

The Paris office of Hogan 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 February 2011.

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

If you would like to consult this newsletter from past months, please click [here](#).

Please send an e-mail to communicationparis@hoganlovells.com if you wish to subscribe to this publication.

For additional information, please speak to your usual contact.

Contact

Bruno Knadjian
Avocat à la Cour

Hogan Lovells (Paris) LLP
6 avenue Kléber
75116 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

Hoganlovells.com

Summary of miscellaneous French draft legislation

- **Bill aiming to reinforce consumer protection in distance selling**, n°1940 - filed on 29 September 2009 - adopted on first reading by the *Assemblée Nationale* on 20 January 2010.
- **Bill to modernise the regulated judicial and legal professions**, n°2383, filed on 17 March 2010 - adopted on first reading by the *Assemblée Nationale* on 30 June 2010 and by the *Sénat* on 8 December 2010
- **Bill on commercial planning**, n° 2490, filed on 3 May 2010 - adopted on first reading by the *Assemblée Nationale* on 15 June 2010 - examined by the economics commission of the *Sénat* on 15 December 2010
- **Bill in relation to police custody**, n° 2855, filed on 13 October 2010 - adopted on first reading by the *Assemblée nationale* on 25 January 2011
- **Bill on bioethics**, n° 2911, filed on 20 October 2010 - adopted on first reading by the *Assemblée nationale* on 15 February 2011
- **Bill orienting and organising internal security performance**, n°1697, filed on 27 May 2009 - adopted by Parliament on 8 February 2011. Referral to the Constitutional Council on 15 February 2011
- **Bill to simplify and improve the quality of the law**, n° 1890, filed on 7 August 2009 - adopted on second reading by the *Assemblée nationale* on 9 February 2011 - examined on second reading by the *Sénat*
- **Bill implementing various European Parliament and Council directives in civil and commercial matters** - filed with the *Sénat* on 22 September 2010
- **Bill adapting legislation to European Union law in the areas of health, work and electronic communications**, filed on 15 September 2010 - adopted on first reading by the *Assemblée nationale* on 13 January 2011 and by the *Sénat* on 10 February 2011 - adopted in *Commission Mixte Paritaire* on 16 February 2011 - awaiting public reading and enactment

Enacted laws

- **Law n°2011-103 of 27 January 2011** on balanced representation of woman and men on boards of directors and supervisory boards and professional equality - OJ of 28 January 2011
- **Law n°2011-156 of 7 February 2011 relating to solidarity in terms of water provision and purification** - OJ of 8 February 2011

1. Banking

France - Consumer credit

Decrees n°2011-135 ([OJ of 3 February 2011](#)) and n°2011-136 ([OJ of 3 February 2011](#)), both dated 1 February 2011, complete the reform of consumer credit by Law No 2010-737 dated 1 July 2010 ([OJ of 2 July 2010](#)) (please refer to the Legal and regulatory update - [June](#) and [July 2010](#)). The first Decree establishes new rules for calculating the effective global rate (*taux effectif global*), which will now include all ancillary costs (such as documentation fees or insurance costs). The second specifies the kind of information a creditor or credit intermediary must disclose to a borrower before making an overdraft facility available, in order to enable the borrower to understand clearly the extent of his commitment.

These new provisions come into force on 1 May 2011.

France - Legal interest rate

The legal interest rate for 2011 is 0.38% (Decree n°2011-137 dated 1 February 2011).

2. Capital Markets

France - Buy back without cancellation of debt securities

A banking and financial regulation law dated 22 October 2010 amended Article L.213-1 A of the Monetary and Financial Code to allow issuers to purchase the debt securities they issue. Article 238-2 of the General Regulations of the *Autorité des marchés financiers* ("RGAMF") specifies that any issuer acquiring more than 10% of the bonds in a single issue must notify the market within four trading days by way of press release. In addition, an article 238-2-1 has been added to the RGAMF to specify the rules on disclosure of acquisitions without cancellation of debt securities. Moreover, Decree No. 2011-180 of 15 February 2011 created an article D.213-1-A in the Monetary and Financial Code which provides that the acquired debt securities may be kept for a maximum of one year after acquisition. This measure comes into force 15 March 2011.

France - New short selling transparency regime

To ensure transparency in short selling and to allow the regulator to know which securities are sold short and how much this accounts for in total, the *Autorité des marchés financiers* ("AMF") has established a reporting system for short positions. Thus, since 1 February 2011, any person holding a net short position which is equal to, or crosses, in either direction, one of the regulatory thresholds (0.2%, 0.3%, 0, 4%, 0.5%, etc. ...) must declare this position to the AMF within one trading day.

