

The Paris office of 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 July 2010.

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For additional information, please speak to your usual contact.

Contact

Bruno Knadjian

Avocat à la Cour

Hogan Lovells
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 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 aiming to facilitate the maintaining and creation of employment - passed on first reading by the National Assembly on 9 June 2009.

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 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 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 by the National Assembly on 21 January 2010.

Bill relating to the banking and financial regulation, n°2165, presented by the National Assembly on 16 December 2009 - passed by the National Assembly on 1st reading on 10 June 2010.

Bill relating to the new organisation of the electricity market, n°2451, presented on 14 April 2010 - passed on 1st reading by the National Assembly on 15 June 2010

Bill relating to the modernisation of regulated legal professions, n°2383, presented on 17 March 2010 - passed on 1st reading by the National Assembly on 30 June 2010

Enacted laws

Act n°2010-737 of 1 July 2010 regarding the consumption credit reform (OJ of 3 July 2010)

Act n°2010-768 of 9 July 2010 aiming to facilitate the seizure and confiscation in criminal law (OJ of 11 July 2010)

Act n°2010-788 of 12 July 2010 regarding the national commitment to the environment (OJ of 14 July 2010)

Act n°2010-658 of 15 June 2010 relating to the limited liability individual entrepreneur (OJ of 16 July 2010)

1. Banking

France - Cheque without funds

Law n°2010-737 of 1 July 2010 reforming consumer credit has removed in its article 36 the non-compliance penalty due by the persons who have been denied of banking privileges (*interdits bancaires*) in case of the issue of a cheque without funds (art. L.131-75 to L.131-77 of the French *Code Monétaire et Financier*) (please refer to the Legal and regulatory update of June 2010).

This measure is of immediate implementation for cheques without funds issued but not yet regularised on the date of the publication of the Law.

France - Grouping of credits

Law n° 2010-737 of 1 July 2010 reforming consumer credit has defined for the first time the governing law that applies to the grouping of credits. In particular, the grouping of consumer credits will be governed by the regulations applicable to consumer credits and the grouping of real estate credits will be governed by the regulations applicable to real estate credits (please refer to the Legal and regulatory update of June 2010).

The grouping of mixed credits will be governed by the regulations applicable to real estate credits since the percentage of the real estate credits with the grouped credits exceeds a threshold which shall be defined by a future Decree. Below such threshold, the grouping of mixed credits will be governed by the regulations applicable to consumer credits.

European Law - Equity (Basel 3 regulation)

The Basel Committee published on 26 July, within the framework of the future regulation Basel 3, new recommendations defining in particular the rules that apply to the equity of European banks and the relaxing of the initial proposals of the Basel Committee after negotiations with the European credit institutions of more than 6 months.

2. Capital Markets

France - Publication by the AMF of a best practice guide to the drafting of marketing materials for complex debt securities

The Financial Markets Authority ("AMF") has published a guide containing an analysis of the marketing materials associated with complex debt securities. The aim is to inform the industry about: (i) practices that may potentially be contrary to regulations in force; and (ii) practices that help improve the standard of disclosure.

The AMF informs issuers that the new guide will ultimately be merged with the best practice guide issued in respect of UCITS as complex financial instruments, whether sold through UCITS or as debt securities, have the same marketing implications.

France - Publication of the AMF report on rating agencies

The AMF underlines the risks of mono-rating and suggests areas for consideration. In the first issue, it states that reliance on ratings from a single agency is problematic not only because it increases the risk of arbitration between the agencies but also because it encourages rating agencies to adopt a conservative attitude when revising ratings. In addition, it also suggests areas for consideration, such as: promoting a more diversified range of ratings and imposing stricter rules for informing markets about ratings.

To make it easier to understand the rationale behind ratings, the AMF recommends transparency in the following areas: (i) rating costs, in order to reduce conflicts of interest; (ii) the factors underpinning the rating of structured finance instruments; (iii) covenants that refer to rating triggers.

France - Simplification of the custodian's obligation to send the AMF an auditors' report on the safeguarding of client financial instruments

As investment service providers, custodians are required to ensure that their statutory auditor sends a report to the AMF at least once a year detailing the suitability of the measures taken to protect their clients' financial instrument assets.

When the custodian outsourced the its duties to a third party, the custodian was still required to send a report drawn up by its own auditor to the AMF.

