

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 April 2011.

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#### Summary of miscellaneous French draft legislation

- **Bill on strengthening consumer protection for distance sales**, n°1940, submitted on 29 September 2009 - adopted on first reading by the National Assembly on 20 January 2010
- **Bill on urban commercial planning, n°2490, submitted on 3 May 2010** - adopted on first reading by the National Assembly on 15 June 2010 - adopted on first reading by the Senate on 31 March 2011
- **Bill on bioethics, n° 2911, submitted on 20 October 2010** - adopted on first reading by the National Assembly on 15 February 2011 and by the Senate on 8 April 2011
- **Bill on simplifying and improving the quality of law, n°1890, submitted on 7 August 2009** - adopted on second reading by the National Assembly on 9 February 2011 - considered on second reading by the Senate - agreed in the CMP on 30 March 2011 - reading of the text adopted in the CMP on 14 April 2011 - brought before the French Constitutional Council (*Conseil Constitutionnel*) on 14 April 2011
- **Bill on transposing several European Parliament and Council civil and commercial directives** - submitted to the Senate on 22 September 2010

#### Enacted laws

- **Law n°2011-392 of 14 April 2011 relating to custody** - O.J. of 15 April 2011

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## 1. Banking

### France - Consumer credit

Decree n°2011-457 dated 26 April 2011 ([OJ of 27 April 2011](#)) sets the conditions for gradual implementation of the consumer credit reform, put in place by Law No. 2010-737 dated 1 July 2010 ([OJ of 2 July 2010](#)) (please refer to the Legal and regulatory update - [June](#) and [July 2010](#)), for ongoing revolving credit agreements.

This Decree came into force on 28 April 2011.

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## 2. Capital Markets

### France - The *Autorité des marchés financiers* (the "AMF") draws attention again to the risks of bond issues of small and medium-sized companies aimed at retail investors

The AMF, through a [press release dated 1 April 2011](#), draws the attention of retail investors, mainly individuals, to the risks relating to bond issues by small and medium-sized companies. Thus, it recommends that investors closely scrutinise the risk factors attached to the issuing company and the bonds. The risk factors, described in the prospectus and its summary, must be referred to in any advertising materials.

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## 3. Employment

### France - Further details regarding the social regime for severance pay

Following the Social Security Financing Act 2010-1594 dated December 20, 2010, two circulars from the [ACOSS n°2011-0000039 dated March 29, 2011](#) and from the [DSS n°DSS/SD5B/2011/145 dated April 14, 2011](#) specify the modalities under which severance pay shall be subject to social security contributions.

The Circulars clarify the transitional regime established by law and in particular the applicable rules for indemnities paid in 2011 after a severance taking place in 2011: according to the circulars, the tax exemption cap is between 3 and 6 times the social security cap, depending on the amount of the severance pay under the collective bargaining agreement.

### France - Further details concerning the implementation of retirement where work is demanding in nature

Following the Pensions Act n°2010-1330, dated November 9, 2010, two Decrees [n°2011-352](#) and [2011-354](#) dated March 30, 2011, an [Order n°0076 dated March 30, 2011](#) and a [Circular n°2011/151 dated April 18, 2011](#) establish the list of risk factors and implement and specify the conditions and modalities for early retirement where work is of a demanding nature.

This new case of early retirement shall be applicable to schemes taking effect from July 1st, 2011.

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## 4. Energy

### France - New prices for the use of the natural gas transport networks

The [Order of 3 March 2011](#) approving the prices for the use of the natural gas transport networks was published in the Official Journal on 31 March 2011.

This Order replaces the prices set previously by the order of 6 October 2008 and which have been in force since 1 January 2009. These prices concern the use of the GRTgaz and TIGF natural gas transport networks. They will apply for one year from 1 April 2011.

#### **France - New prices for the use of the gas terminals**

The Order of 3 March 2011 approving the prices for the use of the gas terminals was published in the Official Journal on 31 March 2011.

This Order replaces the prices set previously by the order of 20 October 2009. These prices concern the use of the gas terminals operated by Elengy in Fos-Tonkin, Montoir-de-Bretagne and Fos-Cavaou.

