



Newsletter

Insurance

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The Decree of 6 August 2026: French Arbitration Between Modernisation and Continuity

Step by step, Decree No. 2026-741 of 6 August 2026 seeks to modernise French arbitration law. Fifteen years after the previous major reform of 2011, the regulatory authority has not sought to overhaul the existing framework: rather, it consolidates its foundations, addresses certain ambiguities and adapts it to contemporary arbitration practices. Instead of a comprehensive reform, the text favours a pragmatic approach to modernisation, designed to make arbitral proceedings clearer, more flexible and, in several respects, more efficient.

The Decree affects both domestic and international arbitration and addresses issues as fundamental as the jurisdiction of the arbitral tribunal, the consolidation of proceedings, the powers of the supporting judge, electronic awards, the recognition of awards and avenues of appeal.

It thus accompanies the development of arbitration law which, for several years, has been shaped as much by case law as by the practices of arbitral institutions and practitioners.

A Modernisation Grounded in Pragmatism

The Decree does not seek to reinvent arbitration. It is consistent with a French tradition that regards party autonomy, procedural efficiency and judicial oversight as complementary rather than competing principles.

Several provisions reflect this pragmatic approach. Subject to certain conditions, **the Decree makes it possible to consolidate into a single arbitration claims relating to several contracts** and falling under several arbitration agreements.

The text also encourages the arbitral tribunal and the parties to adapt the proceedings to the complexity and significance of the dispute. The rule is simple, but it reflects an important development: the efficiency of arbitration is not measured solely by its speed; it also depends on the proportionality of the procedural resources deployed.

This pursuit of efficiency is also reflected **in the now expressly recognised power of the arbitral tribunal to determine, by way of an award, the amount payable under a penalty payment that it has itself ordered.**



The Arbitral Award Fully Enters the Digital Age

The Decree expressly provides that an award may be issued in paper **or digital form**, subject to safeguards concerning its integrity and preservation.

Here, the law is catching up with practice: arbitral proceedings are already largely paperless, communications are conducted electronically and hearings may be held remotely. It was therefore logical for the award itself to benefit from an explicit legal framework.

The Decree goes further by introducing a **general definition of an arbitral award**: an award is now defined as an act of the arbitral tribunal that finally determines, in whole or in part, the dispute submitted to it, including where it rules on its own jurisdiction or on a procedural issue capable of bringing the proceedings to an end.

This clarification is welcome. In arbitration, the classification of an act issued by the arbitral tribunal determines its procedural regime and the remedies available against it. Providing a statutory definition for a concept largely shaped by case law therefore contributes to the clarity of the system.

Strengthened Powers for the Supporting Judge

The supporting judge may, in particular, intervene to confer provisional enforceability on an interim or conservatory measure ordered by the arbitral tribunal. To this end, the Decree provides for expedited proceedings on the merits and sets out the conditions governing the review carried out by the State court.

This choice reflects the French approach to arbitration: the effectiveness of arbitral justice does not entail the withdrawal of the State courts. On the contrary, arbitration operates all the more effectively when, where necessary, it can rely on the authority and resources of the State judicial system.



A Significant Development in Avenues of Appeal

It is probably in the area of avenues of appeal that the Decree introduces one of its most significant changes.

In domestic arbitration, **appeals and applications to set aside an award will no longer have suspensive effect**. The First President, or the judge responsible for case management where the matter has been referred to them, may nevertheless stay enforcement where it is liable to seriously prejudice the rights of one of the parties.

The text also changes the consequences of setting aside an award. Where an award is set aside on grounds other than the jurisdiction or lack of jurisdiction of the arbitral tribunal, the court hearing the matter will, in principle, rule on the merits of the dispute within the limits of the mandate entrusted to the arbitrators, unless otherwise agreed by the parties.

The Asserted Internationalisation of French Law

The Decree also seeks to reinforce France's position as an international legal hub. The definition of international arbitration has been modernised: the reference to the *"interests of international trade"* has been replaced by a reference to *"international economic interests"*.

The amendment is subtle, but it reflects a desire to adapt the terminology of the Code of Civil Procedure to contemporary economic realities. The internationalisation of commercial transactions is no longer confined to the traditional categories of international trade.

Another noteworthy innovation is that the Decree regulates the possibility, before the Court of Appeal hearing a challenge in matters of international arbitration or concerning an award rendered abroad, of making submissions and producing documents in a foreign language. Where the relevant conditions are met, the Court may authorise the parties, their counsel, witnesses or experts to express themselves in a language other than French, with arrangements being made for translation where appropriate.

An Important Reform, but Not a Revolution

It would be excessive to describe the Decree of 6 August 2026 as a complete overhaul of French arbitration law. It is better understood as a further step towards modernisation than as a new Arbitration Code. This is undoubtedly both its strength and its limitation.

