

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 April 2013.

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Summary of miscellaneous French draft legislation

- **Draft law granting amnesty for acts committed in the course of social movements and trade unions' protesting activities** – Filed on November 28, 2012 – Adopted on first reading by the Senate on February 27, 2013 - in debate before the National Assembly on May 16, 2013.
- **Draft law regarding the separation and regulation of banking activities** - Presented to the Council of Ministers on December 19, 2012 – Adopted on first reading by the National Assembly on February 19, 2013 – Adopted on first reading at the Senate on March 22, 2013.
- **Draft law relating to various provisions on infrastructure and transport services** – Presented to the Council of Ministers on January 3, 2013 – Adopted on first reading by the Senate on February 12, 2013 – Adopted on first reading by the National Assembly on April 16, 2013 – CMP (agreement) on April 24, 2013 – Seisin of the Constitutional Council on April 25, 2013.
- **Draft law on job securitisation** – Filed on March 6, 2013 – Adopted on first reading before the National Assembly on April 9, 2013 and by the Senate on April 20, 2013 – CMP (agreement) on April 23, 2013. Reading planned on May 14, 2013.
- **Draft law to amend law n°2011-814 of July 7, 2011 on Bioethics by permitting research on embryos and embryonic stem cells under certain conditions** – adopted on first reading by the Senate on December 4, 2012 – in debate on first reading before the National Assembly on March 28, 2013.
- **Draft law for a general reform of medical biology** – Filed on December 19, 2012 – emergency procedures – adopted on first reading by the Senate on February 5, 2013 – Adopted on first reading by the National Assembly on March 25, 2013 – CMP (agreement) on April 10, 2013 – Reading planned on May 16, 2013.
- **Draft law to prohibit layoffs in the view of maximising profits and abusive job cuts, n°869**, filed on March 28, 2013 – in debate before the National Assembly on May 16, 2013.

Enacted laws

- **Law n°2013-312 of April 15, 2013 to make the transition to a basic energy system and on various provisions relating to tariffs for the supply of water and tariffs for electricity produced by wind turbines**, OJ of April 16, 13, 2013.
- **Law n°2013-316 of April 16, 2013 on independence of scientific expertise and alert regarding health and environment** - OJ of April 17, 2013.

1. Competition

France - Late payments in public contracts

[Please refer to the Public law section.](#)

2. Consumer law

France - Unfair Terms Commission's Report

The Unfair Terms Commission has published its [2012 Report](#) in which it requested that 'dry seats' sales concluded on the internet by consumers be subject to the professional liability rules of travel agencies and tour operators. It also seeks clarification of Article L.121-26 of the Consumer Code relating to the time for thought period in subscription contracts.

3. Corporate

France - Notification to the URSSAF of the identity of beneficiaries of stock options or free shares

The [Circular-Letter ACOSS n°2013-0000019](#) of 28 March 2013 of the *Agence Centrale des Organismes de Sécurité Sociale* (ACOSS) specifies the date on which the employer shall communicate to the URSSAF the identity of the employees or the corporate officers to whom free shares or stock options were granted.

The capital gain on acquisition of the said free shares or stock options is exempted from social security contributions if the employer notifies the identity of the persons to whom they have been granted during the precedent year, as well as the number and the value granted to each of them. In case of failure by the employer to comply with this obligation, the entirety of the social security contributions (in particular on the wage share) shall be payable.

The ACOSS thus specifies that the event entailing such a notification is the date of lifting of the option for stock options or, for free shares, the date of expiration of the acquisition period. The notification may be done by the employer on the annual wages declaration.

4. Employment

France - Law: health & environment expertise and whistle-blowers' protection

The [Law n°2013-316 dated 16th of April 2013 concerning the independence of health and environment expertise and whistle-blowers' protection](#) has been published in the Official Journal.

The Law provides that an employee may alert his employer if he estimates, in good faith, that the products or the manufacturing processes used in the company implicate a serious risk on public health or the environment. A Health, Safety and Working Conditions Council's representative who noticed such a risk may also trigger the alert.

