

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 March 2011.

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Summary of miscellaneous French draft legislation

- **Law proposal to reinforce consumer protection for distance sales**, n°1940, proposed on 29 September 2009 - adopted on 20 January 2010 on first reading by the National Assembly
- **Law proposal relating to urban commercial planning, n°2490, proposed on 3 May 2010** - adopted on 15 June 2010 on first reading by the National Assembly - adopted on 31 March 2011 on first reading by the Senate
- **Bill relating to police custody, n°2855, proposed on 13 October 2010** - adopted on 25 January 2011 on first reading by the National Assembly - adopted on 8 March 2011 on first reading by the Senate
- **Bill relating to bioethics, n° 2911, proposed on 20 October 2010** - adopted on 15 February 2011 on first reading by the National Assembly
- **Law proposal for simplifying and improving the quality of laws, n°1890, proposed on 7 August 2009** - adopted on 9 February 2011 on second reading by the National Assembly - examined on second reading by the Senate - agreed in the CMP on 30 March 2011
- **Bill relating to transposing various of the European Parliament and Council directives on civil and commercial matters** - proposed in the Senate on 22 September 2010
- **Law proposal relating to internet neutrality, n° 3061 corrected, proposed on 20 December 2010** - rejected by the National Assembly on 1 March 2011

Enacted laws

- **Law n°2011-267 of 14 March 2011 on internal security guidelines and programming** - O.J. of 15 March 2011
- **Law n°2011-302 of 22 March 2011 relating to various provisions for adapting legislation to EU law in the areas of health, employment and electronic communications** - O.J. of 23 March 2011
- **Law n°2011-331 of 28 March 2011 on modernising the legal and judicial professions and certain other professions** - O.J. of 29 March 2011

1. Capital Markets

France - "Visites mystères" as part of the AMF's regulatory policy

On 11 March 2011 the *Autorité des marchés financiers* ("AMF") published a list of questions and answers explaining the purpose of "visites mystères" and their modus operandi.

The purpose of these visits is to strengthen the AMF's investor protection action by monitoring the marketing conditions of financial products available to the public.

The "visites mystères" are conducted by an external service provider who carries out an investigation whilst imitating the behaviour of a prospective applicant by requesting information, advice or looking to purchase a service or product, following a scenario written by the AMF based on the issues it wishes to pursue. The external service provider then gives the AMF a summary of the data gathered from the "visites mystères".

France - Publication by the AMF of a guide to establishing the key investor document

Directive 2009/65/EC of 13 July 2009 known to as "UCITS IV" puts a key investor document ("KID") in place, replacing UCITS' simplified prospectuses. The European Regulation n° 583/2010 of 1 July 2010 set out the content of the KID. The AMF recommendation n° 2011-05 of 18 February 2011 reflects this regulation by specifying the information to be included in the KID.

The timing for the transition to KID varies according to the UCITS. However, all UCITS must have a KID no later than 1 July 2013.

France - Update on market practice relating to liquidity agreements

The AMF decision of 21 March 2011 updated the market practice relating to liquidity agreements. In the decision the AMF specifies the legal framework of liquidity agreements and the conditions applying to liquidity agreement managers.

2. Competition

European Law - Online gambling

On 24 March 2011 the European Commission published a [Green Paper](#) on online gambling in the internal market. The Green Paper deals with all internal market issues resulting from the rapid development of online gambling offers directed at EU citizens and is subject to public consultation until 31 July 2011.

3. Employment

France - The administration specifies the procedure for redeployments abroad

Following law n°2010-499 of 18 May 2010 which aims to ensure fair remuneration conditions for employees involved in a redeployment procedure, a [DGT Circular n°03 of 20 May 2011](#) specifies the procedure for redeployment abroad, and also provides a questionnaire to be given to employees.

France - Extension of the agreements on unemployment insurance and individual redeployment agreements

Two [National Inter-professional Agreements of 3 March 2011](#) extend the systems for unemployment insurance and individual redeployment agreements until 31 May 2011.

In view of the difficulties that arose during the renegotiation of these agreements, the current systems, which were due to expire on 31 March 2011, are being extended until 31 May 2011, while new provisions are discussed.

