

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 March 2014.

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

The examination of a lot of draft bills was completed before the parliamentary debates were suspended. As a reminder, the debates will resume after the second turn of the municipal elections.

- **Draft law granting amnesty for acts committed in the course of social movements and trade unions' protesting activities** – Filed on November 28, 2012 – Adopted in first reading by the Senate on February 27, 2013 – A vote for a referral to commission was adopted during the first session on May 16, 2013.
- **Draft law relating to social and solidarity-based economy**, n°805 – filed on July 24, 2013 – adopted in first reading by the Senate on November 7, 2013.
- **Draft law for craft industry, trade and very small businesses**, n°1338 – adopted in first reading by the National Assembly on February 4, 2014 – in debate before the Senate on April 15 and 16, 2014.
- **Draft law which aims not to include the delivery service to the single price of the book**, n°1189, filed on June 26, 2013 – Adopted in first reading by the National Assembly on October 3, 2013 and by the Senate on January 8, 2014 – adopted with amendments in second reading by the National Assembly on February 20, 2014.
- **Draft reform relating to the railway system**, n°1468, filed on October 16, 2013.
- **Draft law for the ratifying of order n°2013-676 of July 25, 2013 which amends the legal framework of asset management**, n°1467, filed on October 16, 2013.
- **Draft law for farming, food and forest**, n°1548, filed before the National Assembly on November 13, 2013 – adopted in first reading at the

National Assembly on January 14, 2014 – debate in first reading before the Senate from April 8 to 11, 2014.

- **Draft law relating to inactive bank accounts and dormant life insurance contracts**, n°1546, filed on November 13, 2013 – Adopted in first reading by the National Assembly on February 19, 2014 – in debate before the Senate on April 16 and 17, 2014.
- **Draft law aiming at reinforcing the liability of contractors and ordering customers for subcontracting contracts and fight against social dumping and unfair competition**, n°1686, filed on January 8, 2014 – adopted in first reading by the National Assembly on February 25, 2014.
- **Draft law for the modernisation and simplification of law and procedures in relation to justice and home affairs**, n°175, filed before the Senate on November 27, 2013 – adopted in first reading by the Senate on January 23, 2014.
- **Draft law relating to the development, supervision of training periods and improvement of trainees' status**, n°1701, filed on January 14, 2014 – adopted in first reading by the National Assembly on February 24, 2014 – in debate in first reading before the Senate on April 29, 2014
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014.

Enacted laws

- **Law n°2014-288 of March 5, 2014 relating to professional training, employment and social democracy** - OJ of March 6, 2014.
- **Law n°2014-315 of March 11, 2014 which aims at reinforcing the fight against counterfeiting** - OJ of March 12, 2014.
- **Law n°2014-344 of March 17, 2014 relating to consumption** - OJ of March 18, 2014.
- **Law n°2014-366 of March 24, 2014 for the access to housing and redeveloped town planning** - OJ of March 26, 2014.
- **Law n°2014-372 of March 28, 2014 relating to geolocation** - OJ of March 29, 2014.
- **Law n°2014-384 of March 29, 2014 aiming at recapturing the real economy** - OJ of April 1, 2014.
- **Ordinance n°2014-326 of March 12, 2014 for prevention of businesses' difficulties and insolvency proceedings** - OJ of March 14, 2014.
- **Ordinance n°2014-329 of March 12, 2014 relating to digital economy** - OJ of March 14, 2014.
- **Ordinance n°2014-355 of March 20, 2014 relating to the granting of a unique permit on an experimental basis for projects relating to the operation of classified installations** - OJ of March 21, 2014.
- **Ordinance n°2014-356 of March 20, 2014 relating to the experimentation of a certificate for projects** - OJ of March 21, 2014.

1. Banking

France: Exposition value calculation

Ministerial order dated 17 February 2014 (J.O n°0048 dated 26 February 2014) amending the ministerial order dated 23 December 2013 related to the application of article 493 (3) of the Regulation (EU) n°575/2013 of the European Parliament and of the Council, dated 26 June 2013, on prudential requirements for credit institutions and investment firms, provides that are 100% exempted of the calculation of the exposition value (mentioned on paragraph 1 of article 395 of the Regulation (EU) above mentioned), the promissory notes mentioned in articles L.313-42 to L.313-49 of the French Monetary and Financial Code which have been issued before 31 December 2013 by credit institutions whose sole purpose is to refinance such promissory notes by issuing bonds with identical characteristics to those of the said promissory notes.