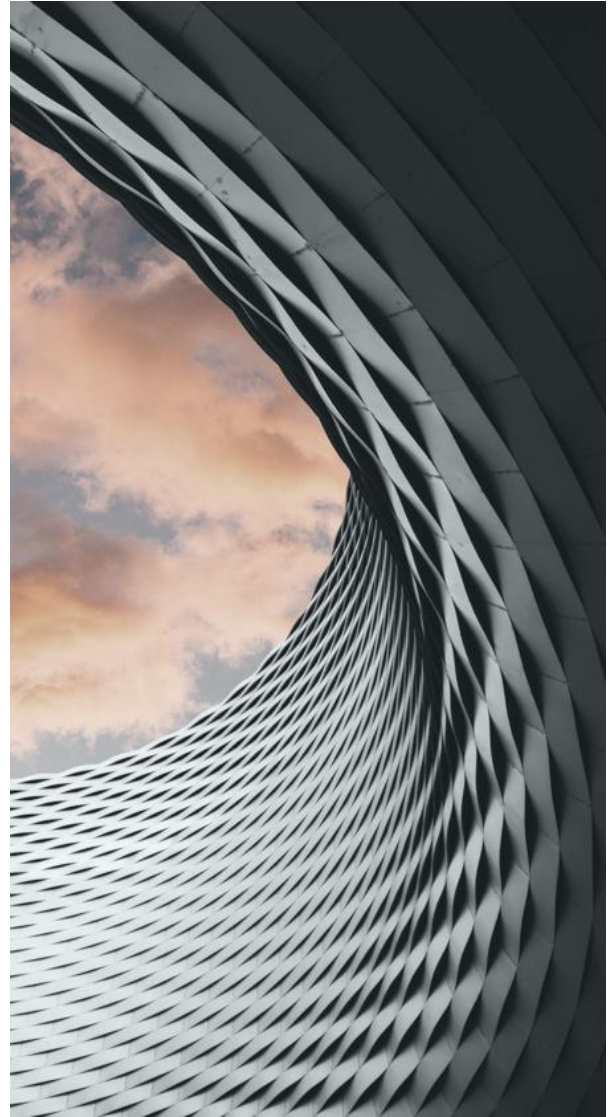
- Its strength lies in the fact that a targeted reform makes it possible to provide swift responses to difficulties identified by practitioners without undermining a body of case law that is widely recognised for its coherence;
- Its limitation lies in the fact that the successive developments in arbitration law will continue to raise the question of whether comprehensive codification is ultimately required. The Decree improves the existing framework; it does not necessarily resolve all the questions currently arising in the field of arbitration.

The 2027 Milestone

The real test will therefore begin on **1 January 2027**, when the reform enters into force, with transitional rules that distinguish, in particular, according to the date on which the arbitration agreement was concluded, the arbitral tribunal was constituted or the award was rendered.

It will then be for arbitrators, arbitral institutions, lawyers and the courts to bring these new provisions to life.

Romain Dupeyré



EXCLUSION CLAUSES – REVERSAL

End of the systematic application of the contamination theory!

Cass., Civ. 2e, 17 September 2026, No. 25-12.441, published in the Bulletin

In a particularly noteworthy ruling of 17 September 2026, the second civil division of the Supreme Court puts an end to case law that had drawn sharp criticism.

As a reminder, since a ruling on 17 June 2021 (Cass. Civ. 2^e, 17 June 2021, No. 19-24.467), the Supreme Court held that a warranty exclusion clause containing a non-formal exclusion case had to be invalidated in its entirety, even if the exclusion case applied to the insured met the legal requirements.

Thus, the contamination theory was born, where the invalidity affecting one of the exclusion cases spread to all the cases listed in the same exclusion clause.

In this case (Cass., Civ. 2^e, 17 September 2026, No. 25-12.441), a restaurant owner sought compensation for his business interruption losses following the administrative closure of his establishment, which occurred in the context of the Covid-19 pandemic. To refuse payment, the insurer invoked an exclusion clause worded as follows: ***"We also cover the loss of gross profit that you may suffer due to the interruption or reduction of your activity consecutive [...] to an administrative closure for food service businesses outside of an epidemic or pandemic context and excluding cases of deliberate violation by you of the labour code and regulations governing the conditions for carrying out your profession, including on hygiene and safety of persons."***

To dismiss the application of this exclusion, the insured argued that an exclusion case within this clause ("excluding cases of deliberate violation by you of the labour code and regulations governing the conditions for carrying out your profession, including on hygiene and safety of persons") was not formal, and therefore the entire clause should be deemed unwritten.





The Paris Court of Appeal (CA Paris, Division 4, Chamber 8, 8 January 2025, No. 22/01113) rejected the insured's argument, considering that only the validity of the exclusion "*which is solely applicable to the case in question*" needed to be analysed and taken into account, and noted that the exclusion relating to the "*epidemic or pandemic context*" was "*perfectly formal and limited*" without having the effect of voiding the coverage of its substance.

The Supreme Court approves this analysis and thus returns to its practice of isolating and neutralising the part of the exclusion clause likely to create a understanding difficulty, while preserving the other exclusion cases that meet the legal requirements (Cass., Civ. 2^e, 24 September 2020, No. 19-19.484).

It takes care to acknowledge and justify its reversal by noting that its previous case law **"has given rise to doctrinal controversies and divergences in case law between courts of appeal which justify a re-examination of the extent of the sanction for a partially non-formal exclusion clause."**

The Supreme Court then highlights that the clarity requirement provided for in Article L. 113-1 of the French Insurance Code primarily aims to inform the insured, so that they can precisely identify the situations in which they are not covered.

It seeks to reconcile the protection of the insured's interests with the economic predictability essential for the insurance business, as well as with the interests of the mutualisation of insureds.

It now considers that **"when a clause in an insurance contract lists several cases of coverage exclusion, their formal nature is assessed in consideration of each of them, and not with regard to all the exclusions covered by the clause. It follows that the nullity of a non-formal exclusion does not entail that of the entire clause, except when it affects its understanding."**

This wording could nevertheless herald a new set of uncertainties. In particular, how will the lower courts assess and measure the impact on the clause's understanding?

Quentin Sichez

LITIGATION DIRECTION

No application without litigation against the insured

Cass., Civ. 2e, 28 May 2026, No. 24-13.550, published in the Bulletin

In a ruling of 28 May 2026, the Supreme Court provides an essential clarification regarding the insurer's direction of litigation direction provided for in Article L.113-17 of the French Insurance Code: the litigation must be brought against the insured. On the other hand, although the liability insurer is not bound to provide cover, due to the exceptions it could then raise, it cannot, however, claim restitution of the indemnity from the injured third party.