The alert is registered in writing in conditions determined by Decree and the employer must inform the whistle-blower about the action he intends to take.

The whistle-blower benefits from a specific protection concerning recruitment, access to an internship or a training period or against any sanction or discriminatory measure for having reported or testified in good faith about the facts related to a serious risk on public health or the environment.

A whistle-blower acting in bad faith or with malicious intent incurs a 5 year imprisonment sentence and a € 45,000 fine.

France - Optional and statutory profit-sharing schemes exceptional release

A Law Proposal concerning the exceptional release of the optional and the statutory profit-sharing schemes has been registered on the 9th of April 2013.

The Law Proposal would allow the beneficiaries to withdraw, during the year 2013, the whole or part of the frozen assets in one of those profit-sharing schemes, except those placed within collective savings plan in view of retirement ("PERCO") and those invested in solidarity funds.

The released sums – including the interests – would not be subject to income tax, but the interests could be subject to general social contributions (CSG) or contributions for the reimbursement of the social debt (CRDS).

The statutory profit-sharing scheme release managed in a frozen current account or the release of both optional and statutory profit-sharing schemes invested in company's stocks in the context of an employee savings scheme would either be subject to a collective bargaining agreement or to the employer's agreement.

The amount of the released sums would be generally limited to € 20,000 per beneficiary.

Decree: extension of the two months APLD conventions experimentation

The Decree n°2013-309 dated 12th of April 2013 postponed the term of the experimentation of the 2 months Long Period Partial Activity Conventions (APLD) to the 31st of July 2013.

5. Intellectual Property

France - Framework agreement on digital books

On 21 March 2013, the French Minister for Culture and Communication, Aurélie Filippetti, has received the National Union of Edition (*Syndicat National de l'Édition - SNE*) and the Permanent Council of Writers (*Conseil permanent des écrivains - CPE*) for the signature of a framework agreement relating to publishing agreements in the book industry.

This agreement follows the works carried out by the Specialised Commission of the Superior Council of Literary and Artistic Property (*Conseil supérieur de la propriété littéraire et artistique -CSPLA*) chaired by Mr. Sirinelli and proposes the adoption of a Code of good practices as well as amendments to the French Intellectual Property Code.

Amongst these amendments are, inter alia, (i) a legal definition for publishing agreements in the digital world and the obligation to provide for specific provisions for digital publishing in agreements, (ii) criteria allowing an assessment of the notion of permanent and monitored exploitation of the work, whether printed or digital, as well as (iii) specific conditions for setting author's remuneration in compensation of digital exploitations.

The Minister had undertaken to make a proposition with a view to enact the legal amendments provided in the framework agreement.

France - Action plan against counterfeiting

On 3 April 2013, the Minister for Economic Affairs and Finance and the Minister of Foreign Trade have presented an action plan against counterfeiting, divided in three levels.

On a national level, the plan is based on the increase of customs action on the Internet, through the legal provisions adopted in the Amending Finance Law for 2012 and pertaining to the so-called "*coup d'achat*" procedure, which authorises customs to acquire, against payment, counterfeit goods, with the sole purpose of reporting the customs infringement, of identifying the infringers and of performing customs seizures. Furthermore, the government aims at adopting specific measures to particular sectors, such as e-commerce, health or culture.

On a European level the government recalls and supports the recent decisions of the European Commission on the reform of European trade mark law, mentioned in the French Legal and Regulatory Update - March 2013.

Finally, on an international level, the government announced that the protection of intellectual property and geographical indications will be a top priority, in particular when negotiating new trade agreements or by strengthening a bilateral cooperation.

France - SACEM, Universal Music and YouTube agreement on the remuneration of authors

On 3 April 2013, the French music collecting society SACEM, Universal Music Publishing International and YouTube have announced to have entered into a new agreement on artists' remuneration and conditions of use of videos hosted on Youtube.

