bodies or representatives of the legal entity and a presumption enables to declare the legal entity criminally liable without bringing any further proof. The scope of application of this presumption appears to be more limited in the decision of 2013 than in the one of 2006, insofar as the body in question (the President of the association) is clearly identified.

In any case, it seems unlikely that these latter decisions will put a final end to the debate among courts and legal authors regarding the question of the identification of the body or representative having committed the offence. Future decisions should provide more clues to determine if, and to what extent, courts will be allowed to hold a legal entity criminally liable without first acknowledging the wrongful actions of one of the bodies or representatives of the legal entity on behalf of which the offence was committed.

Christelle Coslin and Pauline Faron

- **The end of the experiment of citizens' assessors in criminal cases**

By Order dated 18 March 2013, Mrs. Christiane Taubira, the French Minister of Justice, ended the short saga of the experiment of citizens' assessors in criminal cases.

The purpose of Law no. 2011-939 of 10 August 2011 on the participation of citizens in the functioning of criminal justice and the judgment of minors was to bring citizens closer to the judicial system by enabling them to participate in the judgment of certain offences. Following the entry into force of this Law on 1st January 2012, the lawyers registered with the Paris Bar had already publicly declared themselves against the generalisation of the presence of citizen assessors in Courts (see *Towards a broader place for citizens in criminal justice?*, by Christine Gateau, Paris International Litigation Bulletin no. 3, May 2012).

Pursuant to two Orders dated 12 October 2011 and 16 February 2012, only the Courts of Appeal of Dijon and Toulouse were concerned, on an experimental basis, by this reform, which was then meant to be extended to eight other districts from 1st January 2013. But by Order of 13 June 2012, the Minister of Justice decided to suspend the extension of the experiment. It was yet still possible to wonder about the outcome of this suspension and the future of citizens' assessors in criminal cases, the Minister having mentioned the wish to conduct a thorough study relating to the generalisation of non-professional assessors, including

in civil proceedings (see *The place of citizens in criminal justice: an experiment limited to two courts*, by Christine Gateau, Paris International Litigation Bulletin no. 4, October 2012).

It seems, in light of the abovementioned order of 18 March 2013, that it now ought to be considered that the experiment of citizens' assessors is part of the past, the system having proved to be "*extremely burdensome*", "*expensive*" and "*unsuitable*" according to the report communicated to the Minister of Justice on 28 February 2013 by Didier Boccon-Gibod, Main Advocate General before the French Supreme Court, and Xavier Salvat, Advocate General before the French Supreme Court. The only advantage of this experiment, according to these Advocates General, is that it improved the reputation of the French judicial system for the people having acted as assessors.

This report will probably also influence the analysis of the Minister of Justice on the generalisation of non-professional assessors, including in civil proceedings.

Christine Gateau

French commercial courts in the limelight

Improving the efficiency of commercial courts is one of the reforms on which the French Ministry of Justice is currently working. In particular, the aim is to strengthen commercial courts, while seeking to prevent in a more efficient manner the difficulties encountered by companies. Even though they are often criticised, commercial courts have not been subject to many reforms since they were created almost five centuries ago. Several Ministers of Justice have initiated projects which faced strong resistance regarding the intention to modify the composition of commercial courts (lay judges, retailers or company directors, elected by their peers). Indeed, commercial judges are often considered to be close to people subject to trial, but are also accused of lacking impartiality or of being in connivance with some parties. This is why it is often suggested that lay judges sit with professional judges.

Following a meeting at the French Ministry of Justice on 14 December 2012, the French Minister of Justice, Mrs Christiane Taubira, set up, in March 2013, a working group with as mission to think about the organisation of commercial courts as well as the training and status of its protagonists. These works could lead to the submission of a bill to the French National Assembly in the months to come. At the same time, the Law Commission at the National Assembly set up an information committee which led to the submission, on 24 April 2013, of an information report on the role of courts in commercial matters by Cécile Untermayer and Marcel Bonnot, MPs. This report, the watchword of which is "*reforming without stigmatising*", presents thirty reform proposals, some of which are innovative.

The first part of the report focuses on the status, training and role of the people acting in commercial courts, in particular commercial judges. This issue is not new, as one can see from a decision of the French Constitutional Council of 4 May 2012 (Decision no. 2012-241 QPC, *EURL David Ramirez*). An application for a preliminary ruling on the issue of constitutionality had been brought before the Council regarding, notably, the compliance of the commercial judges' mandates with the constitutional requirements of impartiality and independence of the legal system. The Constitutional Council considered that the current system does not violate these principles since the French Commercial Code lays down "*guarantees that prohibit a judge of a Commercial Court from examining a case in which he/she has an interest, even if this interest is an indirect one*". Similarly, the use of elected lay judges is justified, according to the Constitutional Council, by the specialised jurisdiction of commercial courts.

In order to dispel any doubts about the impartiality and independence of commercial courts, the report suggests changing the body of voters electing commercial judges in order to put an end to various co-option practices that had been noted by the French National Council of Commercial Courts in its annual report for 2010. The members of the Chambers of Commerce and Industry and the artisans registered with the Chambers of Trade (and no longer all retailers and company directors) would thus directly elect commercial judges. Lastly, the report suggests implementing a new rule according to which commercial judges would not be allowed to be elected to another function or to exercise an activity requiring regular contacts with commercial courts (for instance, court-appointed administrators).

The report also aims more specifically at preventing conflicts of interest. For this purpose, one of the proposals concerns the creation of a code of ethics, drawn from the handbook of ethical rules established by the French General Confederation of Commercial judges, completed by a practical guide of good practices. A commercial judge could be appointed as referent for ethical matters in each commercial court. Moreover, the report suggests that commercial judges should be obliged to sign (i) a declaration of interest when they take up their position and (ii) a statement of independence at the beginning of each procedure. At the same time, the parties would be granted the possibility to directly bring a case before the French Disciplinary Commission, which would have an independent power to impose sanctions.

To fulfil the double objective of impartiality and efficiency, the report also suggests working again on the territorial distribution of commercial courts, which has yet recently been reorganised. The report cautiously suggests carrying out an impact assessment and implementing a broad consultation before seeking to match the distribution of commercial courts with employment areas.

In order for general disputes before commercial courts "*to be spared suspicion*", the report suggests "*ensuring the presence of the Public Prosecutor in hearings and proceedings before commercial courts*". For the same purpose, the report suggests making it easier to refer some cases to other courts when a party justifiably requests this at the beginning of the proceedings or to have the case heard by a bench including at least one professional judge for cases having significant or complicated stakes. Nevertheless, one of the authors of the report does not entirely agree with these two proposals as he fears dilatory manoeuvres by some parties, which would try to choose their judge. This obvious disagreement is the sign of the difficulties that will arise in the implementation of such a reform.

Finally, some proposals aim at ensuring the competence and efficiency of commercial judges. In this respect, the report suggests creating commissions of professional and commercial judges to assess candidates, prior to their election, according to their skills and motivation. Moreover, the authors suggest replacing the optional training days, which take place when judges take up their positions, with a system consisting in an initial compulsory training as well as mandatory training sessions during their mandate.

The purpose of all these proposals is to make proceedings before French commercial courts "*more attractive, more competitive and better adapted to modern economic stakes*". These purposes are even more significant in the current difficult economic context. Nevertheless, time will tell if this report will go unheeded, just like the previous reports, or if it will be used as basis for the discussions of the working group set up by the French Minister of Justice. Should these reforms be adopted, it is obvious that their implementation will be a lengthy process given the ambitious nature of some proposals.

Christelle Coslin

FRENCH LAW

- **Economic circumstances may justify a significant drop in orders**

Under French Law, the tort liability of a co-contracting party or of any company involved in established business relationships can be incurred in the event of a sudden termination of these relationships. This termination does not necessarily have to be total. Indeed, a significant drop in orders or the delisting of a specific product can constitute a potentially wrongful termination. A partial termination will be deemed sudden if no prior notice has been given reasonably in advance. If this is the case, the author of the termination may be held liable pursuant to Article L. 442-6, I, 5° of the French Commercial Code.

A decision of the Commercial Chamber of the French Supreme Court dated 12 February 2013 (*Pourvoi* no. 12-11.709) is, in this respect, particularly interesting insofar as it takes the economic crisis into account to assess the defendants' liability.

In this particular case, Caterpillar France maintained business relationships, since 1985, with Compagnie de Maintenance Industrielle ("CMI") with which it concluded a first framework agreement on 7 November 2000. Pursuant to a second framework agreement concluded on 28 February 2005, Caterpillar Suisse entrusted the same company with the performance of several works for a duration of eight years. When it noticed that the number of orders had collapsed from September 2008, CMI summoned Caterpillar France and Caterpillar Suisse based on an alleged sudden termination of their business relationships.