The ministerial order entered into force on 27 February 2014.

France: Transposition of the European Union financial rules

The order n°2014-158 dated 20 February 2014 setting forth various provisions modifying French legislation to comply with the European Union financial rules (J.O n°0044 dated 21 February 2014) transposes the directive "CRD IV" and the directive "Ficod" on the performing of the credit and financial institutions' activity. This order complements the existing provisions on prudential supervision of such institutions and provides that the directive "CRD IV" is applicable to financing companies. The order also ensures the compliance of the French legislation with the European regulation known as "CRR".

The order entered into force on 22 February 2014 but the entry into force of some of its provisions has been delayed.

2. Capital Markets

France: The AMF launches an IPO working group

Among the key objectives of its 2013-2016 Strategic Plan and given the increase in the number of initial public offerings (IPOs), a working group has been set up by the AMF to examine the prevailing regulatory environment in France, especially in comparison with other European countries.

Four main discussion areas have been adopted: how IPOs are structured; the rules applicable to price range; the criteria used to assess the price range; the way the IPO timetable is linked to the production of investment research and the release of the base document.

The working group comprises representatives of banks, advisers, lawyers, institutional investors, IPO decision makers, company and individual investors' representatives.

The findings and recommendations will be put out to public consultation in autumn 2014.

3. Competition

France: Merger Control – Publication of the report on cross-border mergers

The "Zivy report" entitled "*For simpler, more coherent and strategic merger control in Europe, a "win-win" reform for more competitively*" was made public on 14 March 2014 by Bruno Lasserre, President of the French Competition Authority (only available in French). Following the Eurotunnel affair, which led to opposing decisions from the British and French competition authorities in 2012 and 2013, Fabien Zivy was appointed to conduct an analysis of potential areas for improvement with regard to "multi-jurisdictional" mergers. The report sets out ten proposals, which are centered

around three axes: (i) implementation of a conflict-prevention mechanism amongst competition authorities; (ii) unification of the basic concepts of national merger control; (iii) better coordination of policies in the matter.

European Law: Anticompetitive agreements – Adoption of a revised competition regime for technology transfer agreements

On 21 March 2014, the European Commission adopted a new "technology transfer agreements" package, consisting of Regulation EU n°316/2014 of the Commission on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements and Guidelines on the application of Article 101 of the Treaty on the Functioning of the European Union to technology transfer agreements. Whilst the package does not involve radical changes to the existing regime, it does impose stricter rules for certain contractual provisions such as exclusive grant-backs, termination for challenge clauses, and passive sales restrictions. These provisions will no longer benefit from an automatic safe harbor, and will thus require a case-by-case analysis. The revised regime also provides clearer guidance on licensing agreements that stimulate competition, in particular as regards "patent pools".

The package will apply from 1 May 2014.

4. Consumer law

France: New French Consumer Law – powers of the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (DGCCRF)

Law n°2014-344 of 17 March 2014 on consumer affairs was published in the Official Journal of 18 March 2014 (only available in French). The Law aims to put in place new tools of economic regulation in order to rebalance power between consumers and professionals. Other than implementing group actions (please refer to the Procedures section) and changes as regards commercial negotiation (please refer to the Commercial Law section), the Law provides for the modernization of the control and investigative capacities of the DGCCRF's officials. The power to enjoin any professional to comply with his obligations, to cease all unlawful activity and to remove any unlawful clause is thus complemented by a capacity to sanction: in case of failing to comply with the order within the given deadline, the DGCCRF may impose a maximum administrative fine of 3,000 euros for natural persons and of 15,000 euros for legal persons. The Law also strengthens the investigative powers of the competition authorities: officials of the DGCCRF and of the French Competition Authority are now authorized to carry out investigations without immediately revealing their identity "if evidence contributing to the establishment of the infringement depends on it". Moreover, penalties for obstructing the investigation are increased to 2 years imprisonment and a fine of 300,000 euros.

