

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 November 2012

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

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Summary of miscellaneous French draft legislation

- **Draft law on the financing of works councils, n°4090, filed on December 14, 2011** - adopted on first reading by the National Assembly on January 26, 2012
- **Draft law on net neutrality, n°190**, filed on September 12, 2012, before the National Assembly
- **Draft law on finance for 2013, n°235**, filed on September 28, 2012 – adopted on first reading first reading by the National Assembly on November 20, 2012 - rejected on first reading on November 28, 2012 by the Senate - CMP
- **Draft law on the financing of Social Security for 2013** – filed on October 10, 2012 – adopted on first reading by the National Assembly on October 30, 2012 – rejected in CMP on November 20, 2012 – Adopted definitely on new reading on December 3, 2012
- **Draft law on public finance programme planning for the period 2012 to 2017, n°234**, filed on September 28, 2012, adopted on first reading by the National Assembly on October 23, 2012 and by the Senate on October 30 – CMP (Agreement) – Seisin of the Constitutional Council on November 23, 2012
- **Draft law on tiered pricing of energy, n°150**, filed on September 6, 2012 – Emergency procedures on September 10 – Rejected on first reading by the Senate on October 30, 2012 – Second reading since October 31, 2012
- **Draft law on the creation of a public investment bank, n°298, filed on October 17, 2012** – Fast track procedure on October 17, 2012 – Adopted on first reading by the National Assembly on November 29, 2012
- **Draft law aiming at anticipating excessive debt, n°221, filed on September 26, 2012** – rejected by the National Assembly on November 22, 2012

- **Draft law on security and fight against terrorism, n°6**, filed on October 3, 2012 – Adopted on first reading by the Parliament on November 27 – CMP
- **Draft Amending law on finance for 2012, n°403**, filed on November 14, 2012 – reading by the National Assembly

Enacted laws

- **Law n°2012-1270 of November 20, 2012 on the overseas regulation including various provisions relating to the French overseas territories** – OJ of November 21, 2012

1. Audiovisual

France - French CNC's aid to subtitling and audio-description of cinematographic works

Decree n°2012-1296 of 22 November 2012 amending Decree n°99-130 of 24 February 1999 on the financial support of the film industry provides a selective financial aid of the *Centre National de Cinéma et de l'image animée* (National Center of Cinematography and the moving image - CNC) to producers of full-length feature films.

This selective financial aid aims at backing the creation of digital subtitling and audio-description files as well as their multi-support transfer so as to allow better access to works for the blind or partially-sighted people and deaf or hard of hearing people. The aid cannot exceed 50% of the expenditure devoted to the creation and transfer of files and is granted by the CNC to cinematographic works that have been initiated in France and which have obtained the approval of investments after 1 January 2012. However, foreign language cinematographic works that are eligible and have not been dubbed in French can benefit from this selective aid for the creation and the multi-support transfer only of digital subtitling files.

France - French CSA strengthens the system of symbols signalling inappropriate programs

Resolution n°2012-57 of the Conseil Supérieur de l'Audiovisuel (Superior Council of Audiovisual - CSA) dated 23 October 2012, amending Recommendation No. 2005-5 of 7 June 2005 to the editors of television services for the identification and classification of youth programs, reinforces the system of symbols that aim at protecting young people against public programs deemed inappropriate for their age group.

The pictogram of Category II programs, that is to say with some scenes that may offend children under the age of ten, shall, as from 12 December 2012, be present during the whole broadcast of the program. In addition, the words "not recommended for children under age ten" that accompanies it, will appear either at the bottom of the screen during one minute at the beginning of the program, or in full screen before the broadcast of the program for a minimum of twelve seconds.

The regime of the age marking for category II programs is now in line with the regime of programs in categories III, IV and V that may offend minors of age of twelve, age of sixteen and age of eighteen.

2. Capital Markets

France - End of the Prospectus Directive implementation

According to the AMF on 19 June 2012, the government has adopted by ordinance and by decrees published in the *Journal Officiel* dated 9 November 2012, the latest provisions allowing the finalising of the implementation of the Prospectus Directive which entered into force on 10 November 2012.

