

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for April 2010.

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

Bill aiming to guarantee fair conditions of remuneration to employees concerned by a reclassification programme - passed on first reading by the French National Assembly (*Assemblée Nationale*) on 30 June 2009, examined by the French Senate on 4 May 2010

Bill for the creation of employment - passed on first reading by the National Assembly on 9 June 2009.

Bill reforming consumer credit - presented on 9 April 2009 and passed on first reading by the French Senate (*Sénat*) on 17 June 2009 - passed on first reading by the National Assembly on 27 April 2010.

Bill relating to the merger of the professions of advocate and solicitor in Courts of Appeal - presented on 3 June 2009 - passed on first reading by the National Assembly on 6 October 2009 and on 22 December 2009 by the Senate.

Bill relating to the opening to competition and regulation of the online gaming and games of chance sector - presented on 25 March 2009 - - passed on first reading by the National Assembly on 13 October 2009 and on 24 February 2010 by the Senate - passed without amendment on second reading by the National Assembly on 6 April 2010. Put forward to the French Constitutional Council (*Conseil Constitutionnel*) on 13 April 2010.

Bill aiming for greater transparency and fairness in remuneration policies of business managers and market operators - presented on 2 September 2009 and passed on first reading on 20 October 2009 by the National Assembly.

Bill relating to the "Greater Paris", n°1961, presented on 7 October 2009 - passed on first reading by the National Assembly on 1 December 2009 and by the Senate on 26 April 2010 - before the Mixed Joint Commission on 27 April 2010.

Bill aiming to simplify and improve the quality of law, n°1899 - presented on 7 August 2009 - passed on first reading by the National Assembly on 2 December 2009.

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Bill aiming to reinforce consumer protection in distance selling, n°1940 - presented on 29 September 2009 - passed on first reading by the National Assembly on 21 January 2010.

Bill relating to an equal representation of woman and men in administrative and supervisory boards and to professional equality, n°2140, presented on 3 December 2008 - passed in first reading on 21 January 2010.

Bill relating to the individual business with limited liability, n°2265, presented by the National Assembly on 27 January 2010 - passed on first reading on 8 April 2010 - discussion in Mixed Joint Commission on 5 May 2010.

Bill relating to the banking and financial regulation, n°2165, presented by the National Assembly on 16 December 2009.

Bill relating to the new organisation of the electricity market, n°2451, presented on 14 April 2010.

Enacted laws

N/A

1. Banking

France - Prudential Supervision Authority

A Government Bill ratifying Ordinance n°2010-76 dated 21 January 2010, implementing the merger of the banking and insurance approval and supervisory authorities, has been presented to the *Conseil des Ministres* on 21 April 2010 ([please refer to the Legal and Regulatory Update \(Insurance and Banking sections\) - January 2010](#)).

This Bill amends and supplements several legal provisions of the French Monetary and Financial Code (*Code monétaire et financier*) in order to facilitate the Authority's operating and to strengthen its relationship with the Bank of France (*Banque de France*).

France - Guarantee of personal guarantors

Regulation n°2000-06 of the banking and financial regulation Committee dated 6 September 2000 relating to the members and resources of the mechanism of guarantee of personal guarantors has been amended by an order of the Ministry of Economy dated 15 April 2010. This order sets out *inter alios* provisions which will be applicable from 2010 to 2013.

France - Consumer credit

A Parliamentary Bill reforming the consumer credit (please refer to the Legal and Regulatory Update (Banking section) - April 2009) was passed by the French National Assembly (*Assemblée nationale*) on 27 April 2010.

This Bill provides, in particular, for a regulation of advertising and granting of credits, improvement of information to consumers and offers consumers the choice between different kinds of consumer credits.

The text has yet to be reviewed by the French Senate (*Sénat*) in order to be definitely adopted.

2. Capital Markets

France - Public consultation on the buyback of debt securities not giving access to share capital

On 30 March 2010, the AMF launched a public consultation into the regulation applicable to the buyback of debt securities that do not confer equity rights and notably suggested that the current tender offer procedure applicable to debt securities referred to in the AMF's General Regulation be replaced with a simplified orderly acquisition procedure. This public consultation will end on 30 April 2010.

France - Professional certification of regulatory knowledge held by market professionals

The AMF published Instruction No 2010-01 relating to the professional certification of regulatory knowledge held by market professionals (such as sales personnel, compliance officers, clearing officers), which details the content of the standard file to be submitted by entities seeking the certification of the examinations they organise.

The AMF has also updated the related list of Q & A published on 17 July 2009.

Please refer to the Legal and Regulatory Update (Capital Markets section) - July 2009 for further details.

France - Appointment of the common coordinator for the ACP and the AMF

The common coordinator for the French Prudential Supervisory Council (ACP) and the AMF, responsible for the supervision of relations between professionals and their clients, is Fabrice PESIN. Appointed until 31 December 2011, he is notably in charge of coordinating the proposed enforcement priorities determined by the two authorities in matters of compliance with obligations towards clients.

