

Contact

Bruno Knadjian
Avocat à la Cour

Hogan Lovells (Paris) LLP
17, Avenue Matignon
CS 60021
75008 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

Hoganlovells.com

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 March 2013.

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.

Summary of miscellaneous French draft legislation

- **Draft law on the establishment of the High Authority of scientific expertise and alert regarding health and environment** - Filed on August 28, 2012 - Adopted on first reading by the Senate on November 21, 2012 – in debate before the National Assembly on January 31, 2013 – In debate before the Senate on second reading on April 3, 2013.
- **Draft law 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**, filed on September 6, 2012 - Adopted on first reading by the National Assembly on October 4, 2012 - Rejected on first reading by the Senate on October 30, 2012 - New draft law adopted by the National Assembly on January 17, 2013 – Amended by the Senate on February 14, 2013 – Adopted definitely on March 11, 2013 - Seisin of the Constitutional Council on March 13, 2013.
- **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
- **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 – in debate before the National Assembly on April 10 and 11, 2013.
- **Draft law on job securitisation** – Filed on March 6, 2013 – In debate on first reading before the National Assembly from April 2 to 6 and on April 9, 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.

1. Audiovisual

France - Publication of a decree relating to the French CNC automatic support in the form of a guaranteed minimum to distribution companies

Decree n°2013-198 of 7 March 2013 modifies Decree n°99-130 of 24 February 1999 on the Financial Aids to Cinematographic Industry and sets up an additional subsidy of 25% for distribution companies who invest their automatic support with guaranteed minimum in full-length cinematographic works stemming from French initiatives, with a production budget under 4 million euros and that are financed by a free TV channel. The annual total amount of the aid shall not exceed 50,000 euros.

The Decree also states that the financial and selective support for the distribution of full-length cinematographic works shall not exceed 50% of the financial investment of the distribution company.

2. Competition

European Law - Mergers: public consultation on proposals to simplify notifications procedures

A Public consultation on several proposals to simplify procedures laid down in Merger Regulation 139/2004 has been launched by the European Commission on 27 March 2013. The Commission proposes to expand the scope of the simplified procedure by increasing the market share thresholds enabling undertakings to benefit from it. The Commission also proposes to reduce the volume of information required in order to make administrative procedures less burdensome for undertakings. In addition, the Commission proposes to amend Regulation 802/2004 implementing Merger Regulation 139/2004 in order to update and simplify notification forms. Interested persons are invited to respond to the Consultation by 19 June 2013.

See the E-alert of 29 March 2013.

European Law - State aid: public consultation on the *de minimis* Regulation

On 20 March 2013, the European Commission has launched a public consultation on its Draft Regulation on the application of Articles 107 and 108 TFEU to *de minimis* aids. This Draft, which operates in the context of the expiry of Regulation 1998/2006 on 31 December 2013, does not change the ceiling (currently set at 200,000€ per company over a period of three years) of *de minimis* aids, benefiting from a notification exemption to the European Commission. The Commission proposes to gradually introduce a central register of all *de minimis* aids in order to have an overview of the *de minimis* state aids granted by a Member State. The Draft also meets stakeholders' expectations by clarifying and simplifying the rules in order to reduce the administrative burden for non-significant aids. Interested persons are invited to respond to the Consultation by 23 May 2013.

European Law - Revision of the explanatory note regarding inspections

On 18 March 2013, the European Commission published a revised version of the Explanatory note to an authorisation to conduct an inspection in execution of a Commission decision under Article 20(4) of Council Regulation n°1/2003. Revisions specify in particular the powers of the Commission inspectors when conducting researches on undertakings' computers and other electronic storage media.

3. Consumer law

France - Publication of Draft bill on Consumer Law

The [Draft bill](#) on Consumer Law was presented to the National Consumer Council on 25 March 2013. The new text aims at establishing class action under French law to repair pecuniary losses suffered by consumers in connection with the sale of goods, provision of services or anticompetitive practices. Compensations for pecuniary losses resulting from a physical injury or non-pecuniary losses are not included. The constitution of the class is based on a positive acceptance by the consumer (opt-in) and an action for damages shall only be brought for anticompetitive practices on the basis of a binding decision that punishes competition law breaches, within five years after the adoption of such decision. Among other key measures, the Draft bill aims at strengthening the powers of investigation under Article L.450-3 of the French Commercial Code. The text also aims at reforming the system of penalties for non-compliance of payment terms between businesses and non-compliance with the contractual formalism for trade relations between professionals under Articles L.441-6 and L.441-7 of the French Commercial Code, replacing the current system of civil and criminal penalties by a system of administrative penalties imposed by the DGCCRF (French General Directorate for Competition, Consumption and Fraud - The amount may reach €75,000 for individuals and €375,000 for legal entities). A power of injunction will also be established in favour of the DGCCRF for the implementation of Title IV of the French Commercial Code. The Draft bill also contains several chapters to improve consumer protection. First reading by the French National Assembly is scheduled for early June.