The facts

An individual was the victim of personal injury following the collapse of a property wall belonging to an insured, who had taken out a civil liability insurance policy with an insurer. The latter had then paid the victim several advances on account of the final compensation for her personal injury.

Seized by the victim in summary proceedings, the judge ordered an expertise and ordered the insurer to pay a supplementary advance. Following the filing of the expert report, the victim brought proceedings on the merits against the owner and her insurer, in the presence of the primary health insurance fund ("CPAM"), to obtain compensation for all her damages.

The Lyon Court of Appeal held that the insurer was not liable for coverage, noting that, due to the lack of defence by the insured in the conduct of the proceedings, the insurer had not waived the exceptions and forfeiture of cover it was raising. Furthermore, considering that the advances paid to the victim had been unduly received given this lack of cover, the Court of Appeal ordered the victim to reimburse the insurer for the advances paid.

Faced with appeals lodged by the fund, the victim and the insured, the Supreme Court had to rule both on the existence of an insurer's absence of coverage exceptions in the litigation direction, assuming this to be applicable, and on whether the advances paid to the victim were undue or not.





A clarification of the concept of litigation direction

The Supreme Court upholds the reasoning of the Court of Appeal and provides an important clarification regarding the application of Article L.113-17 of the French Insurance Code. It adopts a strict interpretation of the litigation direction, which can only be established when the insurer effectively defends its insured in proceedings brought against them.

The Court thus distinguishes between the insurer's defence in direct action proceedings against it and the defence of the insured in proceedings brought against the latter. In this case, since the summary proceedings had been initiated exclusively against the insurer, the latter could not be considered to have defended its insured and had therefore not waived the exceptions and forfeiture of cover – namely, in this particular case, the existence of undeclared work and a false declaration.

Enhanced protection for the injured third party

However, the Supreme Court reaffirms a consistent ruling favourable to victims and partially overturns the Court of Appeal's decision. It considers, on the basis of Article 1302-1 of the French Civil Code (which is relating to the hypothesis of an objective undue payment), that the victim does not have to reimburse the compensation received, given that the insured, whose liability was not disputed, was obliged to repair the damage and that she *"was the sole beneficiary of the undue payment."*

In other words, the restitution of the undue payment cannot in this situation be sought from the victim, but only from the insured, who benefited from the undue payment.

Daly Ba



BODILY INJURY

Future loss of earnings: the victim is not required to seek employment, but incapacity for their former role is not sufficient to justify full compensation

Cass., Civ. 2e, 3 June 2026, No. 24-19.134 and No. 24-18.616, published in the Bulletin

In two rulings dated 3 June 2026, the second civil division of the Supreme Court clarifies the conditions for compensating future loss of earnings for a victim who has become unable to carry out her former professional activity.

The Court articulates two principles: firstly, full compensation for future loss of earnings requires the victim to be permanently unable to engage in any professional activity that generates income; secondly, the victim is not obliged to limit their damages in the interest of the liable party.

The essential points of the decisions

The two cases submitted to the Supreme Court were interesting as they illustrated opposing approaches by the lower courts.

In the first case (No. 24-18.616), a municipal agent, a victim of a road traffic accident, had been placed on early retirement due to permanent incapacity. The Court of Appeal had refused to compensate him for future loss of earnings, considering, among other things, that he had not demonstrated unsuccessful job searches or vocational training or retraining efforts.

In the second case (No. 24-19.134), the victim had been dismissed for incapacity to perform her role as a home help. The Court of Appeal had, conversely, awarded her full former income as future loss of earnings solely on the grounds that she was no longer able to resume her activity under the previous conditions, even though the expert assessment deemed them capable of undertaking professional activity with certain restrictions.

The Supreme Court censures both of these lines of reasoning.

It first recalls that full compensation for future loss of earnings requires the victim to be, due to the damage and after consolidation, permanently unable to engage in any income-generating professional activity. Incapacity for the sole job held before the accident is therefore not sufficient to automatically justify full compensation of previous earnings.

However, this assessment cannot lead to imposing an obligation on the victim to find a job or retrain. In accordance with the principle that the victim is not obliged to limit their damages in the interest of the liable party, the absence of job seeking, training, or retraining, as well as the refusal of redeployment, cannot be taken into account when assessing their capacity to engage in professional activity.

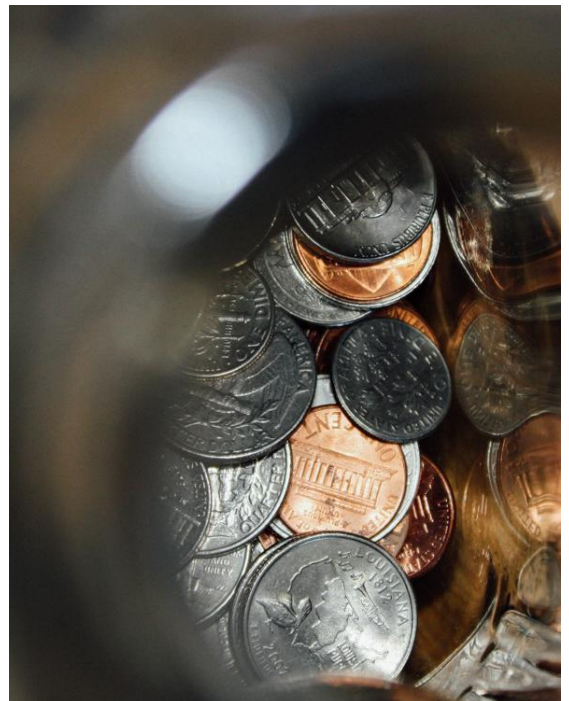
Judges must therefore conduct a concrete assessment of the victim's residual professional capacity, taking into account, in particular, their sequelae, level of education, qualifications, age, and the local job market.

