

The Paris office of Lovells LLP is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for May 2010.

Please note that French legal concepts are translated into English for information only and not as legal advice. The concepts expressed in English may not exactly reflect or correspond to similar concepts existing under the laws of the jurisdictions of the readers.

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Summary of miscellaneous French draft legislation

Bill aiming to guarantee fair conditions of remuneration to employees concerned by a reclassification programme - passed on first reading by the French National Assembly (*Assemblée Nationale*) on 30 June 2009, examined by the French Senate on 4 May 2010

Bill for the easy maintaining and creation of employment - passed on first reading by the National Assembly on 9 June 2009.

Bill reforming consumer credit - presented on 9 April 2009 and passed on first reading by the French Senate (*Sénat*) on 17 June 2009 - passed on first reading by the National Assembly on 27 April 2010.

Bill relating to the merger of the professions of advocate and solicitor in Courts of Appeal - presented on 3 June 2009 - passed on first reading by the National Assembly on 6 October 2009 and on 22 December 2009 by the Senate.

Bill aiming for greater transparency and fairness in remuneration policies of business managers and market operators - presented on 2 September 2009 and passed on first reading on 20 October 2009 by the National Assembly.

Bill relating to the "Greater Paris", n°1961, presented on 7 October 2009 - passed on first reading by the National Assembly on 1 December 2009 and by the Senate on 26 April 2010 - before the Mixed Joint Commission on 27 April 2010.

Bill aiming to simplify and improve the quality of law, n°1899 - presented on 7 August 2009 - passed on first reading by the National Assembly on 2 December 2009.

Bill aiming to reinforce consumer protection in distance selling, n°1940 - presented on 29 September 2009 - passed on first reading by the National Assembly on 21 January 2010.

Bill relating to an equal representation of woman and men in administrative and supervisory boards and to professional equality, n°2140, presented on 3 December 2008 - passed in first reading on 21 January 2010.

Bill relating to the individual business with limited liability, n°2265, presented by the National Assembly on 27 January 2010 - passed on first reading on 8 April 2010 - passed in Mixed Joint Commission on 12 May 2010 - presented before the French Constitutional Council on 17 May 2010.

Bill relating to the banking and financial regulation, n°2165, presented by the National Assembly on 16 December 2009-discussed in first reading on 10 June 2010.

Bill relating to the new organisation of the electricity market, n°2451, presented on 14 April 2010 - discussed in first hearing on 8,9,10 and 15 June 2010.

Enacted laws

Law n°2010-476 of 12 May 2010 relating to the opening up to competition and regulation of the online gaming sector - OJ of 13 May 2010

Law n°2010-559 of 28 May2010 for the development of local public companies - OJ of 1st June 2010

1. Banking

European Law - European mechanism for financial stabilisation

Regulation n°407/2010 of 11 May 2010 implementing an European mechanism for financial stabilisation (OJEU of12 May 2010) provides for the possibility for the Council of the European Union to grant financial assistance from the European Union to a Member State facing financial difficulties or a serious threat of heavy difficulties due to exceptional events tat are out of its control.

This financial assistance is granted upon proposal of the European Commission, in the form of loans or credit facilities to said Member State, following the decision of the Council ruling on a qualified majority.

The regulation, binding in its entirety and directly applicable to each Member State, came into force on 13 May 2010.

2. Capital Markets

France - Creation of the joint unit between the AMF and the ACP

The Agreement setting up the joint unit between the AMF and the French Prudential Supervisory Council ("**ACP**") was signed on 30 April 2010. The setting up of this joint unit, which does not alter the two authorities' respective powers, will allow the emergence of a harmonised approach of marketing control and a uniform customer protection regardless of the way the financial product is marketed. The agreement sets out the field of competence, the organisation and the governance of this joint unit, which is coordinated by Fabrice Pesin.

(Please refer to the [Legal and regulatory update \(Capital Markets section\) - April 2010](#)).

France - NYSE Euronext offers central clearing services

NYSE Euronext terminated its contractual arrangements with LCH.Clearnet Ltd and LCH.Clearnet SA in order to offer central clearing services both in Paris and London. The AMF, the *Banque de France* and the French Prudential Supervisory Council will ensure the continuity and stability of cleared transactions will be assured.