As elsewhere in Europe, this directive will increase the number of issues exempted from establishing a prospectus and the scope of private placement financing.

Whilst the principle of no-liability based solely on the summary of the prospectus is maintained, a second exception, added to the one based on the publication of a summary containing "misleading, inaccurate and/or inconsistent" information, has been created and relates to the case of a summary which does not contain all the "essential information to help investors" to make their decision to invest.

France - Modification of the General Regulation of the *Autorité des Marchés Financiers* further to the UCITS IV Directive implementation

The AMF has amended its General Regulations on UCITS and real estate collective investment schemes (OPCIs) further to the transposition in France of the UCITS IV Directive in October 2011. The AMF has proposed various amendments to Book III and Book IV of its General Regulations. The Ministry of the Economy and Finance has approved the new provisions in a decree dated 15 October 2012, published in the *Journal Officiel* on 25 October.

The amendments to the AMF's General Regulations concern service providers, UCITS and OPCIs. They are intended chiefly to:

- Standardise the rules regarding the regulatory approval timeframes applicable to UCITS compliant with the UCITS IV Directive and those applicable to other UCITS and to OPCIs, particularly in the case of fund mergers:

- Enable existing OPCIs to comply in advance with the requirement to produce a Key Investor Information Document instead of a simplified prospectus by 1 July 2013:

- Remove the quarterly audit requirement for some non-UCITS with assets under management of more than EUR 80 million.

Consequently, the regulator has also amended AMF implementing instructions 2011-19, 2011-20, 2011-21, 2011-22 and 2011-23.

3. Competition

France - Overseas economic regulation

The Law n°2012-1270 of 20 November 2012 on the overseas economic regulation has been published in the O.J. dated 21 November 2012. This Law aims at addressing the "expensive life" in the overseas territories et provides with a set of measures among which the main provisions are (i) the prohibition of imports exclusivities, (ii) the establishment of an annual negotiation process regarding price moderation of a limitative list of common consumer goods, (iii) the lowering of the merger control threshold, (iv) the customs clearance date as the starting date for the calculation of payment terms and (v) the structural injunction power given to the French Competition Authority to order the sale of assets in the retail sector.

European Law - Review of the model leniency program

The European Competition Network (ECN) has published a reviewed version of the Model leniency program. This Program includes a memo, a standard form and a document in which the Commission answers to the most frequently asked questions. The purpose of this review is to ease parallel filings of leniency applications before several competition authorities. It also enabled to clarify some key notions of the leniency procedure.

4. Consumer law

France - Sales

The Decree n°2012-1311 of 27 November 2012 on the starting dates of sales periods was published in the O.J dated 28 November 2012. This Decree amends the exemptions set for certain departments regarding national dates for the start of the two traditional sales periods (summer and winter).

5. Employment

France - Reintroduction of administrative authorisation for short-time work

A Decree of 19 November 2012 (n°2012-1271) re-establishes the employer's obligation to ask for an authorization before implementing short-time work. It came into force on November 22, 2012. From March 2012 to November 22, 2012, it was not necessary to obtain authorisation. It has been reintroduced to secure the legal situation of the employer.

What is new is that after fifteen days from the date the application was received, the authorization is now considered as tacitly approved.

After receiving express or tacit authorisation, the employer shall ask the DIRECCTE to be awarded a special short-time work allowance "*allocation spécifique de chômage partiel*".

A Circular from the Minister of Employment dated November 21, 2012 (n°2012/22) provides forms that can be used to ask for authorization and apply for the related allowance.

France - Medical examinations of employees

A Circular from the Minister of Employment dated November 9, 2012 (n°13) explains the consequences of the occupational medicine reform following the Law dated July 20, 2011 (n°2011-867) and two Decrees dated January 30, 2012 (n°2012-135 and n°2012-137).

The Circular details the modalities of the different types of medical examinations applicable to the employees: pre-recruitment examinations, periodic examinations, examinations upon request, examinations before returning to work and additional examinations.