If this analysis establishes that the victim is permanently unable to engage in any paid activity, full compensation for future loss of earnings must be awarded. Conversely, when professional capacity remains, judges must determine the loss of income effectively attributable to the damage using the evaluation method they deem most appropriate.

These two rulings thus allow the Supreme Court to clarify the interplay between the principle of full compensation and that according to which the victim is not obliged to limit their damages in the interest of the liable party. They thus clarify the conditions for compensating future loss of earnings and the criteria that should guide their assessment by the lower courts.

Practical consequences for insurers

- **No automatic full compensation:** incapacity for the previously held position, even when it leads to dismissal or cessation of activity, is not sufficient in itself to justify full compensation of future earnings.
- **Assessment of residual professional capacity required:** the analysis must be conducted *in concreto*, taking into account, in particular, sequelae, age, training, qualifications, and the reality of the local job market.
- **Absence of job search not opposable to the victim:** the insurer cannot invoke the absence of job search, retraining, or training efforts to demonstrate that the victim could have limited its losses.



Mathilde Mevel

BODILY INJURY

Anxiety damage resulting from bodily injury: consecration of the ten-year limitation period

Cass., Ch. mixte, 29 May 2026, No. 24-17.384, published in the Bulletin

By a notable ruling of 29 May 2026, the mixed division of the Supreme Court provides an awaited clarification regarding the limitation period applicable to anxiety damage. It rules that this damage, when it results from exposure to a toxic or harmful substance likely to cause a serious pathology, constitutes a consequence of bodily injury and is therefore subject to the ten-year limitation period provided for in Article 2226 of the French Civil Code.

Beyond the awaited unification of limitation rules, the Supreme Court also provides details on the starting point of the applicable period, thus strengthening the protection of victims facing risks whose consequences often only become apparent several years after exposure.

Facts and procedure

The dispute originated from the in utero exposure of a woman to diethylstilbestrol (DES), marketed notably under the name Distilbène, following the treatment her mother underwent during her pregnancy.

In 2010, the individual sued the laboratory that marketed this drug to obtain compensation for various damages resulting from this exposure. A second DES-producing laboratory was subsequently brought into the proceedings.

The laboratories' liability was ultimately established for various morphological abnormalities from which the victim suffers, with several damages being compensated. However, the defendants contested the claim for anxiety damage, corresponding to the permanent fear of developing a serious pathology linked to DES exposure in the future, by invoking the statute of limitations for this action.

By a judgment of 22 February 2024, the Versailles Court of Appeal upheld this argument. It considered that anxiety damage constitutes an autonomous moral damage, capable of existing independently of any bodily injury, and therefore falls under the five-year general limitation period provided for in Article 2224 of the French Civil Code.

The question submitted to the Supreme Court was therefore crucial: should anxiety damage be regarded as autonomous moral damage or as a consequence of bodily injury, justifying the application of the ten-year limitation period provided for in Article 2226 of the French Civil Code?



The solution adopted by the mixed division

To answer this question, the mixed division first highlights that any physical or psychological harm to a human being constitutes bodily injury.

It then notes that exposure to a toxic or harmful substance likely to cause a serious pathology characterises such harm, even in the absence of immediate manifestation of the feared illness.

The Court infers from this that the fear of subsequently developing this pathology, which characterises anxiety damage, originates from this impairment of personal integrity. Anxiety damage must therefore be considered as damage resulting from bodily injury.

This clarification is worth noting. The Supreme Court does not directly classify anxiety damage as bodily injury. It distinguishes bodily injury, constituted by the harm resulting from exposure to the harmful product, from anxiety damage, which is one of its compensable consequences.

This classification has a decisive consequence regarding limitation period: the action for compensation of anxiety damage is subject to the ten-year period provided for in Article 2226 of the French Civil Code and not to the five-year limitation period of Article 2224.



The judgment is also of particular interest as it specifies the starting point of this ten-year period.

The Court rules that, when a consolidation date has been set for the bodily injury suffered by the victim, the limitation period for all resulting damages, including anxiety damage, runs from this consolidation date.

Conversely, when only compensation for anxiety damage is claimed and no consolidation has been medically established, the damage must be considered consolidated on the date the victim cumulatively became aware of their exposure, the identity of the potential liable party, and the pathological risks incurred. The Court further specifies that this starting point cannot be set before the cessation of exposure to the risk.

Consequently, the mixed division partially overturns the judgment of the Versailles Court of Appeal insofar as it had declared the claim for compensation of anxiety damage time-barred.

A welcome harmonisation with uncertain future implications

The main contribution of this judgment lies in the unification of the limitation regime applicable to anxiety damage. Until then, solutions differed depending on the nature of the litigation. While the first civil division had already subjected certain damages related to DES exposure to the ten-year limitation period of Article 2226 of the French Civil Code, the labour division held, in the context of employment relations, the two-year limitation period provided for in Article L. 1471-1 of the French Labour Code. By establishing the bodily nature of the damage to which anxiety damage is consequent, the mixed division thus aims to harmonise previously divergent solutions.

The solution also aligns with a protective approach towards victims. The application of a ten-year period, combined with a starting point that takes into account the effective knowledge of exposure, the liable party, and the risks incurred, appears appropriate for situations of exposure to toxic or harmful substances, whose consequences may only manifest or be identified late.