This agreement is a prolongation of the one concluded between YouTube and SACEM in 2010. It will be in force for a period of three years and aims at "ensuring a fair remuneration of the right holders who are associated to the revenues generated by the platform".

This agreement covers any types of videos, including user-generated contents, and authorises YouTube, on an international level, to use SACEM and Universal Music's collections, through the videos hosted on YouTube.

6. New technologies

France - CNIL limits the use of keyloggers

The French Data Protection Authority (CNIL) announced in a press release on 20 March 2013 that keyloggers, (software allowing to record all actions undertaken by any person on his / her computer), could only be used in a professional context in cases of "*strong safety requirements, and with the specific information of the persons concerned*". Using keyloggers without informing the data subjects is now punished by 5 years of imprisonment and a 300 000€ fine (1 500 000€ for corporate bodies), in accordance with the provisions of the LOPPSI Law.

France - VLC/Blu-Ray interoperability

Further to a request filed by the VideoLan association (developer of the VLC Media Player software) before the High Authority for the Diffusion of Protected Works and for the Protection of Rights on the Internet (HADOPI) to address the question of interoperability between VLC and Blu-Ray discs, HADOPI issued its opinion on 8 April 2013. In this decision, HADOPI ruled that VideoLAN could not benefit from the reverse engineering exception, nor the decompilation exception, to obtain the secrets of the AACs and BD+ technical protection measures implemented on Blu-Ray Discs.

France - CNIL annual report

On 23 April 2013, the CNIL published its 33rd annual report on its activities for 2012. The report indicates that the number of complaints received by

the CNIL increased by 4,9% and that opposing the processing of one's data is the main cause for complaints (46% of the received complaints) across all sectors.

European Law - Google's privacy policy: enforcement actions

Given Google's non-compliance with the recommendations issued by the G29 (the Article 29 Data Protection Working Party consisting of the 27 data protection authorities of the European Union Member States) on its new privacy rules ([please refer to the Legal and regulatory update - March 2012](#)), six European data protection authorities decided, on 2 April 2013, to initiate enforcement actions to sanction Google. In France, the CNIL decided to initiate an inspection procedure, while ensuring an administrative cooperation with the other members of the G29.

7. Procedures

European Law - The second generation Schengen Information System

The second generation Schengen Information System (hereinafter "SIS II") created by Regulation 1987/2006/CE and Decision 2007/533/JAI on the establishment, operation and use of the second generation Schengen Information System entered into force on 9 April 2013. This system aims at increasing security and facilitating free movement of persons within the Schengen area by easing the exchange of information between the police, customs and national border control authorities. Its functionalities have been enhanced allowing in particular the introduction of biometrics data and new types of alerts related to means of payment, aircrafts or industrial equipment. Furthermore, "SIS II" reinforces data protection safeguards. The direct consultation of data entered into "SIS II" is limited to certain competent authorities whose names have been listed and published on 9 April 2013 in the Official Journal of the European Union.

8. Public Law

France - Time-limits for payment

Decree n°2013-269 dated 29 March 2013 on fighting late payments in public contracts was published in the O.J. dated 31 March 2013. In accordance with Law n°2013-100 dated 28 January 2013, it provides that the time-limit for payment for contracting authorities is 30 days from the reception date of the payment request (being specified that such time-limit is 50 and 60 days for public health establishments and public undertakings). It also fixes interest rates and the amount of compensation for recovery costs in case of late payment (40 euros). This decree shall apply to all contracts entered into after 16 March 2013 for debts whose time-limit for payment shall start after 1st May 2013. The Ministry for the Economy and Finance has specified the conditions of implementation of this Decree in the public local and hospital sector in a Circular dated 15 April 2013.

9. Real estate

France - Rents: index

The cost of construction index (ICC) for the fourth quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n°80, 5 April 2013](#)) amounts to 1639 which corresponds to a 0.06% increase over a year.

The commercial rents index (ILC) for the fourth quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n°82, 5 April 2013](#)) amounts to 108.34 which represents an increase of 1.94% over one year.