4. Corporate

France - AMF recommends measures to fight against hostile public takeover bids

The AMF has communicated to the French Government its proposals of strengthening the legal arsenal in order to prevent creeping takeovers and to favour the medium-term and long-term shareholding. These recommendations arise in the context of the discussion organized by the Government on the ways to fight against hostile takeover bids and the bill currently being prepared on the remuneration of managers and corporate governance.

In order to control public takeover bids, the AMF suggests three main measures: the establishment of a compulsory obsolescence threshold for all the takeover bids, the reduction or suppression of the 2% threshold provided by Articles L. 433-3, I of the Monetary and Financial Code and 234-5 of the General regulation of the AMF and the maintenance of warrants in the case of a public takeover bid provided by Article L. 233-32, II, of the Commercial Code.

With a view to retaining medium-term and long-term shareholders, the AMF suggests (i) maintaining double voting rights provided by Article L. 225-123 of the Commercial Code and (ii) increasing the maximum rate of loyalty dividends provided by Article L. 232-14 of the Commercial Code, currently capped at 10% and limited to the proportion of securities owned by the shareholder representing 0.50% of the share capital.

5. Employment

France - Law Proposal: social amnesty

The [Law Proposal relating to the amnesty of acts committed during social and unions movements](#) has been adopted by the Senate on February 27th, 2013.

The draft Law provides for the amnesty of offences and minor offences punished by a maximum of a 5 years' imprisonment, committed by a private or public employee between the January 1st, 2007 and February 1st, 2013, during a labor conflict or trade unions activities or during demonstrations on the public area.

The draft Law also provides for amnesty of acts committed in the same circumstances amounting to misconducts punishable by disciplinary measures or which could possibly be used as grounds for sanctions.

Besides, any employee or public agent dismissed for a pardoned misconduct other than willful misconduct causing physical and mental harm, would be reinstated within the job position occupied before the dismissal or a similar job position. The reinstatement request should be done within the year after the enactment of the Law or the imposition of the sanction.

The employee would benefit from the 12 months' protection normally attached to union delegates starting the day of the effective reinstatement.

France - Instruction of the General Labor Directorate: actions plans for professional gender equality

The General Labor Directorate Instruction n°2013/04 dated February 21st, 2013 settles the calendar and modalities of Labor Administration's control upon collective bargaining agreements and actions plans on professional gender equality.

The control will focus on companies with more than 1000 employees in the first half of the year 2013 and on companies with more than 300 employees companies in the second half of the same year.

Moreover, companies employing between 50 and 299 employees will be controlled as from the year 2014.

Finally, the control will especially focus on companies which are not covered by a collective bargaining agreement or an actions plan on January 1st, 2013.

France - Decree: generation contract

The Decree n°2013-222 dated March 15th, 2013 provides conditions for applying the Generation Contract ("*Contrat de génération*") and defines the control procedures of collective bargaining agreements and actions plans as well as the penalty procedure concerning the companies with more than 300 employees.

For companies employing less than 300 employees, the Decree provides modalities concerning allocation, payment and interruption of the financial support for the hiring of a young person with an indefinite term contract and the retention or the hiring of a mature employee.

6. Insurance

France - ACP – questionnaire on the protection of customers

The French supervising authority (*Autorité de Contrôle Prudentiel – "ACP"*) published on its website a questionnaire on the application of rules aiming at protecting customers. Liable entities (banking institutions and insurance companies) subject to Instruction 2012-I-7 are required to provide the required information and shall submit the relevant questionnaires to the ACP by no later than 30 September 2013.

France - Draft project of law – termination of insurance contracts

The draft project of law on consumption to be presented to the Council of Ministers on 24 April 2013 provides for a reform of the conditions for termination of tacitly renewable insurance contracts. The right to terminate the contract at any time without charge or penalty, from the first day following the renewal of the contract would be granted to the insured. The scope of the contracts concerned should be determined by a decree, but would include multi-risk property coverage contracts and motor liability contracts.