The scope of the decision nevertheless remains to be clarified, particularly in labour law. The classification of anxiety damage as bodily injury could indeed lead the social chamber to reconsider the application of the two-year limitation period.

Through this principle-setting judgment, the mixed division thus provides a decisive clarification in general torts law. While this harmonisation enhances legal certainty and improves victim protection, it also opens up new litigation prospects, the outlines of which will need to be defined by future case law.



Juliette Doebeli

CIVIL LAW

Fraudulent bank details: paying wrongly means paying twice, the scammer is not an "apparent creditor"

Cass., Com., 17 June 2026, No. 24-13.306, published in the Bulletin

The decision commented on here severely tests the theory of appearance in buyer-seller relationships and illustrates the adage that *"paying wrongly means paying twice"*, at the expense of the debtor, who now bears the risk of fraudulent bank details.



A French fuel supplier sells diesel to a shipowner to refuel a vessel calling at Marseille. The sale was made through an Italian intermediary. The intermediary receives an invoice for €103,375.64 and bank details by email. **The email came from an address "differing by only one letter from the true electronic address [of the supplier]"**. The intermediary forwards these documents to the shipowner, who proceeds to pay into the account for which they received the bank details. The account actually belonged to a scammer and *"the sum could not be recovered"*. The supplier then sues the shipowner for payment of the price. The latter considers himself released from his payment obligation and holds the supplier solely responsible for the piracy suffered.

According to Article 1342-3 of the French Civil Code, *"payment made in good faith to **an apparent creditor** is valid"*. The question was therefore: **is a debtor in good faith who pays a fraudster posing as their creditor released from their debt by this payment?**

The Court of Appeal of Aix-en-Provence ruled the payment was discharging and rejected the supplier's claim. It held that the shipowner *"could legitimately believe [he] was dealing with his creditor when [he] made the transfer"*. The supplier appeals to the Supreme Court, arguing that the lower court judges *"confused a legitimate belief in the creditor's identity with a legitimate belief in the identity of the payment account holder."*

The Commercial division of the Supreme Court overturns the ruling under Article 1342-3: *"A third party who usurps the creditor's identity is not an apparent creditor within the meaning of this text."* The shipowner *"knew that his creditor was [the supplier]"*: he therefore did not pay an apparent creditor, but *"a person fraudulently posing as [the supplier]"*. Payment of an invoice received from a hacked email address, made to an imposter, *"is therefore not discharging."*

This landmark ruling is destined for wide publicity as it is intended for the Bulletin and the Annual Report. It has undeniable practical consequences: the debtor now bears the risk of fraud involving fake bank details and must exercise extreme vigilance in their daily operations.

Arnaud Attias

TWO-YEAR LIMITATION PERIOD

When referring a case to the Insurance Ombudsman suspends the limitation period

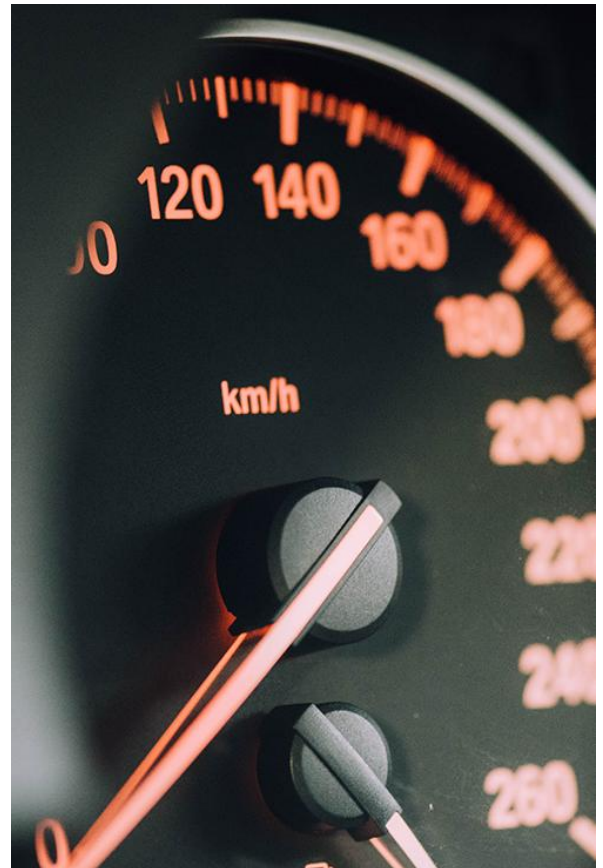
Cass., Civ. 2e, 12 February 2026, No. 24-14.531, unpublished

In a notable ruling on 12 February 2026, the second civil division of the Supreme Court provided an important clarification on the recourse to the Insurance Ombudsman. The Supreme Court held that the mere act of an insured referring a case to the Insurance Ombudsman suspends the limitation period under Article 2238 of the French Civil Code, provided that the insurer has adhered to the Insurance Ombudsman's Charter and no contractual provision opposes it.

In this case, a couple of insured individuals declared a car accident to their insurer in August 2017. After a coverage denial in December 2017, the insureds referred the case to the Insurance Ombudsman on 6 April 2018, who issued his opinion on 9 October 2019. As no amicable solution was reached, the insureds sued their insurer in November 2020 before the Pau judicial court to obtain compensation for their loss.

On appeal, the insurer raised a preliminary objection based on the statute of limitations. It argued that the Insurance Ombudsman is a consumer ombudsman within the meaning of Article L. 611-1 of the French Consumption Code, and not a conventional mediator governed by Articles 1530 et seq. of the French Civil Procedure Code.