4. Energy

France - Modification of the conditions of purchase of electricity produced by producers benefiting from the obligation of purchase

The [Decree n°2011-240 of 4 March 2011](#) amending the Decree n°2001-410 relating to the conditions of purchase of electricity produced by producers benefiting from the obligation of purchase of was published in the Official Journal on 5 March 2011. The Decree n°2001-410 of 10 May 2010 provides that the conditions of purchase of electricity produced by installations benefiting from the obligation of purchase are set out by order. From now on, these conditions will have to specify, *inter alia*, "the technical and financial requirements to be met in order to benefit from the obligation of purchase. These requirements may include, *inter alia*, the delivery of documents evidencing the economic feasibility of the project, the delivery of elements evidencing the environmental impact of the project and the fulfilment of technical or architectural criteria for the completion of the project."

France - Modification of the conditions of purchase of electricity produced by photovoltaic installations

The [Order of 4 March 2011](#) repealing the order of 31 August 2010 setting out the conditions of purchase of electricity produced by installations using solar radiative energy was published in the Official Journal on 5 March 2011. From now on, a second [Order of 4 March 2011](#) sets out the new conditions of purchase of electricity produced by photovoltaic installations and the new purchase prices.

These Orders are in line with decree n°2010-1510 of 9 December 2010 which suspended the obligation of purchase of electricity produced by certain photovoltaic installations for a three-month period.

Nevertheless, certain installations can continue to benefit from the purchase conditions set out in the order of 31 August 2010. These installations were subject to a full request for connection to the operator of the public electricity network before the suspension period created by this decree of 9 December 2010. Other photovoltaic installations can also benefit from the purchase conditions, subject to certain conditions on their start date, where the producer notified the public electricity network operator of its acceptance of the technical and financial proposal for connection by 2 December 2010.

5. Environment

France - National Institute for Industrial Environment and Risks: Operational procedures for the point of single contact "*guichet unique*"

The [Order dated 22 December 2010](#) published in the Official Journal of 26 February 2011 determines the operational procedures of the point of single contact which collects the elements needed to identify operators of underground, air and underwater networks of transportation or distribution and about which operators must notify the National Institute for Industrial Environment and Risks in order to preserve their networks. The functions of the point of single contact are provided by the teleservice called "reseaux-et-canalisation.gouv.fr". The services offered by the teleservice will open no later than 1 September 2011.

6. Insolvency proceedings

France - Accelerated financial safeguard (*sauvegarde financière accélérée*)

Decree n°2011-236 of 3 March 2011 ([OJ of 4 March 2011](#)) details the so-called *sauvegarde financière accélérée* introduced by Law n°2010-1249 of 22 October 2010 ([OJ of 23 October 2010](#)) (please see the [Legal and regulatory update - October 2010](#)) and applicable to conciliation proceedings initiated from 1 March 2011. The decree shortens the relevant time limits, allowing a safeguard plan to be adopted within one month (two months if renewed). The decree also details the new "simplified statement of claims" procedure (*déclaration de créances simplifiée*).

7. Insurance

France - Recommendations relating to advertising communications for certain life insurance contracts

The French regulator, the *Autorité de Contrôle Prudentiel* ("ACP") published a recommendation on advertising communications related to unit-linked life insurance contracts composed of bonds and other debt securities in its official register on 25 March. This recommendation aims to enhance the quality of advertising materials relating to debt securities which qualify as eligible assets for unit-linked life insurance contracts in order to limit any confusion for consumers between debt securities offered as units of account and the funds in Euros of such contracts. To this end, rules of good practice have been adopted setting out information which is clear, accurate and not misleading about the nature of the account-units of the contract, their performance and fees. Insurance companies and insurance intermediaries will have to establish an internal control procedure to ensure compliance with these provisions. This recommendation applies to distribution actions after 30 June 2011.

8. Intellectual Property

European Law - European Court of Justice: adverse opinion on the draft agreement for the creation of a European and Community Patent Court

The European Union Council has drawn up a draft international agreement to be made between Member States, the European Union and other countries which are parties to the European Patent Convention in relation to setting up an integrated system for the European and Community Patent to be issued by the European Patents Office. The objective of this is to create a European patent and future Community patent Court.