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## **5. Environment**

### **France - Classified installations : seismic rules**

Order dated 24 January 2011 published in the Official Journal of 31 March 2011 sets out seismic rules applicable to classified installations subject to authorization.

These classified installations are subject to the regulations for buildings, equipment and facilities included in the seismic category known as "normal risk" (please refer to the Legal and regulatory update - November 2010).

Some equipment within these classified installations is the subject of a study to determine the technical implementations necessary for their protection against earthquakes.

With regard to existing classified installations, this study must be filed no later than 31 December 2015 and before 31 December 2016 the prefect will have to put in place the timetable for implementing protection against earthquakes for this equipment. This should be carried out by 1 January 2021.

New classified installations, authorized after 1 January 2013, must comply with the new requirements.

### **France - New seismic hazard zoning in France**

As of 1 May 2011, for the purposes of preventing earthquake risk to buildings, equipment and facilities, France is divided into five seismic zones in accordance with Article R.563-4 of the Environmental Code from the Decree dated 22 October 2010.

The Order dated 22 October 2010 sets out new rules of classification and earthquake-resistance for buildings in the "normal risk" category, so that new buildings incorporate current earthquake-resistance measures (soil investigation, reinforced foundations soil bearing, etc.).

Preventive measures (including rules of construction, development and operation) are applied to buildings, equipment and facilities in the "normal risk" category located in seismic zones 2, 3, 4 and 5, defined in Articles 3 and R.563-3 and R563-4 of the Environmental Code.

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## **6. Insolvency proceedings**

### **France - Secured Internet portal for formalities**

Law n°2011-331 dated 28 March 2011 (OJ of 29 March 2011) relating to modernising the legal professions includes the creation of a secure Internet portal aiming at relaxing the formalities related to insolvency. This national portal will allow the sending and reception of legal proceedings documents, including statements of claim. The conditions for using this portal will be specified by a Decree of the Council of State (*Conseil d'Etat*), following the advice of the French data protection Authority (*Commission nationale de l'informatique et des libertés*).

The national council of administrators and receivers (*Conseil national des administrateurs et mandataires judiciaires*) is responsible for setting up this portal, by 1 January 2014 at the latest.

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## 7. Intellectual Property

### European Law - Unitary patent: Commission proposes protection

Further to the recent proposals and decisions regarding a unitary patent, the European Commission has tabled a package of two legislative proposals, under enhanced cooperation ([http://ec.europa.eu/internal\\_market/indprop/patent/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/patent/index_en.htm)). This will allow any company or individual to protect their inventions through a single European patent valid in 25 Member States. The proposed regulations set out the terms and conditions for obtaining unitary patent protection, its legal effects and the applicable translation arrangements. The draft regulations will now pass to the Council and the European Parliament for consideration. The Commission hopes that Spain and Italy, who are not yet among the participants, will join the enhanced cooperation.

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## 8. New technologies

### France - LOPPSI 2

The statute on orientation and programming of internal security law, also known as "LOPPSI 2" was enacted on 14 March 2011 and published in the *Journal Officiel* on 15 March 2011. This statute defines the conditions for the implementation of videosurveillance systems and grants the French data protection authority (CNIL) the power to control videosurveillance systems installed in public places or in premises open to the public.

### France - Publication of the fourth "HADOPI" decree

The decree relating to the factors used by the High Authority for the distribution and protection of protected works on the Internet (HADOPI) was published in the *Journal Officiel* on 13 April 2011. This decree sets out the list of factors for development of the legal offer of protected works on electronic communications networks, such as the conditions of access to protected works or the profile of Internet users using legal offers of protected works on internet.

### France - LCEN application decree

Several actors on the internet such as Facebook, eBay and Google have brought an action before the Conseil d'Etat (the French supreme administrative Court) to obtain the cancellation of the second implementation decree of the Law on the Confidence in the Digital Economy (LCEN) regarding the storage and communication of data ([please refer to the Legal and regulatory update - March 2011](#)) which requires that hosting providers and Internet access providers store user data for a one-year period.