France - Project of law on the banking reform – Unclaimed life insurances and improvement of business practices for funeral payment plans

The project of law on separation and regulation of banking activities adopted by the Senate on 22 March 2013 includes provisions aimed at improving the business practices for funeral payment plans. It provides for the allocation to the funeral of the subscriber or adherent, up to their cost, of the capital paid to the beneficiary and also that these contracts are eligible to the mechanism of profit sharing. Concerning unclaimed life insurance, the project of law also strengthens the mechanisms imposing on insurers to examine each year the death file. The project of law must

now be debated on second reading in the National Assembly.

European Law - EIOPA – Consultation on guidelines for the preparation of Solvency II

On 27 March 2013, the European Insurance and Occupational Pensions Authority ("EIOPA") published consultation papers and a cover note related to the preparation for Solvency II. The areas covered by these documents (to the exclusion of measures covering Pillar 1) which EIOPA considers fundamental to ensure effective preparation for Solvency II include system of governance, forward looking assessment of the undertaking's own risks, submission of information to the National Competent Authorities ("NCAs"), pre-application of internal models. Comments are requested by 19 June 2013. EIOPA intends to publish the final guidelines in autumn 2013. This would allow NCA's to put in place certain important aspects of the preparation for Solvency II starting on 1st January 2014.

7. Intellectual Property

France - Publication of a decree for the implementation of the Law of 1st March 2012 relating to the digital exploitation of unavailable books from the 20th century

The Decree n°2013-182 of 27 February 2013 implements Articles L. 134-1 à L. 134-9 of the French Intellectual Property Code arising from the Law n°2012-287 of 1st March 2012 relating to the digital exploitation of unavailable books from the 20th century, i.e. books published prior to 1st January 2001, that have not fallen into the public domain and are not subject to a commercial exploitation.

The Decree specifies the details of the record of books in the French National Library data base, the opposition procedure available to editors and authors against the collective management of their digital exploitation rights, as well as the conditions of admissibility of the collecting societies.

European Law - Proposals of amendments by the European Commission of the Directive approximating the laws of the Member States relating to trade marks and of the Regulation on Community trade mark

The European Commission published on 27 March 2013 a press release announcing a reform of the trade mark regime, implying a revision of the system in force. The main target is to promote the innovation and the economic growth, by making the trade mark system more accessible, more efficient and less expensive.

The proposal for a directive of the European Parliament and of the Council n°2013/0089 (COD) of 27 March 2013 intends to recast Directive n°89/104/EEC of the Council of 21 December 1988, codified as Directive n°2008/95/EC. This proposal intends to: (i) modernise and improve existing provisions, in particular regarding the definition of a trade mark and the issue of counterfeit products in transit, (ii) achieve greater approximation of substantive law, in particular regarding collective marks, (iii) achieve alignment of principal procedural rules, by notably obliging Member States to provide for an administrative procedure to challenge the validity of a trade mark registration before their offices, and (iv) facilitate cooperation between offices.

The proposal for a regulation of the European Parliament and of the Council n°2013/0088 (COD) of 27 March 2013 intends to amend Council Regulation (EC) n°207/2009 of 26 February 2009 on the Community trade mark. This proposal provides: (i) to adapt terminology, in particular by changing "Community trade mark" to "European trade mark", and to have a Common approach on Union decentralised agencies, (ii) to streamline procedures, (iii) to increase legal certainty, by adopting the same rules as those provided within the proposal for a directive, (iv) to have a framework for cooperation between the Agencies and Member State offices.

The proposals for a directive and for a regulation will have to be adopted by the European Parliament and the Council according to the codecision procedure.

Finally, the project also implies an amendment of Regulation n°2869/95 regarding the taxes to be paid to the OHIM.

8. New technologies

France - Public Consultation on Open Data

By a press release of 6 March 2013, the French Data Protection Authority (CNIL) announced the launch of a consultation of public and private actors on the topic of Open Data. The CNIL defines Open Data as « *a movement to foster the availability to internet users of data retained by the public sector.* ». The consultation ultimately aims at participating in the development of a « *Durable Open Data.* »

France - Public consultation for a new Domain Name Dispute Resolution Procedure

The AFNIC (the State-appointed registry for management of .fr, .re, .pm, .tf, .wf, and .yt domain names) opened a public consultation from 11 March 2013 to 2 April 2013 about the creation of a new domain names dispute resolution procedure, in collaboration with World Intellectual Property Office (WIPO), which will offer an alternative to the SYRELI dispute resolution process launched on 21 November 2011 which is administered by AFNIC itself.