Following a request by the Council, the European Court of Justice released [Opinion 1/09](#) of 8 March 2011 which concluded that this agreement was not compatible with European Union law. According to the Court, the incompatibility was largely due to the wide jurisdiction which would be granted to the Patent Court: ability to interpret provisions of European Union law, exclusivity of the power to refer questions to the Court for a preliminary ruling, and the fact that the relevant patent Court could not be subject to infringement or liability proceedings, whereas Member States are responsible for breaches by their national courts. This Opinion was in line with the [Council Decision 2011/167/EU](#) authorising enhanced cooperation for creating unitary patent protection, published on 10 March 2011, and aiming to overcome the failing of negotiations where issues of translation are concerned.

9. Life sciences

France - Health products

[Law n°2011-302 of 22 March 2011 on the adaptation of the legislation to European law as regards health, work and electronic communications](#) was published in the OJ. This Law contains provisions on medical products, in particular advanced therapy medicines and *in vitro* diagnosis test systems, where the manufacturer of such devices is under an obligation to provide a performance certificate for the device.

France - Criminal provisions relating to certain health products

Publication in the OJ of [Decree n°2011-287 concerning criminal sanctions for offences related to some health products](#). The decree modifies some of the criminal provisions applying to cosmetics, medical devices and *in vitro* diagnosis medical devices. A manufacturer of medical device will be sanctioned for failing to provide the Afssaps with the conformity declarations and technical documentation for the certification procedures or not informing the Afssaps about any product recalls.

European Law - Clinical trials

Launching the European Union (EU) Register of Clinical Trials. This online register provides access to information on the authorised pharmaceutical clinical trials underway in the EU. The European Medicines Agency (EMA) is responsible for the day-to-day management of the register and the sponsor of the clinical trial provides and updates the information in the register via the national competent authority of the country or countries in which it is being conducted. The register is part of the EU public database EudraPharm, which also centralizes information on medicines authorised by the EU.

10. New technologies

France - Domain names

The law adapting French Law to European Union legislation in the fields of health, employment and electronic communications ([please see the Legal and regulatory update - February 2011](#)) was adopted on 8 March 2011 and published in the *Journal Officiel* on 23 March 2011. This statute follows the French Constitutional Council's decision which held the provisions of Article L.45 of French Posts and Electronic Communications Code and the associated statutory instruments to be unconstitutional. It includes new provisions relating to the principles for the allocation and management of domain names and clarifies the conditions for the management of domain name disputes.

France - LCEN application decree

The second implementation decree of the Law on the Confidence in the Digital Economy (LCEN) regarding the storage and the communication of data allowing the identification of any person who has contributed to the creation of online content was published in the Official Journal on 1 March 2011. The decree specifies the extent and nature of the obligation for hosts and Internet service providers whereby they have to store certain data for a one-year period.

France - New CNIL exemption for processes implemented in France

In order to simplify use of French data processors by non-European companies, on 16 February 2011 the French data protection authority (CNIL) published an exemption from the obligations of declaration relating to the processing of personal data by French service providers on behalf of data controllers located outside the European Union, in the fields of human resources and the management of clients and prospects.

France - Street View: the CNIL fines Google

Further to checks carried out by the CNIL at the end of 2009 and the beginning of 2010, the CNIL observed that the vehicles used by Google over the French territory to develop its Street View service collected and recorded photographs and the flow of data from individuals' Wi-Fi wireless networks without their knowledge. On 17 March 2011 the CNIL fined Google 100,000 Euros for this.

11. Procedure

European Law - Regulation of the European Parliament and the Council of 16 February on citizens' initiative

The [Regulation \(EU\) n°211/2011 of the European Parliament and the Council on the citizens' initiative](#) was adopted on 16 February and published in the Official Journal of the European Union on 11 March 2011. European citizens' initiative has been established principally to allow European citizens, supported by at least one million eligible signatories coming from at least one quarter of all Member States, to directly request that the Commission submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required to implement the Treaties. This New Regulation will come into force on 1 April 2012.

12. Real estate

France - Real estate transactions : tax

Please refer to the Tax section

13. Tax

France - 40 and 80% penalties

The French Constitutional Council decided (**Constitutional Council 17 March 2011 n° 2010-103 QPC, 2010-104 QPC and 2010-105/106 QPC**) that the 40 and 80% penalties applicable in case of (i) failure to make a declaration following an order to do so from the French Tax Authorities, (ii) bad faith or (iii) undeclared activities, comply with the provisions of the French Constitution.

France - Wealth tax (ISF)

The French Tax Authorities issued a ruling on 1 March 2011 (**RES n° 2011/3 (ENR)**) regarding the filing requirements to be met in case of tax reduction granted in respect of donations made to charitable/general interest organizations.