3. Competition

France - Opening to competition of online gaming

The Bill on the opening and regulation of the gambling and online gaming sector was passed without amendment in a second reading by the French National Assembly on 6 April 2010. This reform will allow the operators which obtain the required license from the ARJEL to offer online poker and sports or horse bets in the coming weeks.

The Bill has not been published yet in the OJ.

European Law - Revision of the exemption Regulation on vertical agreements

Regulation No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices which replaces Regulation No 2790/1999 of 22 December 1999 was published in the OJ of the European Union on 23 April 2010. Companies will benefit from the exemption provided that their agreements do not include hard core restraints and that neither the producer nor the distributor has a market share exceeding 30%.

The Regulation comes into force on 1 June 2010.

4. Employment

France - The use of conventional breach must not lead to avoiding the rules on economic redundancy

In Instruction DGT n° 02 of 23 March 2010, the General Labour Agency ("DGT") enumerates the signs that suggest that conventional breach is used to by-pass the rules applicable to redundancies and deprive employees of the guarantees attached to workforce and talent Management agreements (GPEC) and social plans. If the rules on redundancies are not applied, the Labour Administration will refuse to authorise the conventional breach.

France - Extension of the compensation terms and conditions for the Individual Redeployment Agreement

The National Inter-Professional Agreement, signed on 20 February 2010, extends until the 31st March 2011 the current regime of the Individual Redeployment Agreement which should have expired on 31st March 2010.

A new "UNEDIC" convention extending this regime is currently awaiting ministerial approval. Preliminary notice to this approval has been published in the OJ of 10 April 2010.

Except for catchment areas regrouping many related industries, in which the Professional Transition Agreement is being tested, the Individual Redeployment Agreement shall, in companies with less than 1,000 employees, mainly be proposed to employees made redundant having at least 2 years of service or with at least 4 months of affiliation to the Unemployment Insurance Regime. The beneficiary having accepted the Individual Redeployment Agreement receives a compensation amounting to 80% of its average daily salary during the last 12 months.

France - Partial unemployment : clarification by the General Direction of Employment and Professional Training

In Circular DGEFP n° 2010/13 of 30 March 2010, the General Department of Employment and Professional Training (DGEFP) makes a very detailed presentation of the partial unemployment scheme and of its recent statutory evolutions since end 2008 in order to adapt it to the companies' needs and to better indemnify the employees.

France - Continuation of the company's additional health and contingency insurance: the system is applicable as from the termination of the employment contract

When asked about the conditions of application of Article 14 of the National Inter-Professional Agreement on the modernisation of the labour market of 11 January 2008 modified by Amendment n°3 of 18 May 2009 and extended by Order on 7 October 2009, the Ministry of Labour specified that the continuation of the company's additional health and contingency insurance is applicable as from the date of termination of the employment contract and not as from the date on which the employee receives allowances from the Unemployment Administration (Ministerial Written Answer n°71072; OJNA Q 23 March 2010 p.3484).

5. Energy

France - Classified installations

Three Decrees relating to classified installations have just been published.

Decree n°2010-369 of 13 April 2010 published in the Official Journal of 14 April 2010 amends the nomenclature of classified installations.

Decree n°2010-367 of 13 April 2010 published in the Official Journal of 14 April 2010 modifies the classification of installations by opening certain entries to the registration system.

Decree n°2010-368 of 13 April 2010 published in the Official Journal of 14 April 2010 notably fixes the procedure applicable to installations subject to registration.

France - Natura 2000 : impact assessment

Decree n°2010-365 of 9 April 2010 published in the Official Journal of 11 April 2010 establishes the list of events that could significantly affect a Natura 2000 site and thus being subject to an impact assessment, as well as the content of the impact assessment report.

The applications and declarations filed before 1 August 2010 remain subject to prior provisions.

France - Installations for the production of electricity: control of performance

The Order of 29 March 2010 published in the Official Journal of 17 April 2010 specifies the rules for controlling the performance of production of facilities connected to low voltage public distribution network of electricity.

This verification is done before the first commissioning or the restoration of a facility which has undergone a substantial change.

France - Electricity: new estimated amounts of public service charges

Order dated 2 March 2010 published in the Official Journal of 17 April 2010 updates the estimated amounts of charges due to the public service of electricity.

6. Insolvency proceedings

France - Sole proprietorship with limited liability (EIRL)

The French *Senate* has passed the Government Bill relating to Sole proprietorship with limited liability , providing several amendments to the bill which had been passed by the French National Assembly on 17 February 2010 (please refer to the [Legal and Regulatory Update \(Corporate section\) - February 2010](#)). The Bill passed by the senators allows an individual to create several EIRLs, provided that an asset is not affected to more than one EIRL.

Considering those amendments, the bill must now be reviewed by a joint committee with equal representation of representatives and senators, in order to come into force on 1st January 2011.

