

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 June 2011.

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.

Contact

Bruno Knadjian

Avocat à la Cour
Hogan Lovells (Paris) LLP
6 avenue Kléber
75116 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

Hoganlovells.com

Summary of miscellaneous French draft legislation

Bill aiming to reinforce consumer protection in distance selling, n°1940, filed on 29 September 2009 - adopted on first reading by the Assemblée nationale on 20 January 2010

Bill on commercial planning, n° 2490, filed on 3 May 2010 - adopted on first reading by the Assemblée nationale on 15 June 2010 - adopted on first reading by the Sénat on 31 March 2011

Bill on bioethics, n° 2911, filed on 20 October 2010 - adopted on 2nd reading by the Assemblée nationale on 31 May 2011 - adopted in commission mixte paritaire on 21 June 2011 - awaiting enactment

Bill for the social security supplementary budget for 2011, n°3459, filed on 25 May 2011 - adopted on first reading by the Assemblée nationale on 21 June 2011

Amending finance bill for 2011, n°3406, filed on 11 May 2011 - adopted on first reading on 23 June 2011 - adopted in commission mixte paritaire on 30 June 2011 - awaiting enactment

Enacted laws

Law n°2011-672 of 16 June 2011 relating to immigration, integration and nationality - OJ of 17 June 2011

Ordinance n°2011-504 of 9 May 2011 codifying the legislative part of the Energy Code - OJ of 10 May 2011

1. Banking

France - Usury rates

The French Economy, Finance and Industry Ministry has provided usury thresholds for the third quarter of 2011 in an opinion dated 20 June 2011 (OJ Dated 24 June 2011).

The rates set in the opinion came into force on 1 July 2011.

2. Capital Markets

France - The Autorité des marchés financiers ("AMF") and the Autorité de contrôle prudentiel ("ACP") qualify rolling spot forex transactions as financial contracts (contrats financiers)

The AMF and the ACP in a common position dated 31 May 2011 consider that rolling spot forex contracts are financial contracts (accordingly, they are financial instruments) when they provide for, or actually give rise to, rolling positions.

As a result of such qualification, rolling spot forex transactions are subject to investment services regulation and the providers of rolling spot forex transactions must be approved by the ACP or by their home State regulator and must have a European passport if they offer their services in France.

3. Consumer law

European Law - Online shopping

A Proposal for a consumer rights directive (COM (2008)0614 – C6-0349/2008 – 2008/0196(COD)) was adopted by the European Parliament on 23 June 2011. The Proposal harmonises consumer rights in the European Union by providing a withdrawal right of two weeks for all consumers, wherever the vendor is located in the EU, setting a 30 day deadline for delivery and prohibiting hidden fees.

The directive will be submitted to the Council of ministers for approval at the end of July before being published in the OJ of the EU.

4. Corporate

France - French Financial Markets Authority (AMF) 2010 Annual Report

In this report, the AMF presents the conclusions of the strategic project put in place during the financial crisis to reorganise financial regulation, and sets out its priorities for the future: improving protection for private individuals' savings and savers' confidence, improving monitoring of markets and the fines regime. It describes the steps taken in 2010 by the AMF in this respect, and sets out new powers granted to it in relation to asset management following the Markets in Financial Instruments Directive of 21 April 2004 and the French Banking and Financial Regulation Law (Loi de Régulation Bancaire et Financière) of 22 October 2010.

France - Bill to impose a value-added-sharing bonus (called the "dividend bonus")

On 21 June 2011, the Assemblée Nationale adopted the draft social security supplementary budget for 2011. This text will be considered by the

Senate on 5 and 6 July 2011. It provides that commercial companies with more than 50 employees which distribute dividends to their shareholders that exceed the average dividend per share distributed during the previous two financial years must pay all their employees a bonus. The new bonus would be payable on any distribution of dividends decided after 1 January 2011 in relation to the previous financial year.

5. Employment

France - Bonus on dividends voted in by the deputies

Please refer to the Corporate section.

France - Simplification of the registration of employment as from 1 August 2011

Decree n°2011-681 dated 16 June 2011 has simplified the process relating to the hiring of employees.