France - Donations - Foreign organizations

Decree n° 2011-225 and order dated 28 February 2011 regarding the prior authorization procedure to be followed by foreign charitable/general interest organizations wishing to issue tax receipts for the benefit of their donors. A list of the authorized foreign organizations will be issued soon by the French Authorities.

France - Tax on office space in Ile-de-France

Press release dated 28 February 2011 about postponing the declaration and payment deadline of the tax on offices space in Ile-de-France to 2 May 2011. This was initially set at 1 March.

Real estate transactions

France - Registration duties - Commitment to resell

The French Tax Authorities issued a statement of practice dated 1 March 2011 (**statement of practice n° 7 C-1-11**) regarding two court decisions on the tax regime applicable to real estate dealers and registration duties. A merger is not viewed as the resale of real estate under the provisions of section 1115 of the French Tax Code.

France - Registration duties - Commitment to build

Decree n° 2011-263 dated 11 March 2011 regarding the commitment to construct a new building made at the time of a real estate acquisition. The decree provides comments on the new rules introduced by the reform of the French real estate VAT regime carried out in March 2010 and relaxes the administrative requirements in respect of the aforementioned commitment to construct.

France - Registration duties - Draft statement of practice

The French Tax Authorities issued a **draft statement of practice on 14 March 2011**, binding on the French Tax Authorities until the final statement of practice is released, regarding the new rules on registration duties following the reform of the French real estate VAT regime carried out in March 2010.

International - Double tax treaties and bilateral agreements

Statement of practice n° 14 A-1-11 dated 17 March 2011: Addendum to the tax treaty between France and Luxembourg regarding exchange of information in tax matters signed in Paris on 3 June 2009.

14. Telecoms

France - Adoption of Law n°2011-302 of 22 March 2011 authorizing the French Government to transpose the third 'telecoms packet' through an ordinance

Law n°2011-302 containing various provisions for adapting French Law to the Law of the European Union in the areas of health, employment and electronic communications was adopted on 22 March 2011 and published in the Official Journal on 23 March 2011. Article 17 of this Law authorizes the French Government to adopt an ordinance to transpose European directives n°2009/136/CE and n°2009/140/CE known as of the third 'telecoms packet' Directives.

France - Confirmation by the *Conseil d'Etat* of the proposal drawn up by ARCEP regarding the terms for invitations to tender for 4G licences

It is expected that frequencies freed up by the switch from analogue to digital television will be sold to mobile phone operators over the course of the next few months. The mobile operators should use the frequencies to sell high speed Internet access. The Industry Minister Eric Besson requested that the *Conseil d'Etat* take a position on the land development criteria contained in the invitations to tenders for these licenses. In reliance on the Pintat Law, ARCEP had proposed fixing a target of 99.6% cover across France for purchasers of 4G licenses. The Industry Minister opposed this solution in order to maximize the profits of sale of these licenses, since only two of the four lots of frequencies for sale contained an obligation for 99.6% cover of France, the other two contained an obligation limited to 90%. The *Conseil d'Etat* finally confirmed ARCEP's approach and ruled that the Ministry's approach did not comply with the spirit of the Law.

France - Competition Authority Opinion n°11-A-05 of 8 March 2011

In its opinion of 8 March 2011 the Competition Authority recommended that the regulation regarding high speed Internet in high density zones imposed on the incumbent operator France Télécom be relaxed. It also suggested that ARCEP begin preliminary works on a possible separation of functions of France Télécom's monopoly and its competitive activities.

15. Transports

France - Clarification of the Transport Code

Ordinance n°2011-204 of 24 February 2011 on the Transport Code adjusted and clarified some of the provisions of the Transport Code, since previously the code could have been interpreted in different ways. The modifications mainly related to Article L. 1431-3 of the Transport Code, which provides that any person who sells transport services must provide the beneficiary of the service with information about the amount of carbon dioxide emitted by the mode of transport used, and Article L. 3312-2 of the Transport Code, which specifies the daily working time for employees of trucking companies.

European Law - Functional airspace block

Regulation n°176/2011 of 24 February 2011 on the information to be provided before setting up and modifying a functional airspace block was published in the O.J. of the EU of 25 February 2011. It came into force on 17 March 2011.

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