The tertiary activities rents index (ILAT) for the fourth quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n°81, 5 April 2013](#)) amounts to 106.73 which corresponds to an increase of 2.04% over one year.

France - Sale of plots of land belonging to the private domain of the French State in order to build social housing

Decree n°2013-315 dated 15 April 2013 published in the Official Journal dated 16 April 2013 defines notably the rules to determine the sale price of plots of land belonging to the private domain of the French State in order to build social housing.

These provisions came into force on 17 April 2013.

10. Tax

France - Limitation of the tax deductibility of interest expenses

The maximum annual interest rate used by companies to calculate the limit of the tax deductibility of interest expenses under the provisions of Article 39, 1-3 ° of the French Tax Code have been published in the *Journal Officiel* dated 28 March 2013, with respect of accounting period (12 months) ending between 31 March 2013 and 29 June 2013.

The maximum deductible interest rate is now:

-3.09% for financial year ending between 31 March and 29 April 2013;

-3.04% for financial year ending between 30 April 2013 and 30 May 2013;

-2.98% for financial year ending between 31 May 2013 and 29 June 2013.

France - New rules applicable for carry forward losses – Comments

The French tax authorities have updated their guidelines of the new rules regarding carry forward losses arising from the Finance Bill for 2013 (*Article 24 of Law n°2012-1509 dated 29 December 2012*). As a reminder, the allocation of prior losses on the current taxable income recognized in a given year is only possible up to a ceiling of € 1 million plus an amount of 50% beyond, for financial years ending on or after 31 December 2012 (against 60% previously).

The French tax authorities have also specified that the beneficiary companies of a debt waiver pursuant to a reached or approved agreement under a safeguard or liquidation process, are allowed to increase the limit of 1 million euros by the amount of this waiver (*BOI-IS-DEF-10-30-20130410 dated 10 April 2013*).

France - Additional corporate income tax contribution of 3% on distributions

The French tax authorities have updated their comments, regarding additional corporate income tax contribution of 3% on distributed amounts, provided by the Amending Finance Bill for 2012 (*Article 36 of Law n°2012-1510 dated 29 December 2012*). As a reminder, the amounts distributed by listed real estate investment companies (*SIIC*) (and some companies having an identical object) to fulfil their distribution requirements are exempt from additional corporate income tax contribution of 3%, when the payment is made between 1 January and 31 December 2013 (*BOI-IS-AUT-30-20130410 n°20 dated 10 April 2013*).

France - Partial Public Consultation – Limitation of the deduction of net financial expenses

The French tax authorities have opened a public consultation until 26 April 2013 with respect to their comments on the net financial expenses capping, introduced by the Finance Act for 2013 (*Article 23 of Law n°2012-1509 dated 29 December 2012*). The taxpayer can rely on these comments until their eventual review at the end of the consultation (especially *BOI-IS-BASE-35-40-20130329 dated 29 March 2013*).

France - Consolidation payment of the value added tax ("VAT")

The French tax authorities have finally published their comments on the optional consolidation payment of VAT and similar taxes regime, previously submitted to public consultation. As a reminder, this regime was introduced by the Amending Finance Bill for 2010 ([BOI-TVA-DECLA-20-20-50 dated 19 April 2013](#)). This regime allows a taxpayer to be solely responsible for any VAT payable by the members of his group.

France - VAT – Simplification of the identification formalities for VAT taxable persons established in another Member State of the European Union

The French tax authorities have published their comments regarding the formalities' simplification related to VAT registration. It is no longer required for VAT taxable persons established in another Member State of the European Union, which shall carry out the registration formalities with the DGFIP services, to present in support of their claim an original certificate of their VAT liability of the country where they have their headquarters or principal place of business, since their VAT identification number in that state is valid in the information system of VAT "VIES" set up by the European Commission ([BOI-TVA-DECLA-20-30-40-20 n°80 dated 17 April 2013](#)).