In a decision of 10 November 2011, the Grenoble Court of Appeal noted that the significant fall in the number of orders placed by the Caterpillar companies, which started in 2008 and continued in 2009, could be explained by a decrease in the number of orders received by the Caterpillar companies. This fall in orders, which resulted from the economic and financial crisis of 2008, had indeed led the Caterpillar companies' activity to be reduced by 70% between 2007 and 2008. The Court of Appeal thus stressed the considerable effects of the crisis on the building and civil engineering sectors, notably resulting in the collapse of the number of orders of construction equipment. Given these elements, the Court of Appeal considered that it was not proven that the established business relationships had been terminated, as the fall in orders placed by the Caterpillar companies was not intentional.

The French Supreme Court approves the Court of Appeal's reasoning by stressing that the Caterpillar companies cannot be blamed for the fall in the number of orders.

Before these decisions, using the evolution of economic circumstances to justify a termination without prior notice had not been sufficient to convince the courts to exclude liability as they generally considered that this evolution did not represent a case of *force majeure* (for instance, Chambéry Court of Appeal, 8 July 2010, Docket no. 09/0191).

Nevertheless, the decision in question adopts a reasoning that does not concern the nature but the very existence of the termination. Indeed, it is not because the French Supreme Court and the Court of Appeal identified an unpredictable, compelling and external event constituting a case of *force majeure* (that could justify a termination without prior notice) that they excluded the Caterpillar companies' liability. These companies did not incur any liability because, according to these Courts, they "*unintentionally*" reduced their orders. They did thus not intend to terminate the business relationships.

While it is difficult to bring proof of the unpredictable, compelling and external nature of the *force majeure,* the concept of "*unintentional*" fall in the number of orders gives litigants and courts more room for manoeuvre in order to take into account the economic context affecting some business sectors. This phenomenon could be the consequence of case law that has now become established, which rules that parties incur tort liability (and not contractual liability) for the sudden termination of business relationships. Until now, this determination (tort liability) had mostly created issues for the party at the origin of the termination, which is generally the party with the strongest economic position (notably concerning the enforceability of dispute resolution clauses, see *The sudden termination of established business relationships considered to be a tortious act at the stage of international jurisdiction: the Commercial Chamber persists, like its difference of opinion with the First Chamber*, by Christophe Garin, Paris International Litigation Bulletin no. 4, October 2012). From now on, the party at the origin of the termination could find an advantage in the tortious nature of the action brought against it: the party will have the possibility to plead that the termination is not imputable to them (i.e. does not stem from their intentional actions), but that such termination results from circumstances which will not have to meet the strict conditions of the *force majeure*.

Christelle Coslin and Claire Massiera

Features

Are jurisdiction clauses provided to the benefit of only one party valid?

A recent decision of the French Supreme Court has raised a sensitive question regarding the validity of the jurisdiction clauses that are generally included in the general conditions of numerous banks or in international financial contracts. These clauses are frequently dissymmetrical: they first grant exclusive jurisdiction to the courts of the registered office of the bank before indicating that the bank reserves the right to sue a client before the courts of the latter's domicile or before any other court with jurisdiction pursuant to the applicable rules.

The case in question

In the case that gave rise to the decision of 26 September 2012 of the First Civil Chamber, which specifically deals with issues of international jurisdiction, the facts were far from unusual. A client had entrusted 1.7 million Euros to the bank Edmond de Rothschild Europe, located in Luxembourg, via a French financial institution, domiciled in Paris and belonging to the same group as the bank. Dissatisfied with the return on her investments, a few years later, the client sought the liability of the bank and of the financial institution on the ground of allegedly insufficient information and advice.

Both the bank and the financial institution challenged the jurisdiction of the courts of Paris to rule on such an action by notably relying on the jurisdiction clause included in the general conditions of the bank, which included a clause similar to those mentioned above. The bank thus sought to refer the case before the courts of Luxembourg. As the Court of Appeal did not award this request, the bank lodged an appeal before the French Supreme Court.

The decision of the French Supreme Court is based on a specific analysis of the wording of the clause in question. Taking into account the fact that the bank had reserved the right to act before other courts than the chosen one, the Supreme Court considered that the agreement concerning the choice of forum "*in fact, only bound* [the client]*, who was the only one who had to refer a case before the courts in Luxembourg*" and "*the Court of Appeal rightly inferred that* [this clause] *had a potestative nature towards the bank, resulting in it being contrary to the object and purpose of the prorogation of jurisdiction allowed by Article 23 of the Brussels I Regulation*" (French Supreme Court, 1st Civil Chamber, 26 September 2012, *Pourvoi* no. 11-26.022, Bull. no. 176).

In this case, after having dismissed the litigious clause that only concerned the bank, the Court of Appeal considered that the financial institution could not assert any prorogation of jurisdiction (which had, at one point, been discussed). Given their jurisdiction towards the French financial institution, the Appellate Judges also accepted jurisdiction to rule on the claims filed against the bank in Luxembourg by relying on its status as co-defendant (Paris Court of Appeal, 18 October 2011, no. 11/03572). This reasoning has been confirmed by the French Supreme Court which holds that the possible application of different laws to the relationships of the client with each entity does not call into question the possibility of ruling on the two actions at the same time pursuant to the applicable texts.

The grounds of the decision

The decision of 26 September 2012 applies Regulation (EC) no. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I Regulation") and, in particular, Article 23. This Article notably provides that the jurisdiction of the chosen court is exclusive unless otherwise agreed between the parties.

This decision gives rise to two preliminary observations. Firstly, the acceptance of the jurisdiction clause was not challenged. Indeed, the appellate decision specified that it had been proven that the client had accepted the applicable general conditions by signing them. The issue did thus not relate to the enforceability of the clause and the question raised before the Supreme Court solely related to the validity of the clause.

Secondly, one can wonder about the status of the client, the latter being an individual. Was she acting personally or professionally? In any case, it is Article 23 of the Brussels I Regulation that is referred to in the decision of 26 September 2012. This Article is meant to be generally applied unlike, notably, Article 17 of the same Regulation, which applies to jurisdiction clauses involving consumers (the latter benefiting from more protective rules).

By referring to the "potestative" nature of the clause, the French Supreme Court considers it to be contrary to the object and purpose of Article 23 of the Brussels I Regulation. Even though the decision does not contain any reference to the law applicable to the clause in question, pursuant to Article 1170 of the French Civil Code, a condition is said to be potestative when it "*subjects the performance of the agreement to an event that one of the contracting parties can trigger or prevent*". Between the lines, the Court considers that the two parts of the clause are incompatible: if the parties grant exclusive jurisdiction to the court they choose, one of the parties cannot then retain the right to bring proceedings before another court with jurisdiction. Otherwise, this would mean that only the other party would be forced to comply with the adopted clause.

The French Supreme Court thus seems to dismiss the litigious clause on the ground that the party benefiting from the clause (the bank) could decide alone whether or not to apply it when suing a client. In this respect, the French Supreme Court has probably not been indifferent to the fact that the dispute concerned a significant bank and a mere individual, even though nothing proves that the latter did not act professionally and nothing enables to limit the scope of this interpretation of Article 23 of the Brussels I Regulation.

The unsettled questions

It is rather interesting to note, like the Paris Court of Appeal, that the Brussels Convention of 27 September 1968, applicable before the entry into force of the Brussels I Regulation, explicitly provided for the existence of clauses concluded in the exclusive interest of only one party. Pursuant to Article 17 of the Brussels Convention, which has now become Article 23 of the Brussels I Regulation, "*if an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention*".

As the European legislature did not provide any explanations regarding the removal of this paragraph at the time of the genesis of the Brussels I Regulation, legal authors are currently divided in this respect. Some authors consider that such clauses are no longer available, whilst others believe that the principle remains. In the case at hand, the Court of Appeal chose the second position by ruling that this principle remains valid under the Brussels I Regulation but "*does not authorise clauses that leave the choice of a court at a party's discretion*".

The French Supreme Court did not explicitly end this debate, unless one considers that all the clauses provided in the interest of one of the parties are potestative clauses and ought to be deemed to have never existed. In theory, the question of whether the parties can provide for a jurisdiction clause in favour of one party remains. This question could even be referred to the Court of Justice of the European Union, which may interpret Article 23 of the Brussels I Regulation. In practice, there is also the question of knowing whether one can imagine a clause that complies with the indications of the Appellate Judges, i.e. a clause according to which the favoured party, pursuant to the common intention of the parties, is not entitled to discretionarily choose the court with jurisdiction. Pursuant to the reasoning of the Appellate Judges, case law should specify whether a clause whereby the bank would reserve the right to choose among a few specifically determined courts could eventually be considered to be valid.