The implementation of the transparency regime was further explained by the [AMF position circular n°2011-03 dated 2 February 2011](#) which specifies *inter alia* the scope of the new framework. The new transparency framework covers all issuers whose shares are admitted to a French regulated market (i.e. Euronext Paris) or an organised multilateral trading facility (Alternext Paris), except shares for which the French market is not the principal trading market, as well as any persons subject to a requirement to report (both individuals and legal entities, all investors, whether regulated or not and irrespective of country of residence).

3. Competition

France - Online gaming

[Decree n°2011-169 of 10 February 2011](#) amending Article 3 of [Law n°2010-476 of 12 May 2010](#) on the opening to competition of the online gaming sector was published in the OJ of 12 February 2011.

European Law - New European public consultation on collective redress

Please refer to the Procedure section.

4. Consumer law

France - Publication by ARCEP of thirty proposals for improving offers to consumers

Please refer to the Telecoms section.

France - Consumer credit

Please refer to the Banking section.

5. Corporate

France - A new regime of mandatory takeover bids comes into force

An order dated 31 January 2011, published on 1 February 2011, approved the amendments to the AMF general regulation relating to rules on takeover bids.

By way of reminder, the main amendments are:

- to fix a new trigger threshold for mandatory bids at 30% (instead of one third previously) of a company's capital and voting rights, and introduce a "grandfather" clause intended to preserve the rights of persons holding between 30% and one third on 1 January 2011, as a consequence of the lowering of the trigger threshold for a mandatory bid.
- to introduce a specific exemption from making a mandatory bid for temporary situations where a person or entity does not intend to take control and commits to reducing its investment to below the relevant threshold for a mandatory bid within 6 months.
- to fix a base price for the takeover bid that is equal to (and no longer equivalent to) the highest price paid by the offeror during the 12 month period prior to the event triggering crossing of the threshold.
- to remove the price guarantee and introduce mandatory takeover bids over OMTF (instruments admitted to trading on an organised multilateral trading facility).

France - Maximum period for a company to hold its own debt securities traded on a regulated market

Ordinance n°2011-180 dated 15 February 2011 sets a maximum period for "*self holding*" (i.e. the holding by the issuer of its own securities) of debt securities acquired or retained by the issuer, of one year after their acquisition. At the end of this one-year period, the securities are cancelled.

The Ordinance also provides that an issuer, whilst unable to hold more than 15% of a single issue of debt securities, may nonetheless acquire and retain negotiable debt securities issued by it, in order to improve the liquidity of the said securities, up to a cap of 10% of the total issue, if it notifies the *Banque de France*.

These provisions will be in force as of 15 March 2011.

France - Simplification of French company law

Several provisions of the Bill relating to simplification and improvement of the law passed on second reading by the *Assemblée nationale* on 9 February 2011 concern company law.

The Bill would, in particular:

- simplify share capital increase procedures;
- remove the reporting requirements on *société anonyme* directors, statutory auditors and shareholders in the case of agreements relating to ordinary transactions entered into on normal terms and conditions.

6. Employment

France - Authorities specify how to calculate the "Fillon allowance" on a yearly basis

Article 12 of the Social Security Financing Act for 2011 amends the basis for calculation of the "Fillon allowance" reduction in employers' social contributions.

Circular n°2011-34 dated 27 January 2011 specifies how the annualisation of the allowance will be implemented.

France - The employment agency certificate sent via the Internet

In accordance with Decree n°2011-138 dated 1 February 2011, as from 1 January 2012, companies employing at least ten people will have to send the certificate delivered on termination of employment allowing the employee to receive unemployment benefits, to the Employment Agency ("*Pôle Emploi*") via e-mail and no longer by post.

The decree specifies that the the certificate must be sent via email without delay.

7. Energy

France - Modification of the voltage to be maintained by generating stations

The Order of 23 December 2010 modifying the minimum voltage set by article 14 of the Order of 23 April 2008 was published in the OJ on 15 February 2011.

The Order modifies the minimum voltage that electricity producers must maintain in relation to the technical design and operating prescriptions for connections between generating stations and the public electricity transmission network.

The rule is intended to prevent generating stations from disconnecting in the event of one-off incidents, causing potentially disruptive drops in voltage.

France - Domestic tax on electricity end use

The Order of 3 January 2011 specifying the conditions for exemption from the domestic tax on electricity end use and the Order of 3 January 2011 containing the form for the certificate for exemption from the domestic tax on electricity end use were published in the OJ on 4 February 2011.

This tax is paid by electricity suppliers and companies producing electricity for their own needs and is included in the prices paid by suppliers' end clients. An exemption is available in certain instances. To benefit, the end user must send the supplier and the Customs authorities a certificate in the form set out in the second Order of 3 January 2011.

European Law - Reminder of the 2020 renewable energy objectives

The European Commission published on 31 January 2011 a Communication entitled, "Renewable Energy: Progressing towards the 2020 target".