3. Competition

France - Online gaming: Opening to competition of online gaming

Law N° 2010-476 of 12 May 2010 relating to the opening up to competition and regulation of the gambling and online gaming sector was published in the OJ on 13 May 2010 after having been declared to be entirely compliant with the French Constitution by the French Constitutional Council on 12 May.

This Law is immediately applicable.

France - Online gaming: Conditions for granting authorisations to online gaming operators

Decree No 2010-482 of 12 May 2010, which sets the conditions for granting authorisations to online gaming operators and the requirements they have to comply with to fight against crime and fraud, was published in the OJ of 13 May 2010.

France - Online gaming: Availability of online gaming and gambling services

Decree N° 2010-518 of 19 May 2010 concerning the availability of online gaming and gambling services by authorised operators was published in the OJ of 20 May 2010.

France - Online gaming: Sanctions procedure applicable to authorised operators of the online gaming sector

Decree N° 2010-495 of 14 May 2010 on the sanctions procedure applicable to authorised operators of the gambling and online gaming sector was published in OJ of 15 May 2010. It specifies the procedure set up by the online gaming regulatory Authority.

France - Online gaming: Sports competitions and results

Decree N° 2010-483 of 12 May 2010 relating to sports competitions and the types of sports results defined by the online gaming regulatory Authority was published in the OJ of 13 May 2010.

France - Online gaming: Organisation and functioning of the Online Gaming Regulatory Authority

Decree N°. 2010-481 of 12 May 2010 on the organisation and functioning of the online gaming regulatory Authority was published in the OJ of 13 May 2010.

European Law - Revision of rules relating to distribution and repair of motor vehicles

New Block Exemption Regulation N° 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector and the supplementary Guidelines on vertical restraints in agreements on the sale and repair of motor vehicles and on the distribution of spare parts for motor vehicles were published in the OJEU of 28 May 2010.

The Regulation comes into force on 1st June 2010 regarding the repair and maintenance of vehicle markets and on 1st June 2013 regarding the sale of vehicle markets.

4. Employment

France - A redeployment offer abroad must be accompanied by equivalent compensation

Law 2010-499 of May 18, 2010, which aims to ensure fair compensation conditions for employees who have been offered redeployment abroad as part of a redundancy procedure, entered into force on 19 May 2010, date of its publication in the Official Journal.

This Law, which is of immediate effect, amends Article 1233-4 of the French Labour Code. It specifies that from now on offers to redeploy employees abroad made as part of a redundancy procedure must be accompanied by equivalent compensation, principle to be subsequently defined by means of a circular.

This Law also creates new Article, L. 1233-4-1, of the French Labour Code under which all employers must, before making an international redeployment offer, ask the employee if it is amenable to receiving such offers. Employers must also ask the employee to determine the conditions, such as compensation level and redeployment destination, which would be acceptable to the latter in the event of redeployment.

The employee will have six working days after having received a redeployment offer to make its position known. The absence of such a response is to be understood as an indication of non-acceptance.

International redeployment offers may only be made to employees who previously agreed to receive such offers and must take into account the restriction that were previously specified by the employee.

France - Scheme available through Individual Redeployment Agreements extended until 31 March 2011

The Order of the Ministry of the Economy, Industry and Employment of 25 April 2010 approving the Collective Bargaining Agreement of 20 February 2010 (described in our last legislative alert) was published on 7 May 2010. The Order extends the scheme available through Individual Redeployment Agreements.

France - Bill on labour relations in very small businesses (less than 11 employees)

A Bill on labour relations in very small businesses (those with less than 11 employees) was presented to the French cabinet on 12 May 2010.

According to the Bill, regional elections must be organised every four years to ensure adequate labour representation in very small businesses.

Two types of organisations may declare themselves candidates:

- Independent union organisations that respect republican and independent values, have been legally established for at least two years and are authorised by their constituent documents to be active in the geographical region in question;
- Unions affiliated with national and multi-sectoral union organisations.

Votes will be cast either electronically or by post by employees of businesses of less than 11 employees, who are under employment contract, and are at least 16 years old.