Furthermore, one can question the method used by the French Supreme Court. Indeed, the Court refers to a substantial condition that does not result from Article 23 of the Brussels I Regulation, but can only result from a reference to national law. Yet, on the contrary, European case law has always privileged an autonomous assessment of the validity of the clauses, by strictly focusing on the formal conditions laid down by Article 23 of the Brussels I Regulation and excluding references to national laws.

Moreover, the issue relating to the determination of the law that prohibits the potestative conditions still remains. This prohibition exists under French law and under the laws of Luxembourg. This question is interesting in order to identify the law that governs the validity of the jurisdiction clauses and to determine whether the French Supreme Court applied, in the case at hand, the jurisdiction clause or referred to the principles of French law. In this respect, it ought to be noted that, in the scope of the recent reform of the Brussels I Regulation, a provision was added to Article 23 specifying that the clause must not be null and void (as to its substance) pursuant to the law of the chosen court.

Conclusion

In any case, the solution of the French Supreme Court, which considers, *in abstracto*, that the clauses in question are contrary to the objectives of the Brussels I Regulation can seem surprising. Indeed, this restrictive position towards a common practice and which seemed to be explicitly authorised under the Brussels Convention contrasts with the objectives of foreseeability and legal security resulting from the Brussels I Regulation. It is on the basis of these very

objectives that the Court of Justice of the European Union, when it is questioned on the provisions of Article 23 of this text, tends to favour the applicability of the jurisdiction clauses.

Furthermore, the French Supreme Court did not have to refer to the possibly potestative nature of the clause to grant jurisdiction to the French courts. After having noted the dissymmetrical nature of the litigious provision, it could have inferred that the clause did not grant exclusive jurisdiction to the courts of Luxembourg, as provided for by Article 23 itself, which would also have enabled the client to recover her freedom to act.

To conclude, it is difficult to determine whether this is a unique decision that will remain isolated and the solution of which may soon be reversed by a change in position of the French Supreme Court or a decision of the European court, or if this solution, the exact scope of which remains vague, is intended to last. Until we obtain an answer, a cautious position would result in changing the wording of the clauses for future contracts (either by specifying that the clause does not grant exclusive jurisdiction enforceable against clients, or by removing the part according to which the bank reserves the right to depart from it). It would also be advisable not to apply the second part of the clause in existing contracts when proceedings are initiated against clients (i.e. refer a case to the court of the client, which will in any case have jurisdiction as court of the defendant).

Thomas Rouhette
Partner, Paris
thomas.rouhette@hoganlovells.com

Christelle Coslin
Senior Associate, Paris
christelle.coslin@hoganlovells.com

Actions for declaratory judgments of non-liability in matters relating to tort: *forum shopping* is now also available for the presumed author of an offence

In an important decision of 25 October 2012, the Court of Justice of the European Union (the "CJEU") ruled that "*an action for a negative declaration seeking to establish the absence of liability in tort, delict, or quasi-delict falls within the scope of*" Article 5.3 of EC Regulation no. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I Regulation") (*Folien Fischer*, no. C-133/11). This decision, which does not follow the opinion of the Advocate General, could encourage the phenomenon of *forum shopping* within Member States as well as the "torpedo" strategies on the part of litigants.

The case referred to the CJEU

Folien Fischer, a Swiss company, sells, among other products, laminated paper and adhesive film in Europe and notably in Germany. Fofitec, also a Swiss company and belonging to the same group as Folien Fischer, holds different patents in the same field. The Italian company Ritrama develops, produces and sells various kinds of laminates and multilayer films. In a letter sent to Folien Fischer in March 2007, Ritrama alleged that Folien Fischer's distribution policy and its refusal to grant patent licences were contrary to competition law.

Folien Fischer and Fofitec applied for a negative declaration before the Court of Hamburg, in Germany. Their aim was to obtain a court ruling under which, on the one hand, Folien Fischer would not have to end its sales practice of granting discounts and drafting distribution contracts and, on the other hand, Ritrama would not be entitled to have this sales practice end or to obtain compensation. Following the initiation of this action for a declaratory judgment of non-liability, Ritrama and its Swiss subsidiary, through which it allegedly distributes its products notably in Germany, brought an action for compensation before the Court of Milan, Italy. To support their claim for damages, as well as for a ruling against Fofitec for the latter to grant forced licences for the patents at stake, they asserted that Folien Fischer and Fofitec's conduct was anti-competitive.

The German first-instance and appellate courts declined their international jurisdiction over the action for a declaratory judgment of non-liability brought by Folien Fischer and Fofitec on the ground that an action of this type was designed to establish that no tort had been committed. The German Supreme Court decided to refer a question for a preliminary ruling to the CJEU in order to know whether such an action falls within the scope of the jurisdiction laid down in Article 5.3 of the Brussels I Regulation.

The logical sequel of the *Ship Tatry* decision

To answer the question referred to it, the CJEU first considered that the concept of "*matters relating to tort, delict or quasi-delict*" in Article 5.3 of the Brussels I Regulation does not exclude from its scope of application actions for declaratory judgments of non-liability. In this respect, the CJEU did not agree with the opinion of the Advocate General, who had asserted that, in the *Kalfelis* and *Tacconi* decisions, it had been recalled that Article 5.3 of the Brussels Convention "*covers all actions which seek to establish the liability of a defendant and which are not related to a "*contract*" within the meaning of Article 5(1) of the Convention*" (*Kalfelis*, 27 September 1988, no. C-189/87, and *Tacconi*, 17 September 2002, no. C-334/00).

The CJEU then stated that, in the scope of the Brussels I Regulation, the choice of jurisdiction between the court of the defendant's domicile (Article 2) and the courts with special jurisdiction pursuant to Article 5 is based on the existence of a particularly close connecting factor between the claim and the courts of the place where the harmful event occurred or may occur. The CJEU added that the objectives of foreseeability of the court with jurisdiction and of legal security pursued by this provision do not relate to the allocation of the respective roles of claimant and defendant, or to the protection of either of them, contrary to the provisions of Sections 3 to 5 of Chapter II. Once again, the CJEU did not adopt the same position as the Advocate General, who had interpreted the choice of jurisdiction between the place of the causal event and the place of occurrence of the damage, created by the famous *Mines de potasse d'Alsace* decision (30 November 1976, no. 21-76), as being the result of seeking to give an advantage to the alleged victim, who usually acts as claimant.

The CJEU therefore considered that the application of Article 5.3 of the Brussels I Regulation is not subject to the condition that the alleged victim must be the one to introduce the action. Even though it admitted that the interests of the claimant in an action for a declaratory judgment of non-liability are different from those in a "normal" action for liability, it noted that the examination covers the same factual and legal elements.

In the *Ship Tatry* decision of 6 December 1994 (no. C-406/92), the CJEU, while interpreting the provision on *lis pendens* (Article 21 of the Brussels Convention, which became Article 27 of the Brussels I Regulation), had previously stated that a claim seeking to establish the liability of the defendant for a loss (and have that defendant ordered to pay damages in this respect) has the same cause and purpose as a claim brought by the same defendant seeking to establish that it is not liable for such loss.

Lastly, the CJEU recalled that the court hearing the matter must first of all determine its jurisdiction in light of the provisions of the Brussels I Regulation (and thus the possible existence of a connecting factor with its territory), before examining the admissibility or validity of the action for a declaratory judgment of non-liability, which depends on the law of the forum. As a consequence, the distinctive nature of an action for a declaratory judgment of non-liability (where the roles between claimant and defendant are reversed), does not have any impact on a national court's examination of its jurisdiction (where all that is required is the existence of a connecting factor with the State of the forum).

The CJEU therefore concluded that if the elements at stake in the action for a declaratory judgment of non-liability can prove the connection with the Member State in which the damage occurred (or, if relevant, the causal event), then the courts of that State can accept jurisdiction pursuant to Article 5.3 of the Brussels I Regulation.

Probable increase in the number of actions for declaratory judgments of non-liability

The *Folien Fischer* decision will obviously have consequences for courts (often part of a Common Law system) that agree to rule on declaratory judgment actions.

The alleged tortfeasor will now be able to "choose its court" among the courts with jurisdiction, provided that it brings the action before the victim. The combination of the *Ship Tatry* and *Folien Fischer* decisions strengthens the principle of equality of arms between litigants, by enabling the author of the damage to choose the court and, if relevant, benefit from the strict rules of *lis pendens* "*first come, first served*", which were initially reserved for the victim of the tort. As a result, when litigation is looming, the alleged tortfeasor and the victim need to race each other to secure their preferred court.

