

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for February 2014.

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#### Summary of miscellaneous French draft legislation

*The examination of a lot of draft bills was completed before the parliamentary debates were suspended. As a reminder, the debates will resume after the second turn of the municipal elections.*

- **Draft law granting amnesty for acts committed in the course of social movements and trade unions' protesting activities** – Filed on November 28, 2012 – Adopted in first reading by the Senate on February 27, 2013 – A vote for a referral to commission was adopted during the first session on May 16, 2013.
- **Draft law relating to consumption**, n°1015, filed on May 2, 2013 – Final adoption after *CMP* on February 13, 2014 – Seisin of the Constitutional Council on February 17, 2014.
- **Draft law aiming at recapturing the real economy**, n°1037, filed on May 15, 2013 – Final adoption by the National Assembly on February 24, 2014 – Seisin of the Constitutional Council on February 27, 2014.
- **Draft law for the access to housing and redeveloped town planning**, n°1179 – filed on June 26, 2013 – Final adoption after *CMP* on February 13, 2014 – Seisin of the Constitutional Council on February 24, 2014.
- **Draft law relating to social and solidarity-based economy**, n°805 – filed on July 24, 2013 – adopted in first reading by the Senate on November 7, 2013.
- **Draft law for craft industry, trade and very small businesses**, n°1338 – adopted in first reading by the National Assembly on February 4, 2014 – in debate before the Senate on April 15 and 16, 2014.

- **Draft law which aims not to include the delivery service to the single price of the book**, n°1189, filed on June 26, 2013 – Adopted in first reading by the National Assembly on October 3, 2013 and by the Senate on January 8, 2014 – adopted with amendments in second reading by the National Assembly on February 20, 2014.
- **Draft reform relating to the railway system**, n°1468, filed on October 16, 2013.
- **Draft law for the ratifying of order n°2013-676 of July 25, 2013 which amends the legal framework of asset management**, n°1467, filed on October 16, 2013.
- **Draft law which aims at reinforcing the fight against counterfeiting**, n°866, filed on September 30, 2013 – Final adoption on February 26, 2014.
- **Draft law for farming, food and forest**, n°1548, filed before the National Assembly on November 13, 2013 – adopted in first reading at the National Assembly on January 14, 2014.
- **Draft law relating to inactive bank accounts and dormant life insurance contracts**, n°1546, filed on November 13, 2013 – Adopted in first reading by the National Assembly on February 19, 2014 – in debate before the Senate on April 16 and 17, 2014.
- **Draft law relating to geolocation**, n°257, filed at the Senate on December 23, 2013 – Final adoption on February 24, 2014 – Seisin of the Constitutional Council on February 27, 2014.
- **Draft law aiming at reinforcing the liability of contractors and ordering customers for subcontracting contracts and fight against social dumping and unfair competition**, n°1686, filed on January 8, 2014 – adopted in first reading by the National Assembly on February 25, 2014.
- **Draft law for the modernisation and simplification of law and procedures in relation to justice and home affairs**, n°175, filed before the Senate on November 27, 2013 – adopted in first reading by the Senate on January 23, 2014.
- **Draft law relating to the development, supervision of training periods and improvement of trainees' status**, n°1701, filed on January 14, 2014 – adopted in first reading by the National Assembly on February 24, 2014.
- **Draft law relating to professional training, employment and social democracy**, n°1721, filed on January 22, 2014 – Final adoption after CMP on February 27, 2014.

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#### Enacted laws

- **Order n°2014-86 of January 30, 2014 aiming at reducing requirements for micro and small businesses as regards their accounts** – OJ of February 1, 2014.
- **Law n°2014-110 of February 6, 2014 aiming at a better control of the use of phytosanitary products on the national territory** – OJ of February 8, 2014.
- **Order n°2014-135 of February 17, 2014 amending the legislative part of the Code of research** – OJ of February 18, 2014.
- **Order n°2014-159 of February 20, 2014 relating to intermediary housing** – OJ of February 21, 2014.
- **Order n°2014-158 of February 20, 2014 relating to various provisions for the transposition of EU Law into French Law in financial matters** – OJ of February 21, 2014.