### France - The CNIL authorises the implementation of two whistleblowing systems

The CNIL decided, on 3 March 2011, to authorise two companies, Casino Service and Randstad, to implement whistleblowing systems for complaints or claims relating to discriminations within the scope of the "Diversity Label" subject to compliance with a number of conditions. According to the CNIL, use of whistleblowing systems to fight against discrimination must however remain "*complementary and optional*".

### France - General authorisation for fingerprint identification

On 10 March 2011 the CNIL published a decision regarding the automated processing of fingerprints data collected as part of the control of access to professional laptops. This general authorisation will allow the processing of fingerprints, considered as sensitive data, by filing an undertaking of compliance with the terms of the general authorisation.

## France - The CNIL publishes its 2011 controls program

On 24 March 2011, the CNIL presented its control program for 2011. This agenda aims at pursuing 400 controls in 2011, in particular regarding the security of sensitive data and cross-border data flows as well as the implementation and use of videosurveillance systems further to the recent extension by the LOPPSI 2 of the CNIL's controlling powers ([please see above](#)).

## France - .FR domain names

The Registry for .FR domain names (AFNIC) and the World Intellectual Property Organization (WIPO) have suspended the procedures for the resolution of the disputes relating to .FR domain names (the PREDEC and the PARL procedures) as part of the implementation of the law adapting French Law to European Union Legislation in the field of health, employment and electronic communications of 23 March 2011 ([please refer to the Legal and regulatory update - March 2011](#)).

## International - .XXX Extension

The Board of directors of the Internet Corporation for Assigned names and Numbers (ICANN) decided on 18 March 2011 to launch the .XXX extension, dedicated to pornographic content. According to ICANN, this decision will allow a better protection of minors by creating a specific zone for pornographic content on internet. The first application phases for the registration of .XXX domain names should start in June 2011.

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## 9. Procedure

### France - Custody reform

The Law n°2011-391 of 14 April 2011 published in the Official Journal of 15 April 2011 significantly modified the French custody regime. This reform was necessary as the French Constitutional Council (the "*Conseil Constitutionnel*") held the current custody regime to be unconstitutional in a decision dated 30 July 2010. The modification reinforces the right to a lawyer when in custody. This new regulation will enter into force on 1 June 2011 but the French Supreme Court (the "*Cour de Cassation*") ruled that the law needs to be applied immediately in order to avoid any ruling of the European Court of Human Rights against France. The Minister of Justice agreed with this and also decided that the Law should come into force immediately.

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## 10. Public law

### France - Public interest groups

The Law for simplifying and improving the quality of law was passed on 14 April 2011. It creates a general legal framework for all public interest groups (*groupements d'intérêt public* or *GIP*). Public interest groups are public entities, created by agreement between public entities and possibly private entities, to pursue non-profit activities of general interest. Their legal framework is quite flexible. The Law was referred to the Constitutional Council.

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## 11. Real estate

### France - Rent : index

The Cost of construction index (ICC) for the fourth quarter of 2010 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n° 91, 8 April 2011](#)) amounts to 1533 which corresponds to an increase of 1.73% over one year.

The commercial rents index (ILC) for the fourth quarter of 2010 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n° 90, 8 April 2011) amounts to 102.92 which represents an increase of 1.83 % over one year.

### **France - Validity period of energy performance survey**

Decree n° 2011-413 of 13 April 2011 published in the Official Journal of 19 April 2011 fixes the duration of the energy performance survey at 10 years. This period is now provided for in Article R. 134-4-2 of the Code of Construction and Housing.

The fifth paragraph of Article R. 271-5 of this Code, which used to set out the validity period of the energy performance diagnostic, has been repealed.

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## **12. Tax**

### **France - Patrimony tax reform**

The French patrimony tax reform should be presented to the government on 11 May 2011 and enacted by the end of July 2011. The reform may lead to the abolition of the French so-called "bouclier fiscal" and modify the rules related to wealth tax (taxation threshold set at 1,300,000 Euro and scale of rate modified). In addition, gift tax and estate duties may be reviewed and France may reintroduce an Exit Tax.