Probable indirect effects in the Member States that dismiss actions for declaratory judgments of non-liability

In light of current European case law, the *Folien Fischer* decision will also probably have indirect effects in the Member States, such as France, that dismiss declaratory judgment actions.

In France, the claimant must prove an existing, actual and legitimate interest in having the court rule on the claims. In the absence of such interest, the action may be deemed inadmissible (Articles 30 and 31 of the French Code of Civil Procedure). This principle prohibits litigants from bringing a case before a French court before the occurrence of a dispute. There are, however, a few legal exceptions to this (for instance, an action for a declaratory judgment of absence of infringement of a patent, under Article L. 615-9 of the French Code of Intellectual Property, or an action for the verification of written documents, under Article 285, paragraph two, of the French Code of Civil Procedure).

French courts have also admitted declaratory judgment actions, mainly in matters relating to the status of persons with an element of foreign origin, when there is a serious need to dispel doubts surrounding a decisive situation for the claimant (for instance, on the enforceability of a foreign divorce ruling). However, one can wonder whether these decisions represent a true exception to the requirement of an existing and actual interest, due, precisely, to the existence of this need. The general trend of case law is yet to rule that pure actions for declaratory judgments are inadmissible as the French courts are not instituted to issue consultations outside disputes.

If a claimant, as the alleged tortfeasor, were to bring an action for a declaratory judgment of non-liability before a French court by grounding its jurisdiction on the provisions of Article 5.3 of the Brussels I Regulation, the court would first have to examine the extent to which the tort, assuming it is established, occurred or may occur in France and, if this is the case, would have to accept jurisdiction. Then, it would have to examine the admissibility of the action in light, notably, of the requirement of an existing, actual and legitimate interest. Until the ruling concerning this point has been handed down, Article 27.2 of the Brussels I Regulation on *lis pendens* obliges any other court to which the matter has been referred after the first court to decline jurisdiction to the benefit of the French court.

If the action is, subsequently, held inadmissible in France, the author of the damage will not be able to have his/her rights examined in France as initially sought. This may be seen as failure.

However, pursuant to Article 33 of the Brussels I Regulation, the French decision holding the declaratory judgment action inadmissible may be recognised in other Member States without the need for another procedure. As a consequence, the existence of this decision in France would, in our opinion (and in the opinion of a number of legal authors), prevent the victim from bringing an action to have the tortfeasor ordered to pay damages before the courts of another Member State with jurisdiction. Otherwise, it would result in two courts of two Member States ruling, respectively, on only one dispute and would thus give rise to the risk of having, in two Member States, two incompatible decisions, i.e. that "*entail legal consequences that are mutually exclusive*" (*Hoffmann*, 4 February 1988, no. C-145/86).

This could be the case with a French decision that refuses to declare anything and a foreign decision, between the same parties, that orders the tortfeasor to pay damages. In the *Italian Leather* decision (6 June 2002, no. C-80/00), the CJEU followed *Hoffmann* by solely relying on the effects of the judicial decisions to rule that a foreign judgment ordering a prohibition, in the scope of interim proceedings, was incompatible with an interim ruling of another Member State refusing to grant the same measure for reasons of inadmissibility. One might ask whether this case law will be applied to an action for a declaratory judgment of non-liability that would be deemed inadmissible in a Member State. Should that be the case, such a decision of inadmissibility would be incompatible with the decision of another Member State against the author of the damage.

Should the *Hoffmann/Italian Leather* case law be maintained, the victim of the damage could be left with no other choice but to bring an action for liability in France. This second action in France would not be blocked by the negative *res judicata* for at least two reasons. Pursuant to the definition of *res judicata* in Article 1351 of the French Civil Code, the "claim" would not be the same (in one case, an action for a declaratory judgment of non-liability and, in the other, an action for liability). Furthermore, the existing and actual interest, which the alleged author of the damage as claimant did not have in the first action, does exist for the victim. The issue settled by the first French decision does not, therefore, risk being reversed by this second action.

By ruling that actions for declaratory judgments of non-liability fall under the scope of Article 5.3 of the Brussels I Regulation, the *Folien Fischer* decision, combined with the current case law of the CJEU in matters relating to the recognition of decisions, could thus enable the author of a tort to *in fine* benefit from a true choice of jurisdiction between the court of the place where the damage occurred or may occur and the court of the place of the defendant's domicile, even if the court hearing the action for declaratory judgment refuses to hold it admissible (as would be the case before the French courts).

In its response to the Green Paper on the review of the Brussels I Regulation, France had suggested ending the harmful effects, regarding *lis pendens*, of the rule granting priority to the first court hearing the matter in three cases. One such case referred to the situation where an action for a declaratory judgment of non-liability was referred to the first court before the referral of an action for liability before a second court. In such a situation, the French response suggested granting priority to the latter. This ingenious solution has unfortunately not been adopted in the review of the Brussels I Regulation, which gave rise to the adoption of EU Regulation no. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which will come into force on 10 January 2015. "Torpedo" actions could therefore still prove successful for some time to come.

Cecile Di Meglio
Senior Associate, Paris
cecile.dimeglio@hoganlovells.com

A further step towards the damage to the environment being recognised by the law

On 25 September 2012, the French Supreme Court handed down its decision in the *Erika* case, which had been eagerly awaited since the controversial Opinion of the Advocate General (see *Towards the introduction of a notion of environmental loss in the French Civil Code?*, by Christine Gateau and Damien Bergerot, Paris International Litigation Bulletin no. 4, October 2012).

Even though the French Supreme Court acknowledged the existence of a head of damage relating to the environment, the French Minister of Justice, Mrs. Christiane Taubira, expressed her intention to have this head of damage officially governed by a law.

The damage to the environment is acknowledged by French Courts

Disregarding the Opinion of the Advocate General, the French Supreme Court first confirmed the jurisdiction of the French courts to rule on the pollution caused by a foreign ship having sunk beyond the territorial waters, in the exclusive economic zone.

The French Supreme Court then dismissed the appeals lodged against all of the criminal sanctions that had been ordered by the Court of Appeal and ruled that the civil liability of the charterer of the ship had been incurred pursuant to the International Convention of 1992 on civil liability for oil pollution damage.

Pursuant to Article V(2) of this Convention, the charterer of the ship is, in principle, granted immunity in the case of oil pollution damage except where the damage "*resulted from* [a] *personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result*". In the case at hand, the appellate judges had refused to find the charterer of the *Erika* guilty of such a fault. The French Supreme Court quashed this point of the decision and considered that the facts noted by the Court of Appeal did establish recklessness.

Finally, the French Supreme Court acknowledged the existence of a head of loss relating to the pure environmental damage to nature, which consists of "*the direct or indirect damage to the environment resulting from the offence*".

Despite this case law, the French Minister of Justice insisted during a conference organised at the French Senate on 31 October 2012 on the necessity of a law: "*We don't have the right tools, in our legal system, to deal with the problem of damage to the environment. For me, the decision of the French Supreme Court has certainly acknowledged this concept, but hasn't established it*".

Towards a law establishing a head of damage relating to the environment

The bill of Senator Bruno Retailleau for a new Article 1382-1 to be included in the French Civil Code does not answer all the possible questions. This Article would be drafted as follows: "*A person whose actions cause damage to the environment shall remedy such damage. Damage to the environment shall first be remedied using human resources*".

Firstly, the requirement of a personal nature of the damage cannot be transposed into an environmental civil liability system. Indeed, damage to the environment does not concern anyone in particular. Compensation for this kind of damage is, therefore, blocked by the traditional principle laid down in Article 2 of the French Code of Criminal Procedure, which subjects compensation to proof of the personal nature of the damage.

Accordingly, it is necessary to know precisely who will be entitled to claim on this ground. For now, associations and local authorities benefit, pursuant to the so-called Barnier Law of 2 February 1995, from a general power to exercise the rights granted to civil parties. In its Report released in January 2012, entitled "*How to better remedy damages to the environment*", the *Club des Juristes* (a French legal think tank) recommended granting this power to other entities like the French Environment and Energy Management Agency (ADEME, p. 63 and 69, http://www.leclubdesjuristes.com/notre-expertise/publications-et-travaux/inscrire-la-responsabilite -environnementale-dans-le-code-civil). Yet, the bill does not address this specific issue.

Secondly, the principle of giving priority to remedies that use human resources will result in the responsible

person submitting for the courts' approval the appropriate compensation measures.

Thirdly, if it is established that remedy using human resources is not possible or that monetary compensation is required on an incidental basis, courts will have the difficult task of determining an appropriate monetary equivalent.

In light of these unresolved questions, the Law Commission of the French Senate amended the initial wording of the bill. As a consequence, the amended bill includes Articles 1382-19, 1382-20 and 1382-21 in the French Civil Code.