France - French Digital Council Opinion on Net Neutrality

An opinion on « Net Neutrality » was been adopted unanimously by French Digital Council (CNN) on 1 March 2013. The intention being to enshrine in legislation the principle of the neutrality of the internet network, the opinion states that « *freedom of expression is not protected enough by French law against the development of filtering, blocking, censorship, and slowdown measures* » and that « *the principle of neutrality must be acknowledged as a fundamental principle essential to ensure the exercise of the freedoms of communication and of expression* ».

France - Digital Roadmap defined by the French Government

French government presented, on 28 February 2013, its roadmap on the development of digital sector, which set out three main guidelines. These are focused on training of the younger population on digital tools, the improvement of the competitiveness of the French economy through digital technologies, and the promotion of Republican values in digital sector.

France - Money Laundering: reduced obligations of vigilance for online payments

A decree n°2013-183 of 28 February 2013 specified the conditions under which the obligations of vigilance concerning online payments can be alleviated, applying mainly to operations not exceeding 250 euros between clients of payment institutions established in France or in a Member State of the European Union.

European Law - Public consultation on new competition rules for technology transfer agreements proposition

The European Commission has opened, for a period running between 20 February 2013 and 17 Mai 2013, a public consultation about its proposition of new competition rules for assessment of technology transfer agreements. These propositions aim to strengthen « *research and innovation, facilitate the diffusion of intellectual property and stimulate the competition* ».

European Law - WP29 Opinion on Apps in Smart Devices

The WP29 (the European Union's Article 29 Data Protection Working Party consisting of the 27 data protection authorities of the European Union Member States) published on 27 February 2013 its opinion on the processing of personal data by applications running on smartphones and tablets. The opinion insists on principles relating to information and consent of data subjects as well as the limitation of purposes for which the data collected can be processed.

See also the full article on our data protection blog: <http://www.hldataprotection.com/2013/03/articles/consumer-privacy/european-dpas-non-eu-mobile-apps-must-comply-with-eu-privacy-laws/>

9. Procedures

Decree n°2013-178 of 27 February 2013 setting the legal interest rate for 2013 has been published in the Official Journal of 1st March 2013. Pursuant to Article 1 of the Decree, the legal interest rate has been set at 0.04% for the duration of the calendar year 2013. Its scope of application concerns civil, tax and commercial matters.

France - Penal procedure

The Order of 18 March 2013 ending the trial period of the provisions providing for the participation of citizens in the criminal justice system has been published in the Official Journal of 22 March 2013. It will enter into force on 30 April 2013.

Pursuant to the Order dated 12 October 2011, the trial period started on 1st January 2012 before the courts within the district of the Courts of Appeal of Dijon and Toulouse.

A report on the effectiveness of the provisions has been established on 28 February 2013 at the request of the Minister for Justice. This report concludes that despite some positive aspects, this process has increased judicial costs and lengthened delays to schedule matters. Matters already scheduled for after 30 April 2013 will be heard by the courts without the participation of citizens at the scheduled dates, unless those matters have been rescheduled.

10. Public Law

France - Amendment to the WTO Agreement on Government Procurement

The European Commission adopted, on 22 March 2013, a proposal for a Council Decision on the conclusion of the Protocol amending the Agreement on Government Procurement (GPA), negotiated within the World Trade Organization (WTO).

France - Green Paper on long-term financing

The European Commission adopted, on 20 March 2013, a Green Paper on the long-term financing of the European economy, including a three-month public consultation.

11. Tax

France - Conditions of validity of the election notice for corporate income tax regime for partnerships – Details

In three judgments dated 30 December 2011, the "*Conseil d'Etat*" (Council of State) has admitted that the election, by a partnership, for the corporate income tax regime expressly stated in the declaration filed with the "*centre de formalités des entreprises*" (business formalities center) is binding for the French tax authorities (*CE 30 December 2011 n°342566, n°342567 et n°342568*). The French tax authorities have included in their comments the jurisprudence of the "*Conseil d'Etat*" (*BOI-IS-CHAMP-40-20130307 of 7 March 2013 n°135*). Thus, the taxpayer has the choice between filing an election notice to the relevant "*centre des impôts*" (French tax office) or to the "*centre de formalités des entreprises*" (in this case, the box provided for the election for corporate income tax regime on the registration form presented to the "*centre de formalités des entreprises*" must be checked without ambiguity).