Thus, the insurer argued that referring the case to the Insurance Ombudsman did not suspend the limitation period in accordance with Article 2238 of the French Civil Code and that the action should therefore be declared time-barred under Article L. 114-1 of the French Insurance Code.



In a ruling on 19 March 2024, the Pau Court of Appeal accepted this argument, stating that referring the case to the Insurance Ombudsman "*is not capable of suspending the limitation period as the insurance ombudsman does not conduct a mediation in the strict sense of Article 2238 of the French Civil Code but examines the file on paper, issuing an opinion without the parties meeting to seek an amicable solution*" (CA Pau, 1st Civil Chamber, 19 March 2024, No. 22/02569).

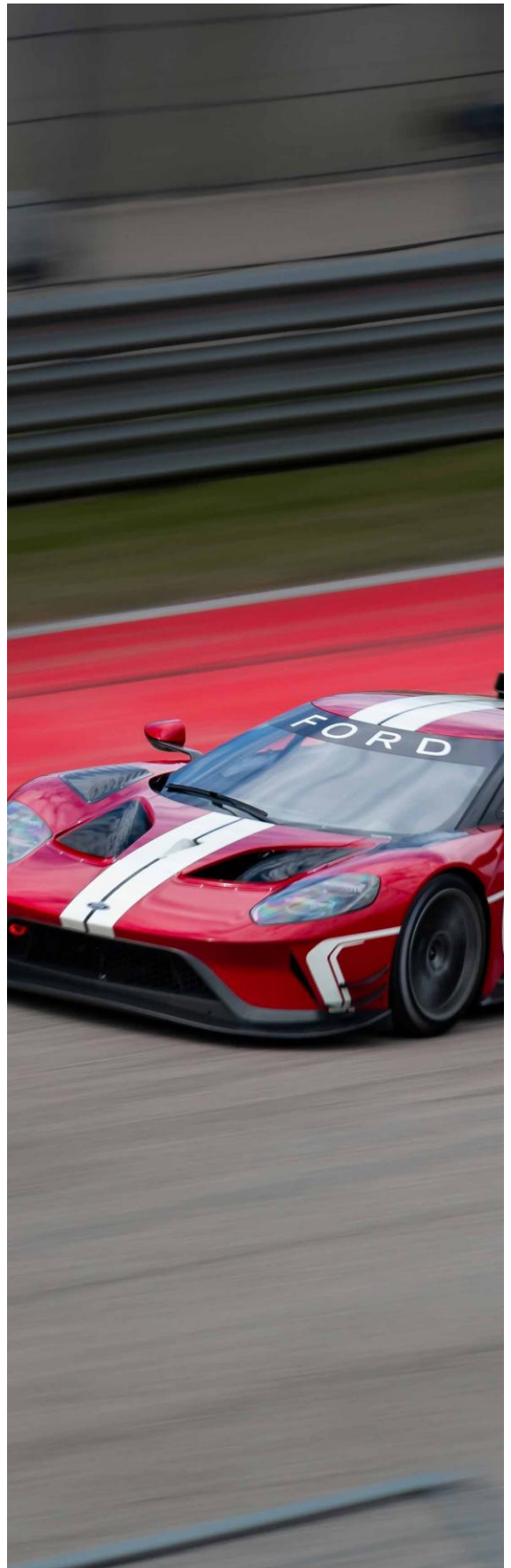
This reasoning was not followed by the Supreme Court, which adopted an extensive interpretation of the concept of conventional mediation within the meaning of Article 2238 of the French Civil Code. Indeed, the second civil division of the Supreme Court holds that recourse to the Insurance Ombudsman must necessarily be assimilated to conventional mediation, as the insurer's adherence to the Insurance Ombudsman's Charter demonstrates its willingness to use this dispute resolution method.

While Article 2238 of the French Civil Code requires that "*the parties agree to resort to mediation*", the Supreme Court considers that by adhering to the Insurance Ombudsman's Charter, insurance companies demonstrate *a priori* their consent to mediation.

The Supreme Court thus limits the procedural risk associated with referring cases to the Insurance Ombudsman and enhances the attractiveness of mediation.

One question nevertheless remains open: should the date of referral to the Insurance Ombudsman be understood as the date of the letter by which the insured requests the Insurance Ombudsman to intervene, or the date of the letter by which the Insurance Ombudsman informs the parties that the case is validly referred?

In the absence of case law, the Commission for the Evaluation and Control of Consumer Mediation (CECMC) chooses the second option. It considers that "*under Article 2238 of the Civil Code, the limitation period is suspended from the date of notification to the parties of the admissibility of the referral, this notification must expressly mention it*" (Collection of CECMC case law summaries, B01, CECMC, plenary session, 16 July 2019).



TWO-YEAR LIMITATION PERIOD

Court-appointed expertise and suspension of the limitation period

Cass., Civ. 2e, 18 June 2026, No. 24-21.460, unpublished

The suspensive effect of the limitation period attached to a decision ordering an investigative measure runs until the day the parties are notified of the filing of the expert report.

Following a fire in 2016 in the principal residence of an insured, his insurer had refused cover, invoking the wilful nature of the claim. A summary proceedings judge subsequently ordered an expertise in January 2018. The court-appointed expert filed his report with the court registry on 10 September 2018, without officially sending it to the parties or informing them of its filing.

The insured then sued his insurer for compensation on 4 November 2020. To declare this action time-barred, the lower court judges considered that the parties were aware of the content of the expert report, due to the communication of the preliminary report and complementary elements and had been informed of its filing by the notification of the tax order.