France - New Social Security threshold for 2013

The threshold of Social Security (used to determine Social Security tax exemptions) should be set at € 37,032 for 2013 (i.e. € 3 086 per month) according to information from the Social Security Department dated November 27, 2012.

The current threshold is € 36,372 and remains applicable until 31 December 2012 (i.e. € 3,031 per month).

6. Insurance

European Law - EIOPA – Guidelines on complaints handling by insurers

On 16 November 2012, the European Insurance and Occupational Pensions Authority ("**EIOPA**") published translation of its Guidelines on complaints-handling by insurers into all 23 official languages of the European Union (please refer to the Legal and regulatory update – June 2012).

The publication triggers a transitional period of two months, until 15 January 2013, within which national supervisors have to declare whether they intend to comply with the guidelines or otherwise explain the reason for non-compliance which may be made public by EIOPA on a case by case basis.

7. Intellectual Property

European Law - Unitary Patent: agreement of the Competitiveness Council and approval of the European Parliament for the unitary patent package

On 10 December 2012, during the Competitiveness Council, the Ministers of the Participating Members State for the enhanced cooperation in the area of the unitary patent have endorsed the agreement reached by the Committee of Permanent Representatives (Coreper I), on 19 November 2012, on the unitary patent package.

During the plenary session of the European Parliament on 11 December 2012, the European deputies approved with a large majority the unitary patent package that comprises the resolutions relating to the implementation of an enhanced cooperation as regards the unitary patent protection and as regards translation issues, as well as the resolution relating to a unified jurisdictional system for patent disputes.

8. New technologies

France - Fight against illegal online gambling websites

By virtue of an order of 19 October 2012, the French Online Gambling Regulatory Authority (ARJEL) has been missioned to implement a processing of personal data aimed at fighting against illegal online gambling websites. The purpose of this measure is to implement and monitor procedures initiated against illegal online gambling websites.

France - Biometric devices based on hand contour recognition

On 20 September 2012, the French data protection authority (the CNIL) revised its unique authorisation concerning biometric recognition based on hand contour. Monitoring employees' working hours using this technology are no longer covered by the unique authorisation and will now require submitting a request for authorisation to the CNIL.

France - The CNIL adopts a new simplified norm concerning the management of clients and prospects

In a decision of 21 June 2012, the CNIL adopted a new simplified norm n° 48 concerning the management of clients and prospects in an effort to keep up with the recent evolution of e-commerce and prospecting methods. Public and private entities that have filed an undertaking of compliance with the previous version of norm n° 48 have one year to bring their systems into conformity with the new norm.

European Law - New EU strategy on cloud computing

In a communication dated 27 September 2012, the European Commission published its new strategy on cloud computing. This document contains key actions foreseen by the Commission and aimed at "*exploiting the potential of cloud computing in Europe*", such as establishing a European certification system for cloud computing service providers and creating standard terms and conditions.

European Law - Article 29 Working Party's opinion on cloud computing

The Article 29 Data Protection Working Party issued on 1 July 2012 an opinion on cloud computing aimed at clarifying the European legal framework

on data protection to be complied with by providers of such services and their clients. This document also provides useful advice on cloud computing and data protection for businesses and public services.

9. Procedures

France - Penal procedure

-Penal reform of maritime law

The [order 2012-1218](#) of 2 November 2012 on the penal reform of maritime law was published in the Official Journal on 3 November 2012. The order creates maritime courts with exclusive jurisdiction over torts that constitute admiralty offences. Those courts are attached to the civil courts, and they are composed of three judges and two maritime assessors. The order provides an enlarged and precise definition of the maritime offence, and it completes the existing measures with regard to sanctions. The criminal procedure rules about prosecution, investigation, and trial are applicable to admiralty offences. It should be noted that courts of general jurisdiction retain jurisdiction over maritime misdemeanours. Some of the provisions of this order – notably the ones regarding maritime courts – shall enter into force by 1 January 2015 at the latest.