France - Exchange of information agreement concluded between France and the Netherlands in respect of Aruba

The Decree promulgating the tax agreement concluded between France and the Netherlands in respect of Aruba, regarding the exchange of information for tax purposes, has been published in the Official Journal of the French Republic ("*Journal Officiel de la République française*" - [Decree n°2013-296 dated 9 April 2013](#)). The tax agreement is now into force since the decree has been published.

11. Telecoms

France - The ARCEP authorizes Bouygues Telecom to use 1800 MHz band for 4G

Following the request of Bouygues Telecom in a letter dated 19 July 2012, in a [Decision n°2013-0363 dated 14 March 2013](#), the ARCEP determined the modalities of operation by this company of a 4G LTE (high mobile broadband) network in the 1800 MHz band, which was formerly reserved to the GSM norm (2G).

Bouygues Telecom had one month following this decision to withdraw its request and keep its original licence. In a letter received on 2 April 2013, Bouygues Telecom confirmed its request of lifting of the restriction on the use of the frequencies which were granted to it in the 1800 MHz band and accepted the conditions determined by the ARCEP. In a [Decision No. 2013-0514 dated 4 April 2013](#), the ARCEP modified Bouygues Telecom licence in order to allow it to use the 1800 MHz band for 4G.

France - The ARCEP launches a public consultation on the future of unbundling

The ARCEP launches a [Public consultation from 3 April to 15 May 2013](#) on the perspectives and the modalities of regulation of the unbundling for the next market analysis round (from mid-2014 to mid-2017). The unbundling enables alternative operators to use the passive infrastructures of the copper local loop of France Télécom in order to provide their final customers with their services by installing their own equipment on the subscriber access nodes (SAN) of France Télécom. This wholesale offer of France Télécom is regulated by the ARCEP.

The coverage rate on the French population of the unbundled retail offers amounts to 86.3%, which is the highest rate in Europe. However, only 40% of the France Télécom's SAN have been unbundled. The extension of the unbundling to the whole French population will not occur before mid-2017, whereas where the unbundling is not reachable, the serviced offered to the final customers are often limited and usually exclude television.

The ARCEP, by this consultation, wishes to obtain the point of view of the private or public stakeholders on the future of the unbundling regulation, to harmonize the offer of unbundled services on the whole territory and thus to reduce the digital divide.

European Law - The Commission asks the German regulator to modify its project of regulation of the call termination rates

The EU Commission, by a [Decision of 8 April 2013](#), has requested from the German regulator that it modifies its project of regulation of the call termination rates, in order to protect the consumer. Call termination rates are those that the telecommunication networks charge each other to deliver calls from a network to another. These costs are reflected on the prices paid by the final consumer.

The German regulator, BNetzA, had set termination rates which were comprised between €0.0036 and €0.0025 per minute, 300% higher than the average of the European countries, which rates are around €0.001 per minute in accordance with the Commission recommendations. In this case, the German regulator used a different calculation method (LRAIC+) than the one used by the Commission (pure BU-LRIC).

The Commission, having been notified of this decision under Article 7a of the Telecoms Directive, has considered that these rates were too high and asks the German regulator to offer new rates that would deliver lower consumer prices and help building a telecoms single market. BNetzA has three months to find a solution with the Commission and the body of the European telecoms regulators (BEREC). During this time, the implementation of those rates is suspended.

12. Transport

France - Information for passengers of airlines included in the European Union blacklist

[Law n°2013-343](#) of 24 April 2013 strengthening passenger information provided for the purchase of tickets on airlines included in the European Union blacklist was published in the Official Journal of 25 April 2013. In particular, it provides that the carrier shall inform clearly and unambiguously the passenger or purchaser of the ticket about this situation and invite him to search for alternatives, subject to a fine of 7,500 euros per ticket, doubled in the event of a repeated violation. It shall come into force on a date fixed by decree.

France - River navigation

Decrees [n°2013-251](#) and [n°2013-253](#) of 25 March 2013 have been published in the Official Journal of 26 March 2013. They codify in the fourth part of the Transport Code regulatory provisions relating to river navigation and transport.

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