The most important change concerns the extension of the proposed liability rules since the concept of a fault is replaced by a system of objective liability. Thus, Article 1382-19 of the French Civil Code would provide that "*A person who causes damage to the environment shall remedy such damage*".

The Law Commission of the French Senate has also provided that should it be impossible to remedy the damage to the environment using human resources, courts will be entitled to order the payment of monetary compensation to the State to be used to protect the environment (Article 1382-20, paragraph 2, of the French Civil Code). Lastly, Article 1382-21 of the French Civil Code would introduce the possibility of obtaining the reimbursement of the expenses incurred to prevent or reduce the consequences of such damage.

This new version of the bill has been adopted by the Law Commission of the French Senate on 17 April 2013.

One week later, on 24 April 2013, the Minister of Justice set up a working group chaired by Professor Yves Jégouzo. This group has been requested to file a report in September 2013 on the introduction of the environmental loss in the French Civil Code. The Minister of Justice has announced that this report will be used as basis for the bill that will be submitted by the Government at the end of the year.

For now, the French Senate has unanimously adopted, on 16 May 2013, this version of the bill amended by the Law Commission (still subject to the review of the French National Assembly). It was acknowledged on the same day by the President of the French National Assembly and submitted to the Commission of Constitutional Laws, Legislation and General Administration of the French Republic. No calendar has been set yet, but the discussions of the Members of Parliament on such a sensitive topic will certainly be very lively.

Christine Gateau
Partner, Paris
christine.gateau@hoganlovells.com

Anne-Laure Judlin de Hemptinne
Associate, Paris
anne-laure.judlindehemptinne@hoganlovells.com

French anti-corruption agency advocates in favour of a new French Bribery Act

In its 2012 annual report, published in July 2013, the French anti-corruption agency, the *Service Central de Prévention de la Corruption* (Central Office for the Prevention of Corruption, or "SCPC"), issued several significant recommendations following a thorough analysis of the risks faced by companies in relation to corruption issues. In particular, SCPC called for the enactment under French law of an obligation for companies to implement an anti-corruption programme, which would be similar to the requirement imposed on businesses under the 2010 UK Bribery Act.

What is SCPC?

SCPC is an inter-ministerial agency, which is part of the French Government and which is formally attached to the French Ministry of Justice. This agency was created by Law no. 93-122 of 29 January 1993 on the prevention of corruption and the transparency of business and public procedures. SCPC's main role is to collect and use, for prevention purposes, information regarding corruption-related offences. In this respect, SCPC publishes an annual report providing detailed statistics on condemnations for these offences. This annual report often contains proposals for legislative reforms made to the Government in order to improve the means available to prevent fraud and fight against corruption in France.

In addition, requests for opinions may also be submitted to SCPC by administrative and judicial authorities, in response to which SCPC drafts technical notes. Furthermore, SCPC plays a significant role in training various audiences (police, judges and public prosecutors, business organisations) in relation to the prevention of corruption. In this respect, SCPC cooperates with businesses and assists them with the setting up of anti-corruption compliance programmes and whistleblowing systems.

Finally, SCPC has a rising role on the international scene as the representative institution of France on corruption issues. SCPC participates in numerous working groups dedicated to the prevention and fight against corruption (notably the Group of States against corruption under the aegis of the Council of Europe, also known as GRECO; the United Nations Office on Drugs and Crime; OECD; G20; the World Bank, etc.).

That being said, SCPC has no investigation or enforcement power. In particular, SCPC cannot take any sanction against any entity or individual. Yet, should SCPC's agents become aware of the perpetration of an offence, they should provide this information to the Public Prosecutor pursuant to Article 40, paragraph 2, of the French Code of Criminal Procedure.

Situation of corruption in France

SCPC reports that in 2012, 193 new corruption cases were investigated by French Public Prosecutors, among which only 29.5% led to prosecution. The main reasons why less than a third of these cases were prosecuted are that either the investigation concluded that no offence had been committed or there was not sufficient evidence of the perpetration of the offences.

Concerning final sentences (i.e. against which no appeal is possible), the 2012 report notes a significant rise in the number of condemnations for corruption-related offences (159 in 2011, against 115 in 2010 and 120 in 2009).

This being said, SCPC explains that no final sentence was entered into in 2011 with respect to the corruption of foreign officers. Only on one occasion was a corporation held criminally liable for such offence: in 2012, a major French group was sentenced to pay a fine of 500,000 Euros for corruption of foreign officers (see *"Money, politics, power: corruption risks in Europe": the new report published by Transparency International on 6 June 2012*, Paris International Litigation Bulletin no. 4, October 2012). This first-instance decision, which was widely publicised, is nevertheless the subject of an appeal. The lack of final condemnations (especially against corporations), when compared with the role of France in international trade, was strongly criticised by OECD when it performed its Phase 3 assessment of corruption in France in the scope of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Furthermore, if the maximum sanctions incurred by the perpetrator of acts of corruption may appear to be high in theory (for example, a 10-year prison sentence and a

fine of 150,000 Euros for individuals giving a bribe and a fine of 750,000 Euros for legal entities), in practice the average amount of fines remains low (850 Euros for active corruption in 2011) and prison sentences are rarely ordered. SCPC underlines that the fine incurred in reality is often much lower than the profit that the perpetrator may hope to make through corruption.

Hence, SCPC considers that the sanctions for corruption in France are not dissuasive enough and lack effectiveness in practice. SCPC thus recommends increasing the sanctions incurred for corruption-related offences.

SCPC's assessment of risks incurred by businesses in relation to corruption issues

SCPC has studied the anti-corruption systems put in place by the 40 most important companies listed on the Paris Stock Exchange ("CAC 40 companies"). This analysis is based on public documentation, as well as information voluntarily communicated by these firms in response to questions asked by SCPC. SCPC states that the fact that a significant number of these companies have already implemented such a programme is encouraging, even though smaller companies may not have done so yet. In any case, SCPC's view is that there is room for improvement even for CAC 40 companies, as SCPC defines the compliance systems implemented by some of them as insufficient.

Furthermore, SCPC acknowledges that for French businesses, complying with the various international and national anti-corruption laws and guidelines that may apply to or affect them could be a challenge. In this respect, in its 2012 report, SCPC dedicates an entire section to presenting the Foreign Corrupt Practices Act (the "FCPA", which was enacted in 1977 in the US) and the 2010 UK Bribery Act (in force since July 2011 in the UK). SCPC underlines the extra-territorial dimension of both these Acts and the significance of the sanctions provided for in those texts. SCPC also highlights that under the 2010 UK Bribery Act, a corporation may be held criminally liable for not having implemented an adequate anti-corruption compliance programme, whereas under the FCPA, such a programme may lead to a reduction of the amount of the fine sanctioning acts of corruption. SCPC also briefly refers to the law enacted in Italy on 30 November 2012, which notably increased the sanctions incurred for acts of corruption.

SCPC thus seeks to underline the various risks and costs that corruption issues may represent for French businesses: not only the criminal sanctions incurred by companies and their managers for committing bribery and corruption, but also all costs associated with

investigations and proceedings in relation to these facts, damage to the reputation, etc.

SCPC recommends the mandatory implementation and voluntary certification of anti-corruption programmes

In this context, SCPC urges French businesses to implement anti-corruption compliance programmes to limit their exposure to corruption risks. According to SCPC, compliance procedures should be based on the requirements of the strictest anti-corruption laws, i.e. FCPA, 2010 UK Bribery Act and French law. The main points that should be addressed in such programmes concern, in particular, the anti-corruption directives given by the firm's top management, the implementation of anti-corruption training for employees and disciplinary sanctions against those breaching the company's anti-corruption directives, the protection of whistleblowers, or the organisation of the compliance function within the company, etc.

Furthermore, one ground-breaking proposal of SCPC consists in making the implementation of anti-corruption compliance programmes mandatory, via the enactment in France of a legislation inspired by the 2010 UK Bribery Act: "*France could adopt a legislation that would be immediately and extra-territorially applicable based on the model of the above mentioned English and US laws, which would introduce into French law a compliance obligation for companies* […]". As a result, French companies could be compelled to take all necessary measures available to prevent corruption, the lack of which would then trigger criminal sanctions. SCPC considers that such legislation would be helpful and even protective for French companies, because it would precisely set out the rules they have to comply with in an international context where several laws and recommendations may concurrently apply.

SCPC highlights that the same new legislation could attribute an additional mission to SCPC: advising companies with respect to the prevention of corruption. Indeed, SCPC would like the Law of 1993 to be amended in order to explicitly allow companies and individual citizens to refer questions to SCPC, which is not yet possible. This clearly stems from its 2012 report which notes SCPC's wishes to assist businesses with the implementation of preventive systems against corruption.