European Law - New directive strengthening the protection of victims of crime throughout the European Union

The [directive 2012/29/EU](#) of 25 October 2012 – establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA – was published in the Official Journal of the European Union of 14 November 2012. These provisions determine the minimum standards on the rights of victims of crime throughout the Union, notably the right to understand and to be understood, the right to information, interpretation and translation, and so on. The directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. Member States shall bring into force the provisions necessary to comply with this directive by 16 November 2015.

European Law - Civil procedure

-Recommendations in relation to the initiation of preliminary ruling proceedings further to the new Rules of Procedure for the CJEU

Following on from the adoption, on 25 September 2012, by the Court of Justice of the European Union (CJEU) of new [Rules of Procedure](#) entered into force on 1 November 2012, some [recommendations](#) addressed to national courts and tribunals have been published in the Official Journal of the European Union dated 6 November 2012. Those recommendations replace the information note on references from national courts for a preliminary ruling.

10. Tax

France - Amendment to the tax treaty between France and Philippines

The amendment to the double taxation treaty signed on 25 November 2011 between France and the Philippines, entered into force following its publication in the *Journal Officiel* of 30 November 2012. The provisions regarding the exchange of information is in line with the OECD model conventions, including the lifting of bank secrecy.

France - Tax filing obligations regarding French tax consolidated groups

The Decree n°2012-1254 dated 13 November 2012 clarifies the tax filing requirements of so-called "Papillon" tax consolidated group (i.e, sub-group

including French subsidiaries held through one or more EU companies) and shows the content of the follow-up of capital gains and losses statement realized by companies of the consolidated group on the disposal of fixed assets to other companies of the consolidated group.

France - Clarification regarding the scope of the exit tax

The exit tax regime applicable to transfers of tax residence out of France since 3 March 2011 has been commented by the French tax authorities in their guidelines *Bofip-Impôts (BOI-MPFR-PVBMI-50 dated 31 October 2012)*. In particular, it has been specified which shares are excluded from the scope of the exit tax and conditions for deferred payment.

France - Clarification on the scope of the annual tax on office premises and related areas

The French tax authorities have provided the following details (*BOI-IF-AUT-50-10 dated 28 November 2012*):

-Company restaurants and gyms commercially exploited are taxable under the category of premises, and premises used by works council and those used for work physician are taxable under the category of office premises. However, nurseries are out of the scope of the above mentioned taxes, as premises for the exercise of social activity.

-Traffic routes and parking access located in multi-tenant buildings used by several of its occupants, and assuming the character of areas do not have to be taken into account for the taxable areas.

France - VAT regime applicable to subsidies

The French tax authorities have specified in their guidelines *Bofip-Impôts (BOI-VAT-BASE-10-10-10 dated 15 November 2012)* that subsidies cannot be qualified as additional price if it is not specifically calculated in order to cover revenue shortfalls resulting from the pricing but aims to support fixed and variables costs.

11. Transport

European Law - Public consultation on the e-Freight initiative

On the 26 October 2012 the European Commission launched a Public consultation on the e-Freight initiative. This program aims at supporting the development of an overall framework for information exchange between the different actors in the transport logistics chain in order to simplify the use of multimodal and cross-countries freight transport. The interested parties have until the 17 January 2013 to answer to a Questionnaire.

European Law - EU aviation security allocation

The Implementing Regulation (EU) n°1082/2012 of 9 November 2012 amending Regulation (EU) n°185/2010 in respect of EU aviation security validation has been published in the E.U.O.J. dated 22 November 2012. This Regulation establishes detailed rules for EU aviation security validation in order to harmonise the conditions by which compliance is established in respect of aviation security.

European Law - Rail sector – Common safety method

The Regulation (EU) n°1077/2012 of 16 November 2012 on a common safety method for supervision by national safety authorities after issuing a safety certificate or safety authorisation has been published in the E.U.O.J. dated 17 November 2012.

The Regulation (EU) n°1078/2012 of 16 November 2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance has been published in the E.U.O.J. dated 17 November 2012.

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