France - VAT deductibility on imports

The French tax authorities have updated their comments regarding the VAT deductibility on imports. As a reminder, the 3rd Amending Finance Act for 2012 (*Article 64 of Law n°2012-1510 dated 29 December 2012*) has set forth that the VAT deductibility on imports is no longer depending on prior payment of the tax, but its chargeability. Thus, the VAT which can be deducted by the persons liable to VAT, is the VAT that is "chargeable" on imports, and no longer the VAT that is "perceived" on imports (*BOI-TVA-DED-10-30-20130308 and BOI-TVA-DED-40-20-20130308 dated 8 March*

2013).

France - Amendment to the double tax treaty concluded between France and the Sultanate of Oman

The Decree promulgating the amendment to the agreement for the avoidance of double taxation and prevention of tax evasion regarding income tax signed between France and the Sultanate of Oman has been published in the Official Journal of the French Republic (*Decree n°2013-230 dated 18 March 2013*). This amendment modifies royalties' taxation rules by allowing the State of the debtor to levy a withholding tax at a maximum rate of 7% and introduced a provision regarding the exchange of information.

France - Details regarding the tax regime of real estate brokers

In a judgment dated 3 May 2012, the "*Cour de Cassation*" (Supreme Court) has considered that the regularity of the tax adjustment procedure based on the disqualification of the favourable tax regime provided for real estate brokers in the absence of resale during the statutory period, only requires that the tax audit covers the period of enforceability of the recalled rights (*Cass. Com. 3 May 2012, n°11-14.820, DSF du Cher c/ Darras*). Thus, for a disqualification of the favourable tax regime in 2012, the tax audit will have to cover the year 2012. The French tax authorities have incorporated this jurisprudence in their comments (*BOI-ENR-DMTOI-10-50-20130322 n°105*).

12. Telecoms

France - The ARCEP informs the Public Prosecutor of a potential criminal offence committed by SKYPE

The ARCEP published a press release on 12 March 2013 by which it declared having informed the Public Prosecutor of a potential breach committed by SKYPE regarding its duty to declare itself as an electronic communication operator in France. Under Article L33-1 of the French Post and Electronic Communications Code, the carry out of an electronic communications operator activity requires a prior declaration to the ARCEP. Any breach of this duty constituted a criminal offence.

The SKYPE company did not declare itself whereas its activity consists in offering to the Internet users a software allowing them to make phone calls from or to a terminal connected to the Internet to fixed and mobile numbers located in France or abroad.

The ARCEP considers that this service consists in providing a phone service to the public and implies the compliance with certain duties, such as the conveyance of emergency calls and the implementation of the necessary means to realize judicial interceptions.

The ARCEP, after having unsuccessfully required from SKYPE that it declares itself, informed the Public Prosecutor of Paris of these facts, which may prove to be of criminal nature.

France - The ARCEP establishes a system of measuring and follow-up of the quality of fixed internet access services

In a Decision n°2013-0004 of 29 January 2013, the ARCEP introduced a system of measuring and follow-up of the quality of the fixed internet access service. This decision was then approved by an Order of 23 March 2013 of the minister of small and medium businesses, innovation and digital economy. The aims of the ARCEP are the improvement of the information of the Internet users and the granting to the ARCEP of means allowing it to perform its supervisory role of the general level of quality of the fixed telephony and Internet access services. This dispositive also comes from works and reflexions organized by the ARCEP since 2010 on the technical and economic aspects of the Internet neutrality.

The system is divided into two parts: principal measures realized by the operators in dedicated lines and environment and additional measures, incumbent to the ARCEP, realized by voluntary users from their own equipment.

The measures will be published on a semi-annual basis by the ARCEP, the first publication being supposed to occur in December 2013.

[See the Newsflash of 19 March 2013](#)

13. Transport

European Law - Publication of a set of new measures to strengthen air passenger rights

On 13 March 2013, the European Commission published on its website [a Proposition](#) regarding air passenger rights when stranded at the airport. The proposition clarifies grey areas in particular regarding information, care and re-routing of passengers. The proposition introduces new rights for passengers, especially in case of rescheduling, misspelt names, mishandled baggage and transparency requirement for luggage. The proposition speeds up complaint procedures, enforcement of rules and sanctions. It also considers the issue of disproportionate financial costs that may be imposed on air carriers.

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 [click here](#).

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. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

© Hogan Lovells 2013. All rights reserved. Attorney advertising.