In this respect, SCPC offers to prepare and publish general guidelines and good practices to help companies in the implementation of efficient anti-corruption compliance programmes. SCPC notes that the creation of such documentation would require coordination with business organisations and would also rely on existing international guidelines (such as OECD's Good Practice Guidance on Internal Controls, Ethics and Compliance).

In addition, SCPC advises French businesses to have their anti-corruption systems certified by appropriate organisations. This certification process, led by an independent third party, would aim at giving a written confirmation to businesses that their compliance system is adequate and efficient, and fulfils legal requirements resulting from international conventions and recommendations as well as national laws.

SCPC acknowledges that the certification is only helpful if the certifying entity is reliable and competent It also acknowledges that, in this respect, standards such as the BS 10500 (created by the British Standard Institution) are a useful tool for both companies and entities certifying compliance programmes. In order to encourage the development of the certification of anti-corruption programmes, SCPC suggests limiting to approved entities the right to issue valid anti-corruption certificates. In France, this type of approval is given by COFRAC (French Committee of Accreditation) and is currently not mandatory with respect to the certification of anti-corruption programmes.

SCPC also recommends amending the French Blocking Statute

SCPC explains that a significant and growing number of French companies are involved in foreign judicial or administrative proceedings, during the course of which they are obliged to cooperate with foreign authorities and directly provide them with confidential documents regarding their internal structure and business model.

In such circumstances, the French Blocking Statute (resulting from French Law no. 68-678 of 26 July 1968, relating to the communication of economic, commercial, industrial, financial or technical documents and information to foreign individuals or legal entities, as modified by French Law no. 80-538 dated 16 July 1980) is rarely invoked by French companies, even though this text prohibits, subject to criminal sanctions, the communication of information or documents in the scope of foreign proceedings, if performed outside the provisions of The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. SCPC believes that French companies may notably fear sanctions from foreign authorities if they do not disclose the requested information and that non-cooperation with these authorities might damage their business reputation.

SCPC reports that in 2011, an innovative procedure was put in place between French and US authorities, with SCPC serving as an intermediary to ensure that documents requested by the US authorities were really useful for the purpose of the US proceedings and did

not affect the interests protected by the French Blocking Statute. SCPC consulted the relevant French Ministries to know which restrictions to apply to the disclosure of information. SCPC thus advocates in favour of an amendment of the French Blocking Statute in order for it to systematically act as an intermediary between US authorities (such as the Department of Justice and the Security Exchange Commission) and the French companies in all corruption cases.

Conclusion

SCPC's 2012 report deserves attention at a time when corruption, especially committed in the course of business, is a growing concern for both the French Government and the media, and when every week sees a new corruption case (real or imagined) arise. In particular, SCPC's 2012 report echoes some of the recommendations and criticisms put forward by OECD during its recent review of the situation of corruption in France at the end of 2012. In such a context, SCPC's recommendations, or at least some of them, could be perceived by the French legislator as possible worthwhile solutions.

In any case, many companies could usefully examine the preliminary indications given by SCPC as to what constitutes good anti-corruption practices: when presenting its study about CAC 40 companies, SCPC gives concrete and specific examples of anti-corruption practices implemented by those companies. Given its statutory goals, cooperating with SCPC should be a possible path for businesses to follow. Indeed, SCPC appears to be more willing to inform, assist and protect French companies regarding the anti-corruption international environment in which they are operating, rather than merely collect information that could then be used against businesses. Yet, the latter option always remains a possibility, and businesses should be aware that the risk of self-incrimination can never be excluded completely.

Thomas Rouhette
Partner, Paris
thomas.rouhette@hoganlovells.com

Christelle Coslin
Senior Associate, Paris
christelle.coslin@hoganlovells.com

Interview

Mediation, Situation in France - Interview with Sophie Henry, General Delegate of the Centre for Mediation and Arbitration of Paris (CMAP)

Sophie Henry is the General Delegate of CMAP. She used to practice law as a Paris Bar attorney for ten years.

She then was an Expert with the Section for the Single Market, Production and Consumption of the European Economic and Social Committee during one year

With the CMAP since 2000, she has held various positions: she was consultant and organised training regarding mediation and arbitration, then was in charge of European programmes, and became General Secretary in 2005.

First of all, how would you describe the place of mediation in commercial matters today in France?

Before answering this question, I would like to define the word mediation. It can refer to different realities in many fields (civil, commercial, domestic, criminal, etc.).

European Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters, transposed into French law by Order no. 2011-1540 of 16 November 2011, has the merit of defining the term mediation. In the Order, mediation is defined as "any *structured process, however named, whereby two or more parties attempt to reach an agreement for the amicable settlement of their dispute, with the assistance of a third party, the mediator, chosen by the parties or appointed, with their consent, by the court before which the dispute has been brought*" (Article 21 of the Order).

Nowadays, commercial mediation, which refers to disputes between two or more companies, is still evolving. It is difficult to determine its place in France. We do not have any statistical data from the Civil or Commercial Courts and the French Ministry of Justice does not have any such statistics at the national level. To the best of my knowledge, except for the Centre for Mediation and Arbitration of Paris ("CMAP"), no institution publishes statistics on commercial mediation.

We can thus only give you the results of our activity: for four years now, the CMAP has been publishing a Mediation Barometer. This Barometer shows the number of cases handled (an average of 300 per year), the success rate, the activity sectors, the typology of the disputes, the cost of a mediation, etc.

In recent years, the Barometer reveals that there has been no significant rise in the number of cases, but that those that are submitted to us are more complex and have significant financial stakes.

What are the particularities and the different types of mediation available when a dispute arises between two companies?

When a dispute arises between two companies, two types of mediation are available:

- judicial mediation: created by Law no. 95-125 of 8 February 1995 and Decree no. 96-652 of 22 July 1996, the mediation ordered during legal proceedings is provided for in Articles 131-1 to 131-15 of the French Code of Civil Procedure (the "CCP"). During legal proceedings, it is possible, at any moment, on the court's initiative or at the parties' request with the court's agreement, to initiate a mediation.
- contractual mediation (pursuant to Articles 1530 *et seq*. of the CCP): the process is initiated by the companies themselves, either at the request of only one of them, or at their joint request.

Whatever the terms and conditions of implementation (by the parties or by the court), the rules governing mediation are the same: voluntary process, freedom of the parties to take part in a mediation or to put an end to it, confidentiality of the exchanges, competence and impartiality of the mediator, suspension of the limitation periods during the mediation (in the case of a contractual mediation in order to protect the parties' rights to later bring legal proceedings), and possibility to homologate the mediation agreement.

Let's talk about numbers. Can you tell us the success rate of a mediation? Its cost? Its average duration?

The overall average success rate of a mediation procedure at the CMAP is 70% (80% for contractual mediations, 60% for judicial mediations). It is interesting to note that this rate of 70 to 80% is almost the same from one year to the other and is identical to the rate published by Anglo-Saxon institutions (see study of Rhys Clift, September 2011, p. 49).

Mediators are paid on an hourly basis (hourly rate between 300 and 600 Euros depending on the stakes of the dispute). At the CMAP, the average number of hours is 15 hours (divided up between one or several meetings), i.e. an average cost of 4,500 Euros to be shared between both parties.

Why use the CMAP? What kind of cases does this Centre deal with?

The CMAP was created 17 years ago by the Paris Chamber of Commerce and Industry with the support of the Paris Bar, the Hauts-de-Seine Bar, the Paris Commercial Court, the French Council of Chartered Accountants and the French National Committee of the International Chamber of Commerce. It aims at enabling companies to settle their disputes through mediation and arbitration, which constitute alternatives to legal proceedings.

The CMAP broke new ground in the field of commercial mediation and gained unequalled experience in this area. At the beginning, the CMAP only aimed at settling disputes between companies in France and abroad: breaches of contracts, disputes between partners, intellectual property issues, etc. At the request of Human Resources Directors, we now also intervene, and have been doing so for some years, in disputes occurring within the company (between employees and executives, between teams, between two employees, etc.).

Could you please describe the profile and the training underwent by your mediators. How are they selected before becoming mediators for the CMAP? Does the CMAP regularly assess mediators?

Profile of the mediators

We have many different profiles. As far as mediations for companies are concerned, the mediator can be, regarding legal professions, a lawyer, a judge or an honorary commercial judge, a General Counsel, a notary or a Law professor, but also an accountant, an auditor, an engineer, a businessman, an architect, a doctor, etc.