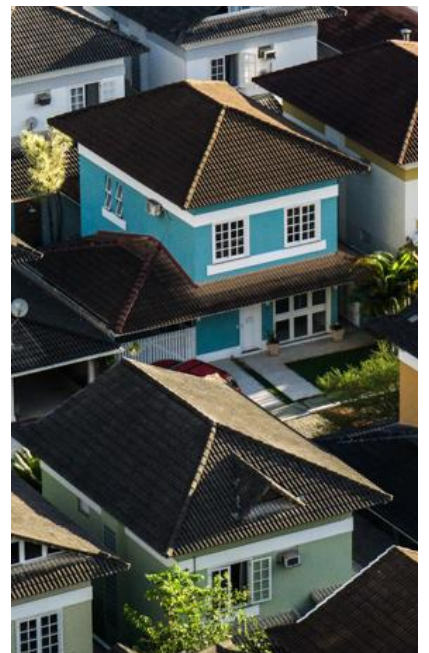
The Supreme Court censures this analysis and overturns the Court of Appeal's decision. It highlights, firstly, that actions arising from an insurance contract are subject to a two-year limitation period (Article L. 114-1 of the French Insurance Code) and, secondly, that an investigative measure ordered before any proceedings suspends the running of the limitation period (Article 2239 of the French Civil Code). This suspensive effect ends when the measure is executed, i.e., at the time the report is filed.

However, the running of the two-year limitation period cannot be dissociated from the procedural obligations incumbent upon the court-appointed expert. Indeed, it follows from Articles 173 and 282 of the French Civil Procedure Code, referred to in the decision, that the technician must *"send each party a copy of their report along with their remuneration request by any means that can establish receipt."*

However, in this case, the insurer's and the insured's legal representatives were only informed of the report's filing by the court registry in September 2023 and April 2024. Knowledge of the preliminary report, the additions made to it by the expert themselves, or the tax order could not therefore substitute for the direct delivery of the final report to the parties or their representatives.

The Supreme Court therefore opts for a formalistic approach to the resumption of the limitation period, after its suspension, when this results from an investigative measure before any proceedings: since the statute of limitations was suspended by the appointment of an expert by a court, only the delivery of the report to the parties is capable of ending this suspension period.

From this perspective, the resumption of the limitation period cannot depend on an event that the parties do not control (the closure of the expert's work and the drafting of the report) and whose occurrence they may be unaware of (if the report is not communicated to them, as was the case in this matter) – which rightly protects the insured's right to take legal action.





REGULATORY

CIMA strengthens the prudential framework applicable to microinsurance and dividend distribution

The Inter-African Conference of Insurance Markets ("CIMA") has strengthened the prudential framework applicable to insurance, reinsurance, and microinsurance companies through Regulation No. 002/CIMA/PCMA/CE/2026 (the "Regulation"), which amends and supplements several provisions of the CIMA Code.

This reform primarily concerns the conditions for distributing dividends by insurance and reinsurance companies and the requirements applicable to the share capital and own funds of microinsurance companies.

Strengthening the conditions for dividend distribution by insurance and reinsurance companies

Under the new version of Article 329-8 of the CIMA Code (a provision specific to public limited insurance and capitalisation companies) and the new Article 818-1 of the CIMA Code (a provision specific to reinsurance companies), dividends may only be distributed if the regulatory provisions concerning the solvency margin, own funds, and coverage of regulated commitments have been met.

This regulatory evolution thus enshrines the primacy of compliance with prudential requirements over shareholder remuneration.

Strengthening the capital and own funds requirements for microinsurance companies

Article 718 of the CIMA Code already required a share capital for public limited microinsurance companies of 500,000 CFA francs, excluding contributions in kind, a requirement that remains in force.

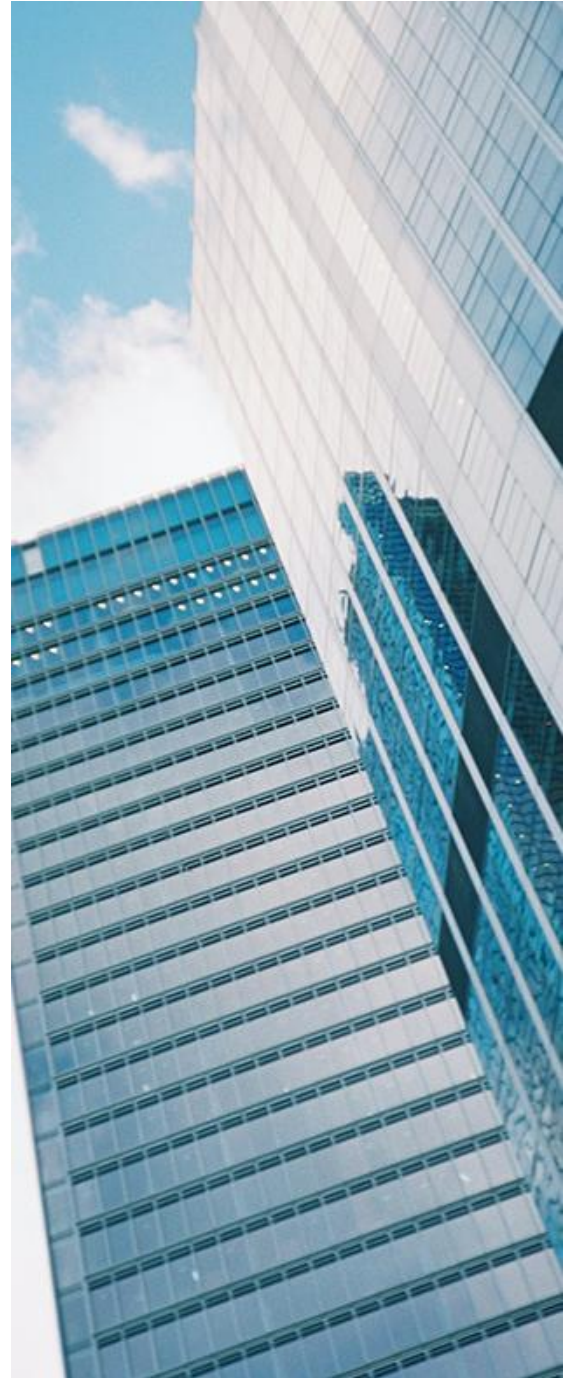
The Regulation primarily introduces a new requirement to this article regarding the level of own funds for these microinsurance companies, which must in no case be less than 80% of the minimum share capital, i.e., 400,000 CFA francs.