To simplify matters, the AMF now authorises custodians that have the custody activity outsourced to refer to the report drawn up by the auditor of the appointed custodian.

Custodians who intend to fulfil their obligation in this way must first inform the AMF in writing.

France - Announcement of the launch of a market segment dedicated to "responsible finance"

NYSE Euronext and MICROFIS announced plans to set up in the last quarter of 2010 the world's first organised market for the listing and trading of bonds based on receivables for debt from international microfinance institutions (offering financial services to poorer populations) and relating to solidarity businesses as defined by the Law on the Modernisation of the Economy (LME) dated 4 August 2008.

France - AMF recommendation on the working group's report on the audit committee and update of the AMF terms of reference on internal control

The AMF recommends to all companies whose securities are admitted to trading on a regulated market to refer to the working group's report on the audit committee. This report highlights the tasks entrusted to the audit committee, determines its scope of action and offers a practical approach for the implementation of the audit committee missions.

The working group also undertook to update the AMF terms of reference for issue by small and medium-sized issuers.

3. Competition

France - Categories of gambling games

Decree n° 2010-723 of 29 June 2010 relating to the different categories of gambling games as referred to in Article 12 II of Law n° 2010-476 of 12 May 2010 on the opening and regulation of the gambling and online gaming sector was published in the OJ of 30 June 2010.

France - Definition of horse races for the purpose of online betting

Decree n° 2010-798 of 12 July 2010 amending Decree n° 2010-498 of 17 May 2010 on the definition of horse races for the purpose of online betting and general principles of "pari-mutuel" was published in the OJ on 14 July 2010.

France - List of online gaming or betting operators

The List of online gaming or betting operators duly accredited on 25 June 2010 was published in the OJ of 26 June 2010.

4. Consumer law

France - Consumer credit reform

The Law n° 2010-737 of 1 July 2010 reforming consumer credit was published in the OJ of 2 July 2010 (please refer to the Banking section). It amends certain provisions of the French Consumer Code relating to requirements in terms of advertising and borrower pre-contractual information.

5. Corporate

France - Publication of the AMF Report on corporate governance and the remuneration of Directors of listed companies.

The AMF published on 12 July 2010 its 7th Report on corporate governance and the remuneration of Directors of listed companies. The AMF notices a clear improvement in practices and transparency and formulates its recommendations in order to reinforce such progress.

France - Reminder concerning the rules on insider trading which apply to financial markets professionals

In a press release dated 6 July 2010, the AMF reminds financial markets professionals that breaches of the abstention requirements set forth in

Articles 622-1 and 622-2 of the General Regulations are determined in an objective manner as soon as insider information is communicated or used, without considering whether there is intention to speculate or if a profit has been made.

6. Employment

France - Draft Bill on retirement reform

In accordance with the time frame set out by the French Government, the Draft Bill on the retirement reform was brought before the Council of Ministers on 13 July 2010 and has been brought before the French National Assembly to be discussed during the next parliamentary session in September.

As announced by the Government, the financial measures of the reform, mainly related to the receipts based on high incomes, capital and business incomes will be determined in the future Draft Bill of Finance Law and Draft Bill for Social Security Financing.

France - Modification of the European Regulation on the secondment of employees and adaptation of the AGIRC and ARCCO regimes (i.e. complementary retirement regimes for employees and executives)

Through Circular AGIRC-ARRCO n°2010-6 DRE of 2 July 2010, the AGIRC and ARRCO adapted their regimes in order to take into consideration the last European Regulations coordinating the social security legislations of the Member States (European Regulation CE n°883/2004 amended and completed by European Regulations CE n° 988/2009 and 987/2009) entered into force on 1st May 2010.

The deliberations 5B (ARRCO) and D 45 (AGIRC) have been adapted accordingly and now provide that employees working on the French metropolitan territory in an establishment covered by the AGIRC and ARRCO regime and who are not registered with the French social security system are exempt from an affiliation to the AGIRC and ARRCO regime as long as they benefit from the exemption of affiliation to the French Social security system on the basis of the European Regulations.

European Law - Cap on bonuses in the financial sector

The European Parliament approved on 7 July 2010 Directive CRD3, also referred to as the "Capital Requirement Directive", capping bankers' bonuses.

This Directive provides that bonuses should not be disproportionate to the fixed compensation and that those paid in money will be capped at 30% of the total variable remuneration or even 20% for particularly high awards. 40% to 60% of the bonuses should be deferred for at least 3 years, which would enable banks to not pay the variable remuneration if the investments operated do not produce the expected results.