It is important that the mediator has professional experience in order for him/her to be legitimate and efficient in assisting the parties. Even if a junior mediator, who just graduated from University, is creative, good at listening and at analysing, these qualities will be, in my opinion, insufficient to reassure two businessmen with 30 years of professional experience and lead them towards a settlement. Good knowledge of the professional world, regardless of the mediator's activity sector, seems essential to me.

At the CMAP, we require at least 10 years of professional experience to be a candidate for the function of mediator

Training

One needs to keep in mind that the role of mediator is not a regulated profession: the European Directive and the Order dated 16 November 2011 provide that the mediator must carry out his/her mission in an "*effective, impartial and competent way*", but do not require compulsory training. Everyone can be a candidate to become a mediator: there is no prior test and no control of the mediator's activity.

Yet, it is essential to take a training course to become a mediator: the mediator's role, the limits of his/her action and the ethics he/she has to comply with are critical points that must be taken into account by candidates.

Moreover, mediation is a structured process that cannot be improvised. Several steps must be complied with before reaching an agreement. Disregarding these steps would most probably lead to a failure of the mediation.

The CMAP, as many other institutions, offers training sessions. Our training lasts for seven days and covers theoretical and practical aspects (the training is validated by the French Bar Council).

At the end of the training, a test has to be taken by those who want to become members of the CMAP and be included on its list of mediators. This test includes a written part (consisting in a multiple-choice questionnaire) and a practical exercise during which the candidate plays the role of the mediator.

Approved mediators registered on the list of the CMAP then have to attend training sessions each year and their approval by the CMAP is re-examined annually.

What are the criteria to correctly select a mediator? How do you make sure they will be independent?

The goal is to appoint the appropriate mediator to help the parties, by taking into account the characteristics of the case and the parties' expectations relating to the mediation. Once the parties have announced their expectations regarding the mediator's profile, the mediator is chosen among all the approved mediators by the Mediation Commission of the CMAP, which is led by a Judge of the French Supreme Court and composed of representatives of the Centre's institutional partners.

Independence is an essential quality of the mediator which is at the basis of his/her role. The mediator must not have any personal or professional relationship with any of the parties. At the CMAP, we require mediators to sign a statement of independence, just like arbitrators. If, during the mediation, the mediator notices the existence of any factors likely to jeopardise his/her independence, we request him/her to inform the parties. The mediator can continue his/her mission subject to the parties' approval. Otherwise, the mediator must stay the mediation.

How can you ensure confidentiality of exchanges during a mediation?

For the record, mediators are bound by a duty of confidentiality regarding the dispute they have to settle and the existence and all aspects of the mediation entrusted to them.

This duty of confidentiality is general, absolute and not limited in time. The mediator can only be released from it under the conditions provided by law. Article 21-3 of the Law of 8 February 1995 (deriving from the Order of 16 November 2011) provides that:

- The mediator's observations and the statements made during the mediation cannot be disclosed to third parties or referred to or produced within the scope of legal or arbitral proceedings.
- There are two exceptions:
    - if there are imperious reasons of public policy or grounds relating to the protection of a child's best interests or someone's physical or moral integrity;
    - when the revelation of the existence of or the disclosure of the content of the agreement reached during the mediation is necessary for its implementation or enforcement.

When the mediator is appointed by the court, he/she shall inform such court if the parties were able to reach an agreement or not.

We ask the CMAP's mediators to sign a confidentiality agreement and the CMAP's Rules recall this essential principle which is imposed not only on the mediator but also the parties. If the dispute is particularly sensitive, the mediator can suggest that the parties prepare a very precise list of all the exhibits which cannot be produced outside the scope of the mediation.

Concerning the confidentiality of exchanges during the mediation process, it is the Counsel's responsibility to be careful about the elements that might be discussed during a meeting with all the parties and the ones for which separate meetings with the mediator will be necessary in order not to be disclosed to the other party.

What advice would you give a company in order to maximise the chances of success of mediation?

The first advice I would give is to make sure that mediation is the most appropriate solution to settle the dispute. The Counsel's role at this preliminary stage is essential. The BATNA (Best Alternative To a Negotiated Agreement) has to be considered.

Once the best alternative has been determined, the company will have to be careful regarding the choice of mediator and make sure that the latter has the skills and experience required to lead the mediation process. The mediator's personality is essential for the mediation's success.

The rest of the process then only depends on the parties' intention to reach a satisfactory agreement for each one of them.

Lastly, what do you think will be the future of mediation in France?

With the transposition of the European Directive of 21 May 2008, mediation benefits from a legislative context which is favourable to its development. Nevertheless, it has been noticed that companies still rarely use this tool. Awareness of this solution has to be increased. This will obviously have to be implemented by the persons initiating mediations, judges and lawyers. Judges are often still hesitant in using mediations, as it is a process for which the parties have to pay, whereas the justice and even the conciliation carried out by judges (judicial conciliation) are free.

French Bars have understood the advantages of mediation and now make lawyers aware, or even train them, to this alternative. The Paris Bar organised, on 25 October 2012, a conference on mediation called "*Generation mediation: justice is changing, what about You*?" and Mrs. Féral-Schuhl, President of the Bar, ended the conference by announcing that 2013 would be the year of mediation. She also declared her intention of supporting before the French Ministry of Justice the idea of creating a national observatory aiming at gathering information on the practices of mediation and the conditions to access the function of mediator.

The mobilisation of the Ministry of Justice would, therefore, be welcome to (finally?) enable the recognition of mediation as an efficient alternative to settle disputes.

.

Sophie Henry, General Delegate of the Centre for Mediation and Arbitration of Paris (CMAP)

.

In practice

CARPA

Do you recall hearing your lawyer talk to you about this barbaric acronym each time one of your cases requires a transfer of funds?

More than a mere acronym, the Lawyers' Pecuniary Payment Funds (*Caisses des Règlements Pécuniaires des Avocats* – "CARPA") appeared in 1954 with the publication of a decree enabling their institution. The Paris Bar Association thus created the very first CARPA on 28 May 1957 as an association governed by the Law on associations of 1901. The other French Bars progressively followed the Parisian example to enable lawyers to handle the funds of their clients via a local CARPA. The existence of these funds was finally established by the Laws of 31 December 1971 and 27 November 1991.

An unavoidable procedure and a tool to fight against money laundering

All lawyers exercising their activity in France must deposit in a CARPA account the funds they receive on behalf of their clients when these funds relate to a professional, judicial or legal instrument. This deposit is temporary as the lawyer must, following a control performed by CARPA, return/transfer these funds pursuant to the instructions of the client. This system enables to guarantee the origin of the funds while preventing money laundering, but also enables to avoid the misappropriation of these funds.

In order to achieve this goal, the lawyer must be able to prove, using an instrument as mentioned above, the purpose of all the amounts deposited in a CARPA account. With this control, CARPA checks the coherence of the transaction by verifying the origin of the funds and their destination, as well as the connection between the instrument and the financial transaction. Most transactions are not always subject to controls, but these are systematic for all the transactions from or to a foreign country. During this phase, the funds deposited in the CARPA account are not available.

Should a lawyer refuse or fail to provide these elements, CARPA can refer the matter to the Bar Association Council, which will be entitled, after an investigation, to take all necessary measures against the defaulting lawyer. Each lawyer must thus obtain clear information on the funds he/she may have to handle on behalf of clients.

There is only one case where the lawyer is authorised to directly use, either totally or partially, funds that relate to a case: the payment of his/her own fees. This specific exception yet requires the prior consent of the client, which is, if obtained, established by a direct debit mandate.

In Paris, the average time period to control cheques is 2 to 10 days. Yet, this period may vary depending on the nature and the drawer of the cheque in question. For bank transfers, most of the time, the control is done in 48 hours. Outside Paris, the applicable time periods are more or less long depending on the CARPA that is concerned, each Bar having its own local CARPA (all the different CARPAs are governed by UNCA – the National Union for CARPAs).

A functioning that is similar to that of a bank account

In practice, CARPAs work as a financial institution. Each lawyer or law firm has a sub-account with the CARPA of the Bar to which it or he/she belongs. Each case in which a movement of capital occurs must be registered with CARPA and is granted a specific number. This number is called a case number and is specific to that case. It does not change until the end of the matter.

Since the dematerialisation of civil procedure in France (see *The dematerialisation of French civil procedure*, by Christelle Coslin and Isabelle Mougin, Paris International Litigation Bulletin no. 2, January 2012, and *The dematerialisation of French civil procedure: more than ever a reality*, by Christelle Coslin and Isabelle Mougin, Paris International Litigation Bulletin no. 3, May 2012), lawyers can access an electronic platform, the RPVA, to perform daily judicial operations. CARPA was not spared dematerialisation as it has implemented a national Internet portal called "i-carpa", which enables lawyers to handle their sub-accounts more efficiently. Indeed, case registrations as well as deposit or withdrawal instructions are now all made online while the cheques and possible supporting documents are

still sent by mail. This tool has the advantage of providing a clear and immediate vision of a case and obviously enables to save time.