- **Law n°2014-173 of February 21, 2014 relating to town planning and urban cohesion**– OJ of February 22, 2014.
- **Law n°2014-201 of February 24, 2014 relating to various provisions for the transposition of EU Law into French Law in the health sector**, OJ of February 25, 2014.
- **Law n°2014-200 of February 24, 2014 which ratifies Convention n°187 of the International Labour Organization relating to the promoting framework for safety and health at work** – OJ of February 25, 2014.
- **Law n°2014-199 of February 24, 2014 which authorises the ratifying of the agreement relating to the establishment of a unified jurisdiction for patents** - OJ of February 25, 2014.
- **Law n°2014-237 of February 27, 2014 which harmonises VAT applicable for printed press and online press** - OJ of February 28, 2014.
- **Order n°2014-239 of February 27, 2014 relating to the exercise of the profession of lawyer at the State Council and Supreme Court and notary as salaried staff** - OJ of February 28, 2014.

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## 1. Competition

### **European Law: State Aid – Adoption of new guidelines on state aid to airports and airlines (Aviation Guidelines)**

The Guidelines (EC) on state aid to airports and airlines were adopted on 20 February 2014 by the European Commission. As part of the Commission's State Aid Modernization strategy, these new guidelines aim at ensuring good connections between regions and the mobility of European citizens, while minimizing distortions of competition in the Single Market. They thus set out the conditions under which (i) aid for investment in airport infrastructure, (ii) operating aid to regional airports (with less than 3 million passengers per year) and (iii) start-up aid to airports to launch a new air route are permitted.

The new rules will be published in the Official Journal of the European Union in March 2014.

### **European Law: Anticompetitive agreements and abuse of a dominant position – Public consultation on the prolongation of the special competition regime for liner shipping consortia**

The European Commission launched on 27 February 2014 a public consultation on a proposal to amend Regulation n°906/2009/EC of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) as regards its period of application. The consortia block exemption regulation allows shipping lines – meeting certain criteria in terms of market shares – to enter into cooperation for the purpose of providing a joint service (so-called "consortia"), in order to rationalize their activities and cost and to improve their individual service quality. On the basis of its latest experience on the maritime transport market, the European Commission considers that the main principles and justifications of the current regulation are still valid. The draft regulation thus proposes to extend the period of application of the existing regulatory framework by five years, setting a new expiry date for 25 April 2020.

Interested third parties can submit their comments until 31 March 2014.

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## 2. Corporate

### **France: Final Approval by the National Assembly of the draft legislation aiming to regain the real economy**

After being rejected twice by the Senate, the draft legislation aiming to regain the real economy (called legislation Florange) was finally adopted by

the National Assembly on 24 February 2014. Further to the recovery of viable industrial sites, the text concerns the double voting rights and the takeover bids.

The Constitutional Council was seized on 27 February 2014.

### **France: Modification of the Prospectus Regulation: impact on the treatment of convertible bonds and bonds redeemable in shares**

Following the amendment of the Regulation (EC) n°809/2004 of 29 April 2004 (called Prospectus Regulation) in April 2013 and the update of the Questions and Answers Prospectuses of ESMA in January 2014, the *Autorité des Marchés Financiers* (AMF) published on 21 February 2014 a summary table of the information required in a prospectus relating to convertible or exchangeable bonds or bonds redeemable in shares

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## **3. Employment**

### **France: Law: creation of a new ground of discrimination**

Law n°2014-173 dated 21<sup>st</sup> February 2014 (*OJ of 22<sup>nd</sup> February 2014*), for town planning and urban cohesion, introduced a new prohibited ground of discrimination based on the "place of residence" in the article L. 1132-1 of the French Labour Code.

No person can be excluded from a recruitment procedure, an internship, or a training period within the company, and no employee can be punished, dismissed or be directly or indirectly discriminated, notably in terms of remuneration, incentive measures, share distribution, training, redeployment, allocation, qualification, classification, professional promotion, transfer or renewal of contract, due to his/her place of residence.