The bill specifies that employees will vote for union organisations and not for individuals. The elected organisations will then designate individuals to represent employees in small business joint commissions.

5. Environment

France - Pipelines carrying hazardous substances: harmonisation of the applicable legal system

Ordinance n°2010-418 of 27 April 2010 published in the Official Journal of 30 April 2010 tends to harmonise and clarify the provisions relating to security and public purpose easement of pipelines carrying hazardous substances.

It also harmonises the legal systems of authorisation and registration applying to gas, oil and chemical pipelines.

These provisions will come into force on the date of publication of the application decrees and no later than 1 January 2012.

6. Insolvency proceedings

France - Individual business with limited liability (*EIRL*)

The Bill relating to the individual business with limited liability (*entreprise individuelle à responsabilité limitée*) (please refer to the [Legal and regulatory update - April 2010](#)) was adopted by the French *Sénat* on 5 May 2010 and then by the French *Assemblée Nationale* on 12 May 2010.

Under this Law, the enforceability of a patrimony allocation against previous creditors is subject to their individual information by the entrepreneur. These creditors have, in this respect, a right to object due to the decreasing of their patrimonial rights (*droit de gage*). Moreover, the Law allows the entrepreneur to combine both a non-distrainability statement (which protects the entrepreneur's own real estate property) and a patrimony allocation statement to an EIRL. Lastly, a same entrepreneur will be allowed to constitute several patrimony allocations as from January 1st, 2013.

This law will come into force on 1st January 2011.

7. Insurance

France - Unclaimed life insurance contracts

The draft Bill that comes to complete the Law passed on 17 December 2007 which aims at strengthening the requirement for insurers to find beneficiaries of life insurance contracts has been adopted by the *Sénat* on 29 April 2010. To meet this objective, insurers will have to make enquiries at least once a year about the death of insured persons who have taken out life insurance policies, the value of which exceeds 2,000€ and from whom they have not heard from for over two years. They will also be required to publish on an annual basis the results of their research efforts and the total costs associated with the research. Finally life insurers will have to disclose each year the number of outstanding and unclaimed life insurance policies. The draft proposal must be voted on by the *Assemblée Nationale* by September 2010.

France - Common Unit between the Supervising Prudential Authority and the Financial Markets Authority

An agreement between the Supervising Prudential Authority and the Financial Markets Authority was signed. This document establishes the framework for common pole between the two authorities, whose mission is to coordinate control in relation to financial products and marketing methods for better protection of investors (please refer to the [Legal and regulatory update - January 2010](#)).

France - Date of entry into force of Solvency II

The date of entry into force of the Solvency II Directive has been deferred from 31 October 2012 to 31 December 2012. This announcement, made by the European Commissioner for Internal Market and Services in a speech on 4 May, allows the date of entry into force of the Directive to coincide with the date on which the accounts of most European insurance undertakings are closed.

8. Intellectual property

France - Commercial communications in favour of gambling operators

The French authority protecting audiovisual communication freedom adopted Decision N0. 2010-23 on 18 May 2010 on the conditions under which television and radio services are allowed to broadcast commercial communications in favour of authorised operators of online gambling. Such decision completes Law N°. 2010-476 of 12 May 2010 on the opening up to competition of such industry.

Commercial communications (advertising, sponsorship, product placement) are forbidden on television and radio services for minors and, on other services, on programmes for minors, as well as during the thirty minutes prior to and after such programmes.

In addition, said communications will have to be clearly identified, not present minors and include a warning message regarding addiction risks.

Such Decision will be in force until 31 January 2011.

France - Orphan visual works

A Bill was submitted to the French Senate on 12 May 2010. It aims at defining the exploitation system of rights attached to orphan works.

Such Bill suggests that the notion of orphan work be introduced as works, the right holders of which cannot be found, located or reached, despite relevant research.

It sets out a royalty scale for the exploitation of such works, the collection of which would be assigned to collective payment societies. After a 10-year period, should the works remain orphan, the royalties will be transferred to special funds notably promoting creation. Should the rights holders be discovered, a reversion procedure is created.