5. Commercial law

France: Consumer Affairs Act

Law n°2014-34 of 17 March 2014 on consumer affairs (the "Hamon Law") introduces significant changes to Business-to-Business commercial relationship and, especially to commercial relationships between suppliers and distributors. Following Dutreil and Chatel Laws, and the Economic Confidence and Modernization Act, the Hamon Law intends to strengthen the supervision and control over commercial relationships between suppliers and distributors in order to achieve a better balance between companies, and it ultimately aims to benefit consumers. The Hamon Law changes some provisions of the Commercial Code, general provisions as well as certain sector-specific provisions (including the fruit and vegetables sector or the food sector). One of the main general contributions of the Hamon Law deals with the general Terms and Conditions of sale ("T&Cs"), becoming "the sole basis of commercial negotiation" (pursuant to article L. 441-6 of the Commercial Code), unless the parties decide to negotiate their agreement and deviate from the T&Cs applying, for instance, the buyer's terms and conditions rather than the T&Cs. The supplier is required to notify its T&Cs to the distributor no later than three months before 1 March of each year (which is the date on which the "single annual convention" ("*convention annuelle unique*") of article L. 441-7 of the Commercial Code shall have been entered into), except for products with a particular cycle of marketing. Thus, the supplier shall notify its T&Cs and its price list to the distributor before 1 December each year. The Hamon Law also provides new elements that the single convention (article L.441-7 of the Commercial Code) must indicate, such as the price list previously communicated by the supplier, the price reductions applicable after the commercial negotiation, and the compensation for "other obligations" intended to facilitate the

commercial relationship or the reduction of global prices related to those obligations. The prohibition of clear disproportion of commercial co-operation services and other obligations related to the value of those obligations is legally stated. Failure to justify the conclusion of a single convention within the statutory deadline is punished with an administrative fine. As regards payment terms, the Hamon Law provides that, in case of summary invoices (recapitulative), payment terms are capped at 45 days from the issuance of the invoice. The Hamon Law provides that clauses or practices abusively delaying the starting point for time-limits of payment terms are prohibited and are punished with an administrative fine. Promotional benefits that the supplier undertakes to grant to consumers are set through mandates entrusted to distributors, including the amount and nature of promotional benefits granted, the granting period and details on the implementation of those benefits, as well as terms of presentation of the accounts by the distributor to the supplier. Every distributor must now reply to any precise written request of the supplier related to the single convention enforcement in a detailed manner and within two months. Furthermore, the list of restrictive practices (provided by article L.442-6 of the Commercial Code) is supplemented by the act of placing, paying or invoicing an order at a price different than the agreed one, resulting either from the unit price list stated in T&Cs when they have been accepted without negotiation by the buyer, or from the price agreed after commercial negotiations subject to the single convention as amended. Obtaining or trying to obtain a benefit which does not reflect any commercial services actually provided or clearly disproportionate (article L.442-6-I-12) may now consist of an additional demand made in the course of executing the contract, which intends to maintain or abusively increase its margins or its profitability. This general wording will require a clarification regarding the scope of this restrictive practice. Amendments to articles L.441-7 and L. 442-6 of the Commercial Code will apply only to contracts entered into as of the first day of the fourth month following the enactment of the Hamon Law. Therefore it will mainly apply to trade agreements entered into in 2015.

6. Corporate

France: AMF launches an IPO working group

In a [press release issued on 7 March 2014](#) the *Autorité des marchés financiers* (AMF) announced the launch of a working group aiming to examine the regulatory framework in France regarding initial public offerings (IPOs) and in particular:

- how IPOs are structured;
- the rules applicable to price range;
- the criteria used to assess the price range;
- the way the IPO timetable is linked to the production of investment research and the release of the base document.

The findings and recommendations of the working group will be submitted to public consultation in autumn 2014.

France: Public consultation on the draft order concerning corporate law

On 18 March 2014, within the framework of the Law n°2014-1 of 2 January 2014 enabling the Government to simplify and secure the life of companies by way of orders, the Ministry of Justice submitted to public consultation a questionnaire on the draft order concerning corporate law.

The reform in corporate law concerns in particular:

- the clarification of the legal rules regarding some securities;
- the softening of certain operating rules regarding commercial companies.

France: Censorship of the provisions of the legislation ALUR regarding transfers of shares of SCI

On 20 March 2014, the Constitutional Council [censured](#) Article 153 of the draft legislation relating to the access to housing and renovated urbanism (called legislation ALUR) which provided that the transfer of the majority of shares of a property investment company (SCI) shall be subject to a

notary deed or private deed countersigned by attorney or professional in chartered accountancy.

France: Partial validation of the legislation Florange

On 27 March 2014, the Constitutional Council validated Articles 8 and 9 of the draft legislation aiming to regain the real economy (called legislation Florange) which was adopted by the National