In case of non-compliance, penal sanctions are provided under the articles L. 1225-1 and subsequent articles of the French Penal Code (a fine of 45,000 euros and 3 years' imprisonment for an individual; a fine of 225,000 euros for a company).

### **France: The French Data Protection Authority's ruling: extension of the scope of the single authorisation for professional whistleblowing**

By a Ruling n°2014-042 dated 30 January 2014 (*OJ of 11<sup>th</sup> February 2014*), the French Data Protection Authority (CNIL) notably decided to extend the scope of its single authorisation to the professional whistleblowing systems relating to the fight against discrimination and workplace harassment, health, hygiene and safety at work (*for more information, please refer to the New Technologies section*).

### **France: Circular letter: precisions on the employers' contributions designed to finance the complementary contributions of retirement and welfare plans**

In a Circular letter n°2014-0000002 dated 4<sup>th</sup> February 2014; the national agency of social security organisms (ACOSS) clarified in about thirty FAQs the assessment methods of the collective and obligatory nature of the additional retirement and welfare plans.

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## **4. Intellectual Property**

### **France: Final adoption of the Bill to strengthen the fight against counterfeiting**

On 26 February 2014, the Parliament has finally adopted the Bill to strengthen the fight against counterfeiting, introduced on 30 September 2013 by Senator Yung and the Socialist Group in the French Senate.

This new law substantively strengthens the French anti-counterfeiting legal instruments, in particular the Law n°2007-1544 of 29 October 2007 on the fight against counterfeiting (implementing Directive 2004/48/CE of 29 April 2004 on the enforcement of intellectual property rights) and harmonizes the provisions applicable to the various rights of intellectual property.

This new law contains, in particular, the following changes:

- **Civil remedies:** with regard to the allocation of damages, the Court shall now "take into account separately" (i) the negative economic consequences, (ii) the moral prejudice and (iii) the unfair profits made by the infringer (including the intellectual, material and advertising investments savings).
- **Right of information:** the text now explicitly allows to raise a claim based on the right of information both during proceedings on the merits and during summary proceedings, and also refers to the "alleged" infringement, which should imply that a claim based on the right of information could also be raised before the Judge in charge of the proceedings.
- **Evidence:** the law harmonizes infringement seizure proceedings applicable to the various intellectual property rights and, in particular, states that the court shall have the possibility to order all the measures necessary to the investigation of the case, even when no prior infringement seizure has been performed. Contrary to what was initially proposed in the draft bill, the non-compliance with the deadline to initiate proceedings on the merits after the performance of the seizure remains the nullity of the seizure, and not the simple release of the seized materials.
- **Statutes of limitation:** the statute of limitation for initiating civil infringement proceedings is extended to five years for all the intellectual property rights.
- **Infringing acts:** in addition to the acts of use, detention and importation, the law extends the monopoly of the owner of any intellectual property right to the exportation and transshipment.
- **Customs' actions:** customs' actions are now extended to all the intellectual property rights, therefore including patents. Furthermore, the law aligns the French customs' actions with the European customs' actions as amended by the [Regulation \(EU\) n°608/2013 of June 2013 concerning customs enforcement of intellectual property rights](#). Ahead of the adoption of the currently discussed EU [Trademark Package](#), the law extends customs' actions to goods in transit.

#### **France: The French Parliament authorizes the ratification of the Agreement on a Unified Patent Court**

On 13 February 2014, upon reaching the final stage of the French fast-track legislative procedure, the French National Assembly adopted a final version of the [bill authorizing the ratification of the Agreement on a Unified Patent Court](#).

Pursuant to Article 89 of the [Agreement on a Unified Patent Court](#), the latter shall enter into force on the first day of the fourth month after its ratification by at least thirteen Member States, including the three Member States in which the highest number of patents is filed (to date, France, Germany and the United Kingdom).

The French ratification will bring to three the number of Member States which have ratified the Agreement, with Austria and Malta.