As essential bodies for lawyers and their clients, the different CARPAs still have quite a few fine days ahead of them.

Isabelle Mougin
Paralegal, Paris
isabelle.mougin@hoganlovells.com

Translator's corner

Arrêté, décret, ordonnance

In France, the Government, Ministries and Administrative authorities can each at their own level enact various binding instruments called *ordonnances, décrets* and *arrêtés*. Even though their purpose can be similar, in practice and in terms of translation they are quite different.

The *arrêtés* are generally enacted by administrative authorities such as town halls, prefectures and county or regional councils. In some cases, they can also be enacted by Ministries or within Ministries but only when their purpose is to organise their services. In concrete terms, an *arrêté* is a written enforceable decision enacted pursuant to a *décret*, a law or an *ordonnance*. It can have a regulatory scope when it establishes general rules to be applied by an undetermined number of people, or it can concern specific individuals, for instance when it appoints someone to a specific position.

The *décrets* are very similar to the *arrêtés*, the main difference being that they are enacted by the Prime Minister or the President and are published in the Official Journal of the French Republic. Like the *arrêtés*, they can either have a regulatory scope or concern specific individuals. There are different types of *décrets*: for instance, the autonomous *décret* (*décret autonome*), which concerns topics that do not fall under the scope of the law, the application *décret* (*décret d'application*), which specifies the terms and conditions for the application of a specific law and the distribution *décret* (*décret de répartition*), the purpose of which is to share the budgets between the different Ministries pursuant to the financing laws.

As for the term *ordonnance*, it has different definitions depending on context. In this specific administrative field, an *ordonnance* is a special measure requested and enacted by the Government in a field that usually falls under the scope of the law. To enact an *ordonnance*, the Government must first request the Parliament's authorisation to do so before submitting a special bill to it. Should the Parliament decide to ratify the text, the *ordonnance* becomes equal, in terms of value, to a law. Yet, should the Parliament refuse the text, it still keeps a regulatory nature. An *ordonnance* can be enacted, for instance, to transpose a European Directive into French law.

When examined in detail, these administrative instruments are easily understood in French. Translating them, however, is another story. The most confusing aspect relates to the fact that dictionaries often suggest the same word for the different concepts. For instance, for *arrêté*, dictionaries tend to suggest "order" or "decree", words which are also suggested for *décret* and *ordonnance*. Also, due to the fact that political systems are completely different from one country to another (in particular between France, the UK and the US), it is difficult to find the exact equivalents. So, how can one choose?

The easiest word to translate would be *décret* as it can be translated with the direct equivalent *decree*. Yet, one still ought to be careful due to the English definition of this word. Indeed, according to various dictionaries, it can either mean "an authoritative order having the force of law", "an edict, law, etc., made by someone in authority" or "the judgment or order of a court, especially in matrimonial proceedings". As a consequence, even though *decree* is an appropriate translation for *décret*, it might, in some cases, be necessary to provide a detailed explanation of the French term.

The translation of *arrêté* is a little trickier. Indeed, as mentioned above, dictionaries tend to suggest *decree* or *order*. Yet, even though an *arrêté* is quite similar to a *décret*, the only difference relating to the party enacting it, it is not possible to translate it with the same word. One solution would thus be to use the other suggestion *order*. Again, if the translation needs to be specific, one might consider quickly explaining the term *arrêté*.

The same problem again occurs with *ordonnance*. In this case, the most common suggested translations are *order*, *ordinance* or *statutory instrument*. Even though these translations are all appropriate, none of them translate the exact meaning of the French *ordonnance*. Once again, a quick or detailed explanation of the term may be useful.

As you can see, in theory, translating these different instruments is not a difficult task. Yet, in practice, it can be tricky. Whether you decide to explain the exact meaning of each term or decide to translate them the easy way using an equivalent, you should always, in

translations, memoranda, letters, etc., stick to the same translation to avoid any confusion on the part of your readers.

Lorène Mazet
Paralegal, Paris
lorene.mazet@hoganlovells.com

Many thanks to our contributors:

Thomas Rouhette, Partner

thomas.rouhette@hoganlovells.com

Thomas leads the Hogan Lovells Litigation team in Paris, one of the largest on the Paris market, as well as Hogan Lovells' global Product Liability Network. He frequently appears before the French commercial, civil and criminal courts on behalf of leading French and international clients in matters concerning chemicals, asbestos, aviation, automotive, industrial equipment, consumer goods and telecommunications. He also has significant defense experience in aviation and medical devices cases, as well as in industrial risk litigation (industrial accidents or environmental claims). He provides assistance in all disputes relating to commercial contracts, product liability/product safety (including advising on the effect of regulations, assisting with products recalls and responding to the demands of regulatory authorities), unfair competition, insurance/reinsurance and transportation law. He regularly handles cross-border disputes in liaison with practitioners in other jurisdictions.

Christine Gateau, Partner

christine.gateau@hoganlovells.com

Christine is a Litigation partner in the firm's Paris office. Christine specialises in product liability litigation and in claims arising from commercial contracts, especially in the TMT and energy sectors. She has broad experience in defending online marketplaces against allegations regarding the sale of counterfeit items or the breach of selective distribution networks on the websites they host.

Cécile Di Meglio, Senior Associate

cecile.dimeglio@hoganlovells.com

Cécile, qualified as an attorney in both France and New York, is part of the Litigation practice of the Paris office of Hogan Lovells and regularly advises clients on international jurisdiction, choice-of-law, international discovery and other issues arising in international litigation matters. She has developed a specific expertise in product liability issues, especially in the aviation industry.

Christelle Coslin, Senior Associate

christelle.coslin@hoganlovells.com

Christelle is part of the Litigation practice of the Paris office of Hogan Lovells and regularly advises clients on jurisdiction, choice-of-law and international litigation issues. She has broad experience in commercial litigation and product liability issues. She has developed a specific expertise in white-collar crime issues and assists clients in the scope of internal investigation.

Anne-Laure Judlin de Hemptinne, Associate

anne-laure.judlindehemptinne@hoganlovells.com

Anne-Laure is an Associate in the Litigation department of the Paris office of Hogan Lovells. She represents clients from the Life Sciences industry (pharmaceutical companies and medical devices manufacturers) in civil, administrative and criminal proceedings, and product liability cases.

Pauline Faron, Associate

pauline.faron@hoganlovells.com

Pauline is an Associate in the Litigation department of the Paris office of Hogan Lovells. She specialises in product liability litigation and in claims arising from commercial contracts. Pauline notably advises clients in the TMT sector and on product safety issues.

Claire Massiera, Associate

claire.massiera@hoganlovells.com

Claire joined the Litigation team of Hogan Lovells' Paris office in 2013. She specialises in commercial litigation and product liability litigation. She advises clients in asbestos litigation.

Isabelle Mougin, Paralegal

isabelle.mougin@hoganlovells.com

Isabelle is a paralegal in the Litigation practice of Hogan Lovells' Paris office. She provides assistance to the firm's clients in all types of commercial and product liability litigation. She specialises in the management of litigation before the French civil, commercial and criminal courts (international notifications, enforcement proceedings, recovery of debt....) and in particular in the management and follow-up of data relating to plaintiffs in the scope of multi-party disputes.

Lorène Mazet, Paralegal

lorene.mazet@hoganlovells.com

Lorène is a French and English native paralegal/translator in the Litigation practice of Hogan Lovells' Paris office. She is in charge of the translation of all kinds of legal documents (submissions, decisions, expert reports, memos, etc.) and also assists the team by proof-reading a broad range of materials. She works in French, English and Italian.

www.hoganlovells.com

Hogan Lovells has offices in:

Alicante	Denver	Jakarta*	Munich	San Francisco
Amsterdam	Dubai	Jeddah*	New York	Shanghai
Baltimore	Dusseldorf	London	Northern Virginia	Silicon Valley
Beijing	Frankfurt	Los Angeles	Paris	Singapore
Berlin	Hamburg	Luxembourg	Philadelphia	Tokyo
Brussels	Hanoi	Madrid	Prague	Ulaanbaatar
Budapest*	Ho Chi Minh City	Miami	Rio de Janeiro	Warsaw
Caracas	Hong Kong	Milan	Riyadh*	Washington DC
Colorado Springs	Houston	Moscow	Rome	Zagreb*

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.
The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.
For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.
Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.

©Hogan Lovells 2013. All rights reserved.

*Associated offices