7. Insurance

France - Reform of consumer credit and insurance

The Bill on the reform of consumer credit which was passed on its first reading on 27 April 2010 by the *Assemblée nationale* includes amendments regarding payment protection insurance. The most significant amendment concerns the obligation to inform the insurer vis-à-vis the lender and provides that "when an insurance policy has been required by the lender and the borrower has subscribed an insurance policy with the insurer of its choice, the latter shall inform the lender of non payment by the borrower of its insurance premium or any substantial change in the insurance agreement." The Bill will be submitted for a second reading before the French Senate in May.

8. Intellectual property

France - Submission before the Council of ministers of a decree facilitating the exploitation of films in the form of video recordings

The French Minister of Culture submitted before the Council of ministers of 21 April 2010 a decree facilitating the exploitation of films in the form of video recordings. The decree defines the conditions for granting derogation of the period of four months after the cinema release of films allowing the DVD or VOD release. This period may be reduced within the limit of four weeks for films that will account for less than 200 tickets sold during the fourth week of cinema exploitation.

European Law - Publication of the "Audiovisual Media Services" Directive

Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010, which refers to the coordination of certain legal, regulatory and administrative provisions in Member States of the European Union concerning the provision of audiovisual media services, was published in the Official Journal of the European Union of 15 April 2010.

This Directive codified the Audiovisual Media Services Directive 89/552/EEC of the European Parliament and of the Council, which has been substantially amended several times. When this new Directive enters into force on 5 May 2010, it will repeal and replace Directive 89/552/EEC and its amendments, Directive 97/36/EC of the European Parliament and of the Council and Directive 2007/65/EC of the European Parliament and of the Council.

9. Life sciences

France - Reimbursement rate: decreasing from 35 to 15%

The Official Journal of 16 April 2010 published a notice of the French Health Ministry concerning decisions taken by the managing director of UNCAM (national union of social security offices) on 9 April 2010, listing pharmaceutical specialties for which the reimbursement rate is now set at 15%. These decisions are applicable since 17 April 2010.

10. Real estate

France - Serviced residences and prevention of difficulties encountered by joint owners' associations

Decree n°2010-391 of 20 April 2010 published in the Official Journal of 21 April 2010 particularly concerns serviced residences and the prevention of difficulties encountered by joint owners' associations.

The Decree specifies the operation of serviced residences in determining the content of the services agreement, the accounting requirements of joint owners' associations and provisions applicable in case of dispute. These provisions are applicable as from 1 November 2010.

The Decree also specifies the applicable procedure for the prevention of difficulties encountered by joint owners' associations and the concept of outstanding payments. These provisions are applicable as from 1 June 2010.

France - Rents : index

The Cost of construction index (ICC) of the fourth quarter 2009 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n° 97, 9 April 2010) amounts to 1,507, i.e.: a 1.05% decrease over one year.

The commercial rents index (ILC) of the fourth quarter 2009 published by the National Institute of Statistics and Economic Studies (INSEE) ([Information Rapide INSEE, n° 98, 9 April 2010](#)) amounts to 101.07 which represents a 1.88 % decrease over one year.

11. Tax

France - Legal certainty

As from now important texts will be systematically subject to a public consultation at their preparation stage, draft administrative guidelines being therefore available on the Internet. These drafts will now be enforceable against the French Tax Authorities until publication of the definitive administrative guidelines.

France - Registration duties

The French Tax Authorities published on 6 April a ruling on the taxable base of registration duties in the event of the acquisition of real estate (Ruling n°2010/20).

The French Tax Authorities specified that if VAT appears separately, the liquidation of the registration duties on the price paid by the acquirer excluding VAT must be carried out.

France - Territorial Economic Contribution (CET)

The deadline to file the new CET tax returns has been postponed due to the delay in the publication of the decrees applying such tax.

The deadline for filing the land contribution tax returns, the network company tax return, the added-value returns and the employees list is postponed from 4 May to 15 June 2010. In case of online transmission of tax and accounting data, the deadline for filing the added-value and salaried employees returns is postponed from 19 May to 30 June 2010.

France - Tax penalties

The 2008 Amending Finance Act has increased tax penalties with respect to non compliance with the filing requirements in connection with assets located in states or territories that have not entered into an administrative assistance agreement with France to fight against fraud and tax avoidance, giving access to bank information.

On 12 April 2010, the French Tax Authorities issued guidelines regarding this new regime (Bulletin Officiel des Impôts 13 N-2-10).

12. Transports

European Law - Civil aviation security : establishment of common basic standards

[Regulation](#) n°293/2010 of 8 April 2010 amending [Regulation](#) n°820/2008 laying down measures for the implementation of the common basic standards on aviation security supplemented by [Regulation](#) n°297/2010 of 9 April 2010 amending [Regulation](#) n°272/2009 was published in the OJ of the European Union of 9 April 2010.

The Regulation came into force on 10 April 2010.

European Law - Civil aviation security : implementation of the common basic standards

Regulation n°357/2010 of 23 April 2010 amending Regulation n°185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security was published in the OJ of the European Union of 27 April 2010.

The Regulation came into force on 29 April 2010.

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