This Communication follows Directive n°2009/28/EC on promotion of the use of energy from renewable sources, which set binding national objectives for 2020.

According to this Communication, the 2020 objectives will be met and even exceeded if the member States fully implement their domestic action plans and financing instruments are improved. The European Commission calls for member States to double their annual capital investments in renewable energies in order to reach 70 billion Euros each year, for more cooperation and integration of the European renewable energies market.

8. Procedure

France - Reform of the arbitration procedure

By means of Decree n°2011-48 adopted on 13 January 2011 and published in the OJ of 14 January 2011, the arbitration procedure (domestic or international arbitration) has been amended to keep Paris an attractive venue. The Decree will be codified in the French Code of Civil Procedure (Articles 1442 to 1527), and will come into force on 1 May 2011, subject to specific provisions. While it codifies case law (for instance the rule that the President of the "Tribunal de Grande Instance" of Paris is the "support judge", unless otherwise provided by contract), it also introduces new provisions. For instance, it provides that appeals against, and proceedings for annulment of, arbitral awards will no longer have suspensive effect.

European law - New European public consultation on collective redress

The European Commission launched on 4 February 2010 a new public consultation aimed at achieving a coherent approach to collective redress in the European Union. Contributions may be sent until 30 April 2010 and must identify:

- the legal principles on which collective redress may be based,
- the fields in which the various forms of collective redress could add value in terms of improving the application of EU law.

9. Insurance

France - Signature of an amendment to the AERAS agreement

An amendment to the convention on Insurance and Loans for individuals with increased health risks ("**AERAS Convention**") was signed on 1 February 2011. The amendment is the result of a compromise between the French State, representatives of patient groups and the disabled and the insurance and banking sector. Its aim is to improve access to credit for sick persons. Among the major improvements of the amended convention is the introduction, as from 1 September 2011, of a new insurance product offering a new disability guarantee designed to meet the needs of people who are or have been sick, without excluding pathology, and providing for the disability to be recognised by all insurers according to common criteria.

10. Intellectual Property

European law - European Parliament approval of the draft Council decision authorising enhanced cooperation in the creation of unitary patent protection.

Faced with the failure over many years of negotiations on the creation of a single European Union patent, in particular because of the refusal of certain Member States (notably Spain and Italy) of filings in languages other than their national languages, nine Member States (including France, Germany and United Kingdom) have decided to cooperate further in this area. The draft Council decision was approved by Parliament by resolution of 15 February 2011. The Council will vote in March using the ordinary legislative procedure, and the Commission will then submit two drafts: one relating to creation of the single patent and the other to language matters. Other member States may join the enhanced cooperation at any time.

11. Life sciences

France - Health products

- Publication in the OJ of Decree n°2011-56 of 14 January 2011 concerning co-payment due from patients in accordance with article L. 322-2 of the French Social Security Code. The decree increases the range within which the National Union of Health Insurance Fund ('UNCAM') must set the proportion of co-payment due from patients for medication with a moderate medical benefit, homeopathic medication and medical devices. The

decree came into force on 16 January 2011. Following on from this decree, a [ministerial Order of 15 February 2011](#) has been published to modify the characteristics of medicine labels.

- Publication in the OJ of [Decree n°2011-56 of 3 February 2011](#) concerning inclusion in the list of generic drugs of modified-release oral pharmaceutical specialties in a different form from the reference medicine. The decree enforces a provision of the social security financing law for 2011 allowing the inclusion in the generic drugs list of "quasi-generic drugs", i.e. drugs in a different pharmaceutical form.

12. New technologies

France - Domain names

Following the decision of the French Constitutional Council ([please refer to the Legal and regulatory update - October 2010](#)) holding Article L.45 of the French Posts and Electronic Communications Code and associated statutory instruments unconstitutional, the *Sénat* adopted, on 10 February 2011, a bill adapting French law to European Union legislation in the field of health, employment and electronic communications. The bill sets out the conditions in which domain names may be awarded and withdrawn.

France - Digital books

On 15 February 2011 the *Assemblée Nationale* adopted a bill on the price of digital books, requiring publishers to set a sale price for books sold on both digital and printed media. Sellers of digital books will have to apply the price set by the publisher.

France - Inspections by the CNIL

An inspection by the French data protection authority (CNIL) revealed that the mayor of a French town had used data collected in a population census to create an illegal file. The CNIL brought legal action, leading to a 1,500 Euro fine for the mayor.

France - Four cease and desist letters issued by the CNIL

During the session of its litigation panel of 18 January 2011, the CNIL issued cease and desist letters against four companies for their failure to comply with French data protection legislation in relation, respectively, to data subjects' access rights, commercial prospection, geolocation of employees and videosurveillance systems. Concerning videosurveillance systems, the CNIL seized the opportunity to emphasise that employers may only install security cameras in the workplace in limited circumstances.