### **France - Non-cooperative countries and territories - Updated list**

The French Tax Authorities issued the updated list for 2011 of non-cooperative countries and territories (Anguilla, Guatemala, Niue, Belize, Cook Islands, Oman Islands, Panama, Brunei, Marshall Islands, Philippines, Costa Rica, Liberia, Dominique, Montserrat, Grenada, Nauru, Turks and Caicos Islands, Saint-Vincent and the Grenadines).

### **France - Registration duties - Reform of the French real estate VAT regime**

The French Tax Authorities issued a statement of practice dated 27 April 2011 (**statements of practice n° 7 C-2-11**) regarding the new rules applicable for registration duties purposes following the reform of the French real estate VAT regime carried out in March 2010.

### **France - Value added tax (VAT) - Banking operations**

The French Tax Authorities issued a statement of practice dated 5 April 2011 (**statement of practice n° 3 L-1-11**) regarding the new procedure to be followed in order to opt for VAT with respect to eligible banking operations.

### **France - Tax on office spaces located in Ile-de-France**

The French Tax Authorities issued a statement of practice dated 19 April 2011 (**statement of practice n° 8 P-1-11**) regarding the new rules applicable with respect to the tax on office spaces located in Ile-de-France introduced by article 31 of the Amended Finance Bill for 2010 (law n° 2010-1658 dated 29 December 2010).

### **International - Double tax treaties and bilateral agreements**

**-Statement of practice n° 14 A-2-11** dated 14 April 2011: Addendum to the tax treaty between France and Singapore signed in Singapore on 13 November 2009.

**-Statement of practice n° 14 A-3-11** dated 14 April 2011: Addendum to the tax treaty between France and Malaysia signed in Putrajaya on 12 November 2009.

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## 13. Transport

### France - Amendment of penalties applicable to certain infringements of the Traffic Code

Decree n°2011-368 of 4 April 2011 amending Decree n°2009-780 of 23 June 2009 concerning the transportation of round wood was published in the O.J. of 6 April 2011. The Decree raises the level of fines under the Traffic Code for infringement of rules regarding the weight of vehicles, the organization of vehicles for the transport of persons, polluting emissions such as noise, smoke and toxic gases emissions, traffic prohibitions and the requirements for special transport permits.

The Decree came into force on 7 April 2011.

### European Law - Rules applying to end-of-life vehicles

Directive 2011/37 of 30 March 2011 amending Annex II to Directive 2000/53 on end-of-life vehicles was published in the OJ of the EU of 31 March 2011.

It should be implemented in the Member States by 31 December 2011 at the latest.

### European Law - Implementation of the common basic standards on aviation security

Regulation n°334/2011 of 7 April 2011, amending Regulation n°185/2010 fixing the detailed measures for implementation of the common basic standards on aviation security, was published in the OJ of the EU on 8 April 2011.

The Regulation came into force on 9 April 2011.

### European Law - List of air carriers which are subject to an operating ban

Regulation n°390/2011 of 19 April 2011, amending Regulation n°474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community, was published in the OJ of the EU on 20 April 2011.

The Regulation came into force on 21 April 2011.

### European Law - List of aircraft operators as regards the expansion of the Union emission trading scheme

Regulation n°394/2011 of 20 April 2011, amending Regulation n°748/2009 on the list of aircraft operators that performed an aviation activity listed in Annex I to Directive 2003/87 on or after 1 January 2006 specifying the administering Member State for each aircraft operator as regards the expansion of the Union emission trading scheme to EEA-EFTA countries, was published in the OJ of the EU on 27 April 2011.

The Regulation came into force on 30 April 2011.

### European Law - Type-approval requirements for motor vehicles

Regulation n°407/2011 of 27 April 2011, amending Regulation n°661/2009 as regards the inclusion of certain regulations of the United Nations Economic Commission for Europe on the type-approval of motor vehicles, their trailers and systems, components and separate technical units intended therefore, was published in the OJ of the EU on 28 April 2011.

The Regulation came into force on 2 May 2011.

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