The Decree merges the two existing employee registration procedures and creates a new declaration involving simplified and updated procedures. The new declaration will come into use on 1 August 2011.

France - Information on the fight against discrimination and the promotion of diversity

The Law relating to Immigration, Integration and Nationality n°2011-672 dated 16th June 2011 obliges certain public limited companies and joint-stock companies to include in their annual report information about their commitment to fighting discrimination and promoting diversity.

6. Environment

France - Requirement for a diagnosis of the waste arising from the demolition of certain buildings

Decree n°2011-610 dated 31 May 2011 published in the OJ of 1 June 2011 creates an obligation on owners to perform a diagnosis of the waste derived from the demolition of certain buildings prior to filing a demolition permit application, accepting a quote or signing a contract relating to the demolition works to be carried out.

The diagnosis is required for the demolition of buildings with a gross floor area greater than 1,000 sqm or in which an agricultural, trade or business activity was operated and in which a hazardous substance as defined in Article R.4411-6 of the French Labour Code has been used, stored, manufactured or distributed.

The provisions will apply to demolitions for which the date of filing of the demolition permit application, acceptance of the quote or signing of the contract relating to the demolition works falls after 1 March 2012.

France - Natural and technological risks statement: new printed form

An Order dated 13 April 2011 published in the OJ of 31 May 2011 amends the printed form for the natural and technological risks statement.

This Order came into force on 1 May 2011.

7. Insurance

France - Recommendations on the marketing of life insurance contracts regarding the financing of funerals

The French regulator, the Autorité de Contrôle Prudentiel ("ACP"), has adopted a recommendation of best practice rules intended to increase the transparency of such contracts at the time of their marketing. Pursuant to this recommendation, insurance companies and intermediaries must, through their distribution actions and the advice provided to their customers, draw subscribers' attention to a certain number of points, including the fact that the death benefit can be used by the beneficiary(ies) at his (their) convenience, i.e. potentially not to pay for the funeral, and the risk that the death benefit paid to the beneficiary may not cover the funeral fees. This recommendation applies to distribution actions after 31 October 2011.

8. Life sciences

France - Pharmacovigilance

Publication in the OJ of Decree n°2011-655 of 10 June 2011 on the reporting by patients and approved patients' associations of adverse reactions likely to be related to medicines. The Decree allows patients to report directly (rather than through healthcare professionals) adverse reactions to medicines. Patients are now identified as participating in pharmacovigilance. Reporting is done via a form sent to the regional pharmacovigilance centre for the patient's area. The decree came into force on 13 June 2011.

Publication in the OJ of the ministerial order of 10 June 2011 on the procedures for the reporting of adverse reactions by patients and approved patients' associations. The ministerial order amends pharmacovigilance good practice by adding a new chapter on the procedures to be followed by patients and patients' associations in the reporting of adverse reactions. The chapter contains a reporting form and guidelines on the information to be included, notably in relation to the medicine under suspicion and the description of the adverse reaction.

9. New technologies

France - Digital books

The law relating to the price of digital books was published in the OJ on 28 May 2011. Publishers must now set a sale price for books. The price must be communicated to the public and digital booksellers must apply it.

France - Conseil d'Etat decision on the private copy levy

On 17 June 2011, the Conseil d'Etat (the highest French administrative court) overruled a decision by the commission in charge of implementing the levy on blank media to compensate for private copying at the time of the decision, which considered products purchased by professionals for a purpose other than private copying to be subject to the private copy levy. The Conseil d'Etat considered this decision contrary to the 2001 European directive on the harmonisation of certain aspects of copyright and related rights, on the ground that devices purchased for a purpose other than private copying must not be subject to a levy.

France - The CNIL authorises a multimodal biometric device

On 12 May 2011, the French data protection authority (the CNIL) authorised a company to use a biometric device capturing both fingerprints and finger vein patterns to monitor access to its premises. The CNIL recalled that the authorisation only covers the entity requesting it and that the use of this type of device must be subject to a specific request for authorisation.

France - The CNIL fines a clothing retailer

The CNIL recently fined a clothing retailer € 15 000 for failure to comply with a number of its obligations under French data protection law, including in relation to the formalities required prior to data processing. The CNIL had already warned the company to remedy the breaches.