When own funds fall below this threshold, the company must reconstitute them within one year from 1st June of the year following the financial year in which this shortfall was noted. Failure to do so exposes it to the sanctions provided for in Article 312 of the CIMA Code, namely a warning, a reprimand, a limitation or prohibition of all or part of its operations, any other limitations in the exercise of its activity, the suspension or forced resignation of responsible managers, withdrawal of authorisation, or fines.

Furthermore, the Regulation specifies the procedures for increasing the share capital of microinsurance companies:

- in the event of an increase in share capital, each shareholder must pay up at least $\frac{3}{4}$ of the amount of cash shares they have subscribed to;
- the capital increase is deemed to have been completed from the establishment of the notarised declaration of subscription and payment;
- any capital increase must be carried out within three years from the extraordinary general meeting that decided upon it.

These new measures thus reflect CIMA's desire to consolidate the financial base of market players and strengthen the protection of insureds, by conditioning, in particular, shareholder remuneration on prior compliance with the main prudential requirements.



Souleymane Simpara

MULTIMODAL TRANSPORT OF GOODS

Warehousing between the aircraft and the truck does not fall under CMR

Cass., Com., 20 May 2026, No. 24-17.614, unpublished

A new episode in a case law saga that clarifies the boundaries of the liability periods of successive air and road carriers for temperature excursions that occurred during intermediate storage. Following a ruling in 2023 that recalled the end of the air carrier's liability period, this new ruling recalls the beginning of the road carrier's liability period.

At the end of 2013, a French pharmaceutical laboratory sold three batches of medicines to the Iraqi Ministry of Health. It instructed a freight forwarder to organise their **transport "under controlled temperature"** from France to Iraq. The forwarder entrusted the air leg, up to Jordan, to an airline. The road journey was entrusted to a sub-forwarder and then to a Jordanian road carrier. The border between Jordan and Iraq being closed, the goods were kept in the airline's refrigerated warehouses from 21 December 2013. The road carrier only took charge of them on 18 February 2014, then delivered them on 23 February. Upon delivery, the Iraqi ministry noted **temperature excursions** and destroyed the medicines. The laboratory replaced them. The laboratory and its goods-in-transit insurer sued the forwarder and its liability insurer. The latter, in turn, called the airline and the road carrier, as well as the Jordanian sub-forwarder and customs agent, as guarantors.

The forwarder attempted to oppose the goods interests **the limits of the road carrier's liability** under the Geneva Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road (CMR).





The Versailles Court of Appeal (itself seized on referral after cassation – Com., 8 February 2023, No. 21-17.932) granted its request after noting that the airline had charged storage to the customs agent, who acted on behalf of the Jordanian sub-forwarder responsible for the land phase. It considered that the warehousing was "*an inseparable accessory to road transport*" and applied CMR limitations.

The Supreme Court overturns the judgment under Article 1^{of} the CMR and highlights: "***CMR does not apply until the land carrier has been put in possession of the goods***". However, the Court of Appeal had itself noted that the temperature excursions had occurred "*after the air phase of the transport but before the road carrier took charge of the goods*". It could not therefore apply CMR to the storage period in the airline's warehouses.

This judgment recalls a simple criterion: CMR applies from the moment the goods are taken over by the road carrier, and not before. The fact that storage was ordered by an actor in the road transport chain is not sufficient to link it to that transport. In **multimodal transport**, it is therefore essential to precisely date the time of the damage to assess the liability regimes and, with them, the potentially applicable liability ceilings. It is now up to the referral Court of Appeal to determine whether the forwarder is well-founded in invoking other liability limits.

Arnaud Attias

Appointment of Souleymane Simpara as Counsel

The Insurance & Litigation department is pleased to announce the appointment of Souleymane Simpara as Counsel.

This promotion reflects the quality of his career, his expertise and his constant commitment to our clients, our team and the firm. It also reflects DWF's ambition to support the development of its talent and recognise the excellence of its teams.

Congratulations to Souleymane on this significant milestone in his professional journey.



Arrival of Quentin Sichez as an Associate

Quentin Sichez joined DWF's Litigation & Insurance department in September 2026. Welcome Quentin!

1. What was your background before joining DWF?

I hold a Master's degree in Insurance Law from the University of Le Mans (2022). Before joining DWF, I worked at the law firm Kennedys, which I joined for my final internship at EFB in January 2024. I continued my career there, first as a legal officer and then, after being sworn in February 2025, as an associate. Prior to that, I gained solid experience within several insurance companies.



2. What are your preferred areas of practice?

I am primarily involved in insurance cases, both at a French and international level. I represent insurance companies and their insureds in complex litigation before state and arbitral tribunals. My activity is particularly focused on coverage and subrogation issues in property and casualty insurance. I also handle reinsurance matters. Furthermore, my previous experiences have led me to develop complementary expertise, particularly in insurance product distribution, transport law and cyber risk.



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