9. New technologies

France - Deliberation of the CNIL on embedded geolocation devices

On 18 April 2010, the French data protection authority (CNIL) issued a Recommendation relating to the implementation of geolocation devices embedded in vehicles by insurance companies and car manufacturers. These devices include the said "Pay As You Drive" devices, facilitating the fight against theft as well as emergency calling devices. According to the Commission, it is essential that such devices are not exploited to monitor the drivers' movements.

France - The CNIL orders the suspension of two processing

The CNIL recently ordered the suspension of a biometric device and a video surveillance system for a term of three months further to on-site controls in two companies. The CNIL had refused to grant an authorisation for the implementation of the biometric device by one of the companies but the latter however had still implemented it. Concerning the video surveillance system, the CNIL considered that it constituted a device allowing the permanent monitoring of employees and thus breached their fundamental and privacy rights.

France - The CNIL issued a public warning against Acadomia

On 22 April 2010, the CNIL issued, and ordered the publication of, a public warning against AIS 2, a company that offers extra teaching services under the trade name "Acadomia", for breach of the data protection law. As part of an on-site control, the CNIL indeed noted that the company's files included excessive or insulting comments towards teachers, parents and students as well information regarding their state of health and alleged criminal offences.

10. Public law

France - Creation of local public companies

The Bill on the development of local public companies (*sociétés publiques locales*) was passed by the *Sénat* on 19 May 2010. It creates a new type of local public entities : *sociétés publiques locales* (or *SPL*), which are business corporations created and exclusively owned by at least two local authorities. These local public companies can implement development and building operations, and operate industrial or commercial public services and all other activities of public interest, on behalf of their shareholders. Benefiting from “in-house” relationships with their shareholders, they are exempted from European and French procurement rules.

11. Real estate

France - Low-income housing agencies: tax on financial resources

The Order dated 28 April 2010 published in the Official Journal of 12 May 2010 establishes the terms and conditions for the registration, calculation and payment of tax on financial resources to which are subjected low-income housing agencies, if their average annual investments remained below 50% of their average annual financial potential over the last two financial years.

12. Tax

France - France-Australia double tax treaty

The French Tax Authorities issued in administrative guidelines of 23 April 2010 (BOI 14 A-2-10 dated 12 May 2010) the new double tax treaty entered into between France and Australia aiming at avoiding the double taxation of revenue and preventing tax evasion.

This Agreement, signed on 1 June 2006, came into force on 1 June 2009, with most of the provisions being applicable as from 1 January 2010.

France -The fight against tax evasion

The 2009 Amending Finance Act n°2009-1674 of 30 December 2009 provides for new means to fight fraud and tax evasion against uncooperative States and territories (ETNC).

The French Tax Authorities recalled in its Ruling of 4 May 2010 (ruling n°2010/30) the rules now applicable to withholding taxes levied on revenues distributed by companies established in France to persons whose domicile or registered office is located outside of France or paid outside of France in an ETNC. .

France - Levies on gambling activities

The Law relating to the opening up to competition and regulation of the French online gambling market provides for three new levies applicable to gambling activities.

Foreign entities falling within the scope of the Law and liable for any of the three levies would have to appoint a representative in France. This tax representative would be in charge of the disclosing requirements and the payment of any tax due in France. The French Tax Authorities issued administrative guidelines regarding the appointment of the representative (BOI 3 P-4-10 dated 14 May 2010) ([please refer to the Competition section](#)).

13. Transport

France - Road transport

Decree N° 2010-524 of 20 May 2010 which amends certain provisions relating to road transports was published in the OJ of 22 May 2010. It sets up a registration procedure for taxis as specific carriers and harmonises the rules granting access to the profession concerning the condition of professional integrity.

The Decree is immediately applicable.

European Law - Approval of motor vehicles

Regulation No 371/2010 of 16 April 2010 replacing Schedules V, X, XV and XVI to Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, was published in the OJEU of 1st May 2010.

The Regulation came into force on 21 May 2010.

European Law - Type-approval of hydrogen-powered motor vehicles

Regulation N° 406/2010 of 26 April 2010 implementing Regulation N° 79/2009 on type-approval of hydrogen-powered motor vehicles was published in the OJEU on 18 May 2010.

The Regulation comes into force on 7 June 2010.

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