France - Several cease and desist letters issued by the CNIL

The CNIL has issued cease and desist letters against some schools regarding their videosurveillance systems. During inspections carried out by the CNIL, it became apparent that videosurveillance systems had been permanently installed in "social areas", such as school playgrounds, while this type of monitoring is only justified in exceptional circumstances.

France - Mobile applications

On 14 June 2011, the CNIL published an article setting out the obligations imposed on publishers of mobile applications by French data protection legislation. The CNIL noted in particular that data collected by publishers of applications may only be kept for a limited period and that users' express consent must be obtained in certain situations.

International - New gTLDs

The board of directors of the Internet Corporation for Assigned Names and Numbers (ICANN) adopted on 20 June 2011 the seventh version of the Applicant Guidebook for new gTLDs and thereby approved the launch of the new gTLDs program. Applications should be accepted from 12 January 2012 to 12 April 2012.

10. Public law

France - Defence and security contracts

Law n°2011-702 dated 22 June 2011, published in the OJ of 23 June 2011, implements in French law Directive 2009/43/EC of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community and Directive 2009/81/EC of 13 July 2009 on contracts awarded by contracting authorities or entities in the fields of defence and security. It amends Ordinance n°2005-649 governing contracts awarded by contracting authorities or entities not subject to the public procurement code. It includes specific provisions regarding procedures for the award of defence and security contracts. These provisions will come into force on 21 August 2011.

11. Real estate

France - Asbestos

Decree n°2011-629 dated 3 June 2011 published in the OJ of 5 June 2011 amends the obligations of building owners whose building permits were issued before 1 July 1997 in relation to: the identification and flagging of materials and products containing asbestos; safety measures; monitoring of the state of the material; and the preparation of documents bringing together information on the presence of the materials and products.

The decree specifies the responsibilities of identifying operators and organisations that test materials and measure airborne asbestos.

Finally, the decree sets out the procedures that can be initiated by the prefect to remedy non-compliance and emergency situations.

Transitional provisions are provided to deal with existing sightings/identification of products containing asbestos.

The provisions will come into force on 1 February 2012, except for those relating to organisations measuring airborne asbestos dust and to the possibility of exceptionally extending the time period within which immediately applicable containment or removal works can be carried out.

France - Statement of taking into account of acoustic regulations

Decree n°2011-604 dated 30 May 2011 published in the OJ of 31 May 2011 sets out the requirements relating to the statement of taking into account of acoustic regulations to be made at completion of the works on new residential buildings.

These provisions apply to new residential buildings for which a building permit is applied for after 1 January 2013.

France - 3% real estate tax

Please refer to the Tax section.

12. Tax

France - Stock-options and free shares - Employee social contribution

The French Tax Authorities issued a statement of practice dated 3 June 2011 (statement of practice n° 5 F-11-11) regarding employees' social contribution on income from the exercise of stock-options or the acquisition of free shares introduced by the Social Security Financing Bill for 2008. This contribution is levied at a rate of 8%, unless the income from the acquisition of free shares is less than €17,676 in 2011 (in which case, a 2.5% rate applies).

France - French 3% tax on buildings owned by legal entities in France - 1 January 2011 update

The French Tax Authorities issued a statement of practice dated 7 June 2011 (statement of practice n° 7 Q-1-11) regarding the 2011 update to the list of States and territories with a tax treaty/agreement with France permitting, in specific conditions, the 3% tax exemption provided for by section 990 E, 3° of the French Tax Code. Legal entities established within the European Union may, provided the same requirements are met, enjoy this exemption from the 3% tax.

France - French tax consolidation - Absorption or dissolution without liquidation of a tax consolidated subsidiary by another group company

The French Tax Authorities issued a ruling dated 7 June 2011 (RES n° 2011/15 (FE)) regarding the consequences of the absorption or dissolution without liquidation of a company belonging to a tax group by another company from the same group with respect to the scope of French tax consolidation.

France - Personal Income Tax (PIT) - Investment in small companies (PME)

The French Tax Authorities issued a ruling dated 7 June 2011 (RES n° 2011/17 (FP)) regarding the minimum employee requirement (at least 2 employees for most companies, according to the Finance Bill for 2011) that companies must fulfil at the end of the first financial year in order to receive the PIT credit.

International - Double tax treaties and bilateral agreements

Statement of practice n° 14 A-5-11 dated 27 May 2011: Addendum to the tax treaty between France and Bahrain signed in Paris on 7 May 2009.

Statement of practice n° 5 I-2-11 dated 8 June 2011: Following enactment of the addendum to the tax treaty between France and Switzerland dated 27 August 2009, Swiss-sourced distributed income received in France as of 1 January 2010 may benefit from the 40% rebate provided for by section 158 of the French Tax Code (FTC).

13. Telecoms

France - Adoption by ARCEP of market analysis decisions relating to broadband and ultra-fast broadband markets (markets 4 and 5)

Having taken into account the comments of the sector's stakeholders (carriers and local authorities), the French Competition Authority and the European Commission, ARCEP, adopted on 14 June 2011 the market analysis decisions relating to broadband and ultra-fast broadband markets: decision n°11-0668 (market 4) and n°11-0669 (market 5). These decisions impose asymmetric obligations on wholesale offers made by France Télécom: the unbundling offer of the copper local loop and sub-local loop, the offer of access to infrastructures (channels and poles) and the bitstream offer. These decisions complement the regulatory framework for broadband and ultra-fast broadband, in particular regarding access to France Télécom's sub-local loop for the deployment of ultra-fast broadband networks in optical fibre.

France - Calls for applications for allocating the 800 MHz and 2.6 GHz frequency bands

The 800 MHz frequency band, from the digital dividend, and the 2.6 GHz band have been allocated to mobile services, with a view to deploying ultra high-speed mobile (4G) networks. On 31 May 2011, ARCEP adopted decisions containing proposals addressed to the Minister responsible for electronic communications on the terms and methods to be used to allocate these spectrums. On this basis, calls for applications for the granting of spectrum on these two frequencies were issued through an order from the Minister responsible for Industry, and published in the OJ on 15 June.

The deadline for submitting applications to ARCEP is 15 September 2011 for the 2.6 GHz band, and 15 December 2011 for the 800 MHz band. The Authority will be allocating the 2.6 GHz-band spectrum in autumn 2011 and the 800 MHz-band spectrum in early 2012.

France - Launch of a public consultation on the provisions for implementation of the telecoms package

On 21 June 2011, the Minister responsible for electronic communications launched a public consultation which will last until 11 July 2011 on the provisions for implementing the telecoms package. The provisions specify operators' obligations relating to the portability of numbers, access for disabled users to electronic communications services and the mechanism to be used by ARCEP to notify analysis decisions to the European institutions. These provisions will then be sent to the National Digital Council for its opinion.

Pursuant to law ° 2011-302 dated 22 March 2011, the Government has until 21 September 2011 to implement the European Telecom Package directives through an order.

14. Transports

European Law - Access to vehicle repair and maintenance information

Regulation n°566/2011 of 8 June 2011 amending Regulation n°715/2007 and Regulation n°692/2008 on access to vehicle repair and maintenance

information was published in the OJ of the EU on 16 June 2011.

The Regulation came into force on 20 June 2011.

European Law - Charging of heavy goods vehicles for the use of certain infrastructures

The Proposal for a directive amending Directive n°1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures was adopted by the European Parliament on 7 June 2011.

The directive has not yet been published in the OJ of the EU.

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 send an email to communicationparis@hoganlovells.com.

This is a commercial communication from Hogan Lovells. "Hogan Lovells" or the "firm" refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, Hogan Lovells Worldwide Group (a Swiss Verein), and their affiliated businesses, each of which is a separate legal entity. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia with offices at 555 13th Street, NW, Washington, DC 20004, USA.

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. Rankings and quotes from legal directories and other sources may refer to the former firms of Hogan & Hartson LLP and Lovells LLP. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

New York State Notice: Attorney Advertising.

© Hogan Lovells 2010. All rights reserved.