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## **5. New technologies**

### **France: Geolocation**

The draft statute governing the use of geolocation devices as part of preliminary police investigations was adopted on 24 February 2014 by the *Assemblée nationale* and the Senate. The draft statute provides that the use of geolocation devices may be authorised by public prosecutors for an initial period of 15 days, despite the opinion of the French data protection authority (CNIL) which had recommended to limit its period to 8 days. This draft statute is currently being reviewed by the French Constitutional Court.

### **France: Draft statute aimed at amending French consumer law**

The draft statute aimed at amending French consumer law, the so called "Hamon Law" was adopted by the *Assemblée nationale* on 13 February 2014. The draft statute will allow, among other things, CNIL agents to carry out online controls of websites processing personal data while current French data protection legislation only allows for onsite CNIL controls, on the basis of documentary evidence or upon summons. This draft statute is currently being reviewed by the French Constitutional Court.

#### **France: Whistleblowing systems**

On 11 February 2014, the CNIL adopted an amended version of the unique authorisation n°AU-004 relating to whistleblowing systems. The unique authorisation now extends its scope to whistleblowing systems allowing for the reporting of potential breaches in the fields of the protection of the environment, the fight against discrimination and harassment at the workplace, and health, safety and security at the workplace. However, it also tightens the requirements for anonymous reporting.

#### **European Law: Copyright levies**

The European Parliament adopted on 27 February 2014 a report on copyright levies, the so-called "Castex report". This report calls for the harmonization of the copyright levies system in all Member states of the European Union. It also aims at applying the private copying exception and the copyright levies system to some online services, including some cloud computing services.

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### **6. Procedures**

#### **France: Civil procedure: Introduction of class actions in French law**

The "Consumer" bill has been definitely adopted on 12 February 2014 by the French Parliament. The main purpose of this law is to improve the information provided to consumers and strengthen their contractual rights, as well as the powers of the enforcement authorities. This law also provides for the introduction of a French type of class actions codified in Articles L. 423-1 and following of the French Consumer Code.

Under certain conditions, a nationally representative consumer protection association authorised under Article L. 411-1 of the French Consumer Code will be entitled to act before the civil courts to obtain compensation for the individual losses sustained by a group of consumers.

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### **7. Public Law**

#### **European Law: Directives for the reform of public procurement**

The Council adopted on 11 February 2014 the legislative package for modernisation of public procurement in the EU after the Parliament voted it on 15 January 2014. It is made up of a directive on public procurement, a directive on procurement by entities operating in the utilities sectors (water, energy, transport and postal services) and a directive on award of concession contracts.

#### **European Law: New guidelines for state aids to regional airports**

The European Commission adopted on 20 February 2014 new guidelines on how Member States can support airports in line with EU state aid rules. For investment in airport infrastructure, the new guidelines define maximum permissible aid intensities depending on the size of the airport. Furthermore, operating aid to regional airports (with less than 3 million passengers a year) will be allowed for a transitional period of 10 years under certain conditions.

## 8. Tax

### France: Legal interest rate for 2014

The Decree of 4 February 2014 sets the legal interest rate at 0,04% for 2014. (Decree n°2014-98 dated 4 February 2014 establishing the legal interest rate for 2014).

### France: Mortgage guarantee granted unanimously by the partners

The French Tax Authorities have updated their Guidelines by integrating the decision taken by the French Court Supreme (Decision n°11-17948 of the Cour de Cassation dated 12 September 2012) which considers that the mortgage granted by all of the partners of a property investment company as a security for a loan that does not fall within its business purpose, is valid provided that it is included in the interest of the company (BOI-REC-GAR-20-40-10-10 n°100 dated 5 February 2014).

### France: Updating of the conditions for the deductibility of double residence costs

The French Tax Authorities have updated their Guidelines by specifying that double residence costs can be deductible for income tax purposes provided that the dual residence does not result from a personal choice of the employee (Decision n°256092 of the Council of State dated 6 October 2004 – BOI-RSA-BASE-30-50-30-20 n°290 dated 11 February 2014).