13. Real estate

France - Listed real estate investment companies (REITs): Tax

[Please refer to the Tax section.](#)

14. Tax

France - Personal Income Tax (PIT)

The French Tax Authorities issued a statement of practice dated 8 February 2011 (**statement of practice n° 5 B-2-11**) regarding calculation of the withholding tax on salaries and retirement annuities paid to individuals non-resident in France for tax purposes.

France - Estate and free transfers (inheritance)

The French Tax Authorities issued a statement of practice dated 15 February 2011 (**statement of practice n° 13 L-2-11**) regarding the audit by the tax authorities of declarations and agreements drafted for inheritance purposes at the request of the parties. In consideration of the audit, the tax authorities would not be able to challenge such declarations and agreements more than one year after filing of the audit request.

France - Listed real estate investment companies (REITs)

The French Tax Authorities issued a ruling dated 15 February 2011 (**RES n°2011/1 (FE)**) regarding application of the corporate income tax exemption provided for by section 208 C of the French Tax Code to foreign companies. The dual listing of foreign companies (abroad and in France) is no longer required provided specific conditions are complied with.

International - Double tax treaties and bilateral agreements

- **Decree n°2011-106** dated 26 January 2011: Tax bilateral agreement regarding exchange of information in tax matters between France and Vanuatu signed in Paris on 31 December 2009;
- **Decree n°2011-109** dated 27 January 2011: Addendum to the tax treaty between France and Luxembourg signed in Paris on 3 June 2009.

15. Telecoms

France - Publication by ARCEP of thirty proposals for improving offers to consumers

On 18 February 2011, ARCEP published thirty proposals for improving offers to consumers by Internet Service Providers (ISP), mobile telephone and landline operators and postal service operators. The proposals were made to ensure consumers have effective means of making an informed choice when subscribing for an offer (especially in terms of the nature, quality and price of the services offered). Twenty-three of the proposals relate to electronic communications services, and the other seven to postal services.

ARCEP will evaluate the implementation of these proposals at the end of 2011.

France - Publication in the OJ of 19 February 2011 of the Decree dated 23 December 2010 approving the agreement between ARCEP and the Caisse des dépôts et consignations (CDC) regarding management of the universal service fund for electronic communications

The agreement between ARCEP and the CDC, approved on 23 December 2010, specifies the mechanisms for management of the universal service fund for electronic communications, including the way ARCEP notifies the CDC of contributions and the way contributions are collected by the CDC.

France - Publication in the OJ of 11 February 2001 of the Decree dated 31 January 2001 approving Decision n°2010-1233 of ARCEP of 14 December 2010 amending Decision n°2002-1179 of 19 December 2002 listing emergency numbers that electronic communications operators must carry for free

In its Decision n°2002-1179 of 19 December 2002, ARCEP awarded emergency number status (entailing free carriage by electronic communications operators) to the following numbers: 112 (European emergency number), 15 (protecting human life), 17 (police), 18 (firefighting), 115 (social emergency), 119 (social emergency - child abuse).

Decision n°2010-1233 of 14 December 2010 adds two new numbers to the list: 114 (allowing the hearing impaired to call a national relay centre receiving and redirecting their calls so as to allow them to get through to emergency numbers at all times) and 11600 (social emergency - missing child).

16. Transports

European Law - List of aircraft operators

Regulation n°115/2011 of 2 February 2011 amending Regulation n°748/2009 on the list of aircraft operators performing an aviation activity listed in Annex I to Directive 2003/87 on or after 1st January 2006 and specifying the member State in charge of each aircraft operator was published in the OJ of the EU of 12 February 2011.

It came into force on 15 February 2011.

European law - Community vessel traffic monitoring and information system

Directive 2011/15 of 23 February 2011 amending Directive 2002/59 establishing a Community vessel traffic monitoring and information system was published in the OJ of the EU of 24 February 2011.

It comes into force on 16 March 2011.

Disclaimer

This publication is for information only. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.

So that we can send you this email and other marketing material we believe may interest you, we keep your email address and other information supplied by you on a database. The database is accessible by all Hogan Lovells' offices, which includes offices both inside and outside the European Economic Area (EEA). The level of protection for personal data outside the EEA may not be as comprehensive as within the EEA. To stop receiving email communications from us please send an email to communicationparis@hoganlovells.com.

This is a commercial communication from Hogan Lovells. "Hogan Lovells" or the "firm" refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses, each of which is a separate legal entity. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia with offices at 555 13th Street, NW, Washington, DC 20004, USA.

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Rankings and quotes from legal directories and other sources may refer to the former firms of Hogan & Hartson LLP and Lovells LLP. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

New York State Notice: Attorney Advertising.

© Hogan Lovells 2010. All rights reserved.