The Directive compels banks to pay at least 50% of the total bonus whose payment is not deferred in shares subject to a retention period.

European Law - Temporary transfer of employees who are not nationals of the European Union: Directive proposal

The European Commission put forward a Directive Proposal on 13 July 2010 aimed at simplifying, for multinational companies, the temporary transfer of employees who are not citizens of the European Union, from a company having its registered office outside the European Union to branches or subsidiaries established within the European Union.

7. Energy

France - "Grenelle 2"

Law n°2010-788 of 12 July 2010 published in the Official Journal of 13 July 2010 amends a number of provisions relating to environmental law.

It subjects certain wind turbines to the authorisation required for classified installations for the protection of the environment. It also modifies the system of impact studies.

France - Publication of the governmental order dated 23 July 2010 on the conditions for the purchase of electricity produced by installations using energy sources from groundwater or underground rocks

A governmental Order dated 23 July 2010 published in the Official Journal of 24 July 2010 specifies the conditions for the purchase of electricity produced by installations using energy sources from groundwater or underground rocks, as addressed by paragraph 6° of Article 2 of Decree n°2000-1196 of 6 December 2000.

The Order defines the purchase price for this electricity in power purchase agreements signed as from 2010, and details the mandatory provisions of a power purchase agreement for such electricity.

This Order has abrogated the former order of 10 July 2006.

France - Publication of a government's Circular dated 1 July 2010 detailing the tariffs for the purchase of photovoltaic electricity.

The Circular dated 1 July 2010 on the tariffs of photovoltaic electricity as defined in the governmental Order of 12 July 2010, has been released by the General Energy and Climate Agency.

It explains how to interpret the following concepts:

- "existing buildings", the Circular defines the status of building extensions
- "level of 250 kWp"
- "residential, educational or healthcare use"

8. Environment

France - Publication of the Grenelle 2 Law on national commitment to the environment

Law n°2010-788 of 12 July 2010, relating to national commitment to the environment called "Grenelle 2" was published in the Journal Officiel of 13 July 2010. It contains a series of measures which aim at implementing, sector by sector, the objectives set by the law Grenelle 1.

Grenelle 2 also reinforces the principle of environmental liability of companies, with the obligation for large non-listed companies to communicate a social and environmental report, and increases the liability of parent companies in case of environmental damages caused by their subsidiaries.

Specific arrangements put apart, the Law came into force on 14 July 2010.

9. Insurance

France - Life insurance: Unit-linked contracts

Law n°2010-737 of 10 July 2010 amended Article L. 131-1 of the French Insurance Code ("**FIC**") and now authorises insurers to deliver UCITS securities derived from an agreed division to policyholders or beneficiaries of a life insurance contract as part of a confinement of illiquid assets. These provisions apply to policies which are active on 3 July 2010.

France - Life insurance: Non misleading information

Law n°2010-737 of 10 July 2010 reforming consumer credit has ratified and modified certain provisions of Ordinance 2009-106 of 30 January 2009 concerning the marketing of life insurance products and operations relating to collective contingency and insurance. It supplements the provisions of the Ordinance which required that the content of all information, particularly advertising material, relating to certain life insurance contracts and capitalisation contracts should have correct, clear and non-misleading content, by extending this requirement to all life insurance and capitalisation contracts. This new requirement is provided for in Article L. 132-37 of the FIC.

France - Life insurance: Duty to advise

Ordinance 2009-106 of 30 January 2009 mentioned above introduced new obligations that lie with insurance companies regarding a duty to inform, advise and warn. These obligations are intended to impose an obligation in relation to life insurance products to state the needs and requirements expressed by the policyholder or subscriber, and the reasons for the advice provided in relation to a specific contract. These new obligations are provided for in Article L. 132-27-1 of the FIC.

France - Group insurance: New information obligations

Law n°2010-737 of 10 July 2010 amended the provisions regarding the information obligation which the subscriber must be provided with by the policyholder when adhering to an optional group insurance scheme referred to in Article L. 441-3 of the FIC. The subscriber must receive a notice containing a list of information and including the essential provisions of the agreement. The type of information should be specified by an order. The text also introduces the requirement to insert a summary of the essential characteristics of the agreement at the beginning of the notice, similar to what already exists for other insurance products.