### France: Investment Income

The French Tax Authorities have updated their Guidelines by integrating the changes made by the Finance Bill for 2013 (Article 9 of the Finance Bill for 2013 n°2012-1509 dated 29 December 2012) related to investment income.

The following key measures have been provided for (BOI-RPPM dated 11 February 2014):

- Deletion of the option for the flat tax rate applicable to investment income perceived on or after 1 January 2013;
- As from 1 January 2014, establishment of a deposit which will be deducted at source (i) at the rate of 21% for dividends or (ii) at the rate of 24% for interests and chargeable to the income tax that must be paid in respect of the year in which income is perceived.
- As a reminder, households can be exempted from this deposit provided that the amount of their reference income for the penultimate year does not exceed (i) 50,000 euros (75,000 euros for a couple) in the case of dividends and (ii) 25,000 euros (50,000 euros for a couple) with regard to interests;
- Creation of an option to be taxed at a proportional rate of 24% applicable to individual taxpayers who perceive less than 2,000 euros of interests per year.

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## 9. Telecoms

### France: ARCEP publishes its second draft decisions on Market 4, Market 5 and Market 6 analysis

The *Autorité de régulation des communications électroniques et des postes* (ARCEP) has submitted to the Competition Authority for advice and to public consultation (which will run until 26 March 2014) its second draft decisions (which will apply from mid-2014 to mid-2017) which define asymmetrical regulation (applicable only to Orange) governing broadband and superfast broadband markets, namely: (i) wholesale (physical) network infrastructure access at a fixed location (market 4); (ii) wholesale broadband access (market 5); (iii) wholesale terminating segments of leased lines (market 6).

This new version contains several adjustments to the previous draft decisions of November 2013, especially:

- regarding the market 4 analysis, Orange's ducts operational terms and conditions for optical local loop rollouts have been clarified, taking into account the wide range of rollout situations and the growing shared use of this crucial resource;
- regarding the market 6 analysis, a partial and gradual lessening of tariff regulation for bitstream offers for business on copper and optical fibre networks is planned from 2015 onwards.

#### **France: Launch of 4G spectrum licence allocation procedures in the overseas territories in the first half of 2014**

Following the [public consultation held from 17 July to 30 September 2013](#) on the allocation of new 4G frequencies in the overseas territories, the Government and the *Autorité de régulation des communications électroniques et des postes* (ARCEP) will launch frequencies allocation procedures in order to better meet operators' needs and develop 4G superfast mobile broadband networks in these territories.

With a view of selecting beneficiaries, calls for applications will be issued in the first half of 2014 in Réunion, Mayotte, Guadeloupe, Martinique, Guyane, Saint-Martin and Saint Barthélemy.

As to the collectivity of Saint Pierre and Miquelon, frequencies will be allocated as the operators request it, without requiring a call for applications.

#### **France: Launch of the market analysis process for fixed telephony relevant markets for 2014 to 2017**

The *Autorité de régulation des communications électroniques et des postes* (ARCEP) launches a public consultation (which will run until 21 March 2014) starting thus a new round of analysis for fixed telephony markets. This consultation concerns a document on the [current situation and prospects of the regulation rounds for fixed telephony markets](#) as well as a [draft decision](#) of analysis of these markets.

Precisely, within the framework of this market analysis process, ARCEP:

- suggests a process of gradual phasing out (with an overall four-year notice period) of straight carrier selection offers which involves switching the concerned operators and customers over to the VGAST wholesale line rental solution;
- considers the removal of the asymmetrical regulation imposed on Orange for its call origination services for calls to value-added service (VAS) numbers;
- proposes the definitive withdrawal of the flat rate interconnection scheme for narrowband internet access, referred to as IFI, which has been imposed on Orange since 2005 but not used by a single alternative operator since mid-2012;
- invites the sector to start a reflexion: (i) over the pricing conditions applied to the supply of the VGAST wholesale line rental offer and (ii) over the opportunity to extend native IP interconnection, which is currently used to deliver traffic to the Orange IP local loop, to all types of traffic (both call termination and origination).

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