France - Retirement saving products

Further to the adoption of Law n°2010-737 of 10 July 2010, subscribers of retirement saving products are required to report annually to the subscribers the average rate of return on assets entrusted by the subscribers.

European Law - Solvency II: Launching of the last quantitative impact study

The European Commission has unveiled the criteria concerning the technical specifications which will be used for the fifth quantitative impact study on Solvency II. European insurance and reinsurance companies are being invited to participate in the exercise from August to November 2010. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) will publish its report on the results in April 2011.

European Law - Solvency and pension funds

The European Commission has launched a consultation on pensions through the publication of a green paper entitled "achieving adequate, sustainable and reliable pension systems". One of the proposals is to strengthen the prudential rules relating to pensions following the example of Solvency II.

10. New technologies

France - Publication of the third "HADOPI" Decree

The Decree relating to the procedure applicable before the Commission for the protection of rights of the *Haute autorité pour la diffusion des œuvres et la protection des droits sur internet* ("HADOPI") was published in the Official Journal of 27 July 2010. The Decree defines the conditions for initiating proceedings before this Commission in cases where the offence of blatant negligence having allowed the use of the user' Internet connection to download illegally, may be constituted ([please refer to the Legal and regulatory update of June 2010](#)).

France - ARJEL sends 19 cease and desist letters

Since June 2010, the newly instated French Online Gambling Regulatory Authority (ARJEL) has ordered 19 illegal gambling operators to cease their activities in France. When these cease and desist letters have not been complied with, ARJEL has sought to obtain orders from the President of the Paris Tribunal of first instance so that their hosting providers and Internet service providers block access to these websites.

European Law - The European Parliament approves the SWIFT Agreement

On 7 July 2010, the European Parliament approved the new Agreement, referred to the "Swift Agreement" entered into between the European Union and the United States of America for the transfer of financial data relating to European citizens to the American government. An interim agreement was rejected in February 2010 by the European Parliament, due to the absence of sufficient guarantees for the protection of data ([please refer to the Legal and regulatory update of February 2010](#)).

11. Real estate

France - "Grenelle 2": Planning law

[Law n°2010-788](#) of 12 July 2010 published in the Official Journal of 13 July 2010 amends a certain number of provisions relating to French planning law.

The "Grenelle 2" Law provides for in particular a better taking into account of the environment through planning tools (such as "SCOT", "PLU" ...), and under certain conditions, the possibility of exceeding the rules applicable to size and density within a 30% limit for buildings particularly efficient in terms of energy or the inability to object to the grant of a planning permission because of the use of renewable materials.

The Law also amends the regulations on outdoor advertising.

France - "Grenelle 2": Construction law

Law n°2010-788 of 12 July 2010 published in the Official Journal of 13 July 2010 amends a certain number of provisions relating to construction law.

The "Grenelle 2" law provides among other things for the creation of a certificate of recognition of thermal and acoustic regulations to be provided on completion of construction works, taking into account the emission of greenhouse gas emissions in the energy performance of buildings and the obligation to carry out improvement works for energy efficiency in existing buildings dedicated to tertiary activities or in which a public service activity is exercised.

France - "Grenelle 2": Co-ownership

Law n°2010-788 of 12 July 2010 published in the Official Journal of 13 July 2010 amends a certain number of provisions regarding co-ownership.

The "Grenelle 2" law provides for the implementation of an energy performance diagnostic in buildings with a collective heating or cooling system or an energy audit for buildings under co-ownership, whose principal use is housing, and that is made up of more than 50 lots. The issue of a work plan for saving energy or of an energy performance contract must be added to the agenda of the General Shareholders' Meeting following the energy performance diagnostic or the energy audit.

The law facilitates the carrying out of works relating to energy savings and reduction of emissions of greenhouse gases in buildings under co-ownership, for instance, by the modification of majority rules.

France - "Grenelle 2": Tenancy

Law n°2010-788 of 12 July 2010 published in the Official Journal of 13 July 2010 amends a certain number of provisions regarding tenant relations.

The "Grenelle 2" law provides for an obligation for leases or renewed leases of offices or shops with premises of more than 2,000 square meters to include an environmental schedule.

The law also provides for an obligation to attach a natural and technological risks statement to commercial leases and the requirement to attach an energy performance diagnostic for all rentals, except for agricultural leases and seasonal leases.

France - Tourist residences and leisure housing

Law n°2009-888 of 22 July 2009 for development and modernisation of tourist services and Decree n°2009-1652 of 23 December 2009 modified the legal regime applicable to tourist residences and leisure housing.

Decree n°2010-759 of 6 July 2010 published in the Official Journal of 8 July 2010 updates the definition of tourist residences, codifies the definition of holiday villages and introduces the definition of residential leisure parks and campsites.

Three Orders dated 6 July 2010 published in the Official Journal of 8 July 2010 set out standards and procedures for the classification of holiday villages, residential leisure parks and campsites.

France - Lifts

Decree n°2010-782 dated 8 July 2010 published in the Official Journal of 11 July 2010 implements Article 24 of Directive n°2006/42/EC.

The Decree amends the definition of the scope of lifts compared to that of machines. It also specifies the procedures for implementing alternative solutions for the safety of maintenance personnel.

The provisions relating to the safety of maintenance personnel will enter into force on 1 March 2011.

12. Tax

France - System for taxation of French source real estate income

The tax authorities published an Instruction on 12 July 2010 (BOI H-4-10) relating to French income from immovable property that must be taken into account for the determination of the profit liable to business tax in France.

France - Laws authorising the approval of tax agreements

A series of laws was adopted on 23 July 2010 to ratify tax treaties entered into between the Government of the French Republic and: Kenya, Jersey, the Bahamas, Turks and Caicos Islands, Bermuda, the Cayman Islands, Gibraltar, Saint Martin, the Principality of Andorra, Liechtenstein, Guernsey, the Isle of Man and the British Virgin Islands.

European Law - The common system of value-added tax (VAT) concerning the rules of invoicing

The European Union Council adopted a Directive on 13 July 2010 (Directive 2010/45/UE) amending Directive 2006/112/CE relating to the common system of VAT concerning invoicing rules. This Directive aims at simplifying the requirements of invoicing of VAT in particular as regards to electronic invoicing.

13. Telecoms

France - Reduction of phone bills

Decree n° 2010-760 of 6 July 2010 relating to persons likely to benefit from a reduction in their phone bill was published in the OJ of 8 July 2010.

France - ARCEP issues decision on the regulation of SMS call termination

On 22 July 2010 the ARCEP adopted the final decision relating to the analysis of the market for wholesale SMS call termination on mobile networks in France. In this decision, the ARCEP determines the maximum SMS call termination fee that can be charged to other operators. The tariff will eventually decrease to one eurocent per delivered SMS, for all mobile operators. With this decision, the Authority intends to create competition conditions that will allow the unit price of an SMS to decrease in retail markets.

France - ARCEP's survey on "unlimited" offers

Further to an administrative investigation, the ARCEP considers that the practices of local loop operators (either landline or mobile) excluding certain telephone communications from their abundance offers, known as "unlimited", appear to be disproportionate, arbitral, discriminatory and, consequently, harmful to users making or receiving the call. The ARCEP therefore deems that these practices must be ceased rapidly.

14. Transports

France - Conditions relating to the marketing of lifts

Decree n° 2010-782 of 8 July 2010 which amends Decree n° 2000-810 of 24 August 2010 relating to the marketing of lifts was published in the OJ of 11 July 2010.

France - New rules on learning to driving

The Order of 18 June 2010 on learning to drive category B motor vehicles was published in the OJ of 16 July 2010.

European Law - Estimation of the fuel consumption of certain small emitting aircraft operators

Regulation n° 606/2010 of 9 July 2010 on the approval of a simplified tool developed by the European organisation for air safety navigation (Eurocontrol) to estimate the fuel consumption of certain small emitting aircraft operators was published in the OJ of the EU of 10 July 2010.

The Regulation came into force on 30 July 2010.

European Law - Common basics standards on aviation security

Regulation n° 573/2010 of 30 June 2010 amending Regulation n° 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security was published in the OJ of the EU of 1 July 2010.

The Regulation came into force on 31 July 2010.

European Law - Technical roadside inspection and roadworthiness tests

Directive 2010/47 of 5 July 2010 regarding adapting to the technical progress of Directive 2000/30 relating to the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community and Directive 2010/48 of 5 July 2010 regarding adapting to the technical progress of Directive 2009/40 on roadworthiness tests for motor vehicles and their trailers were published in the OJ of the EU on 8 July 2010.

The Directives came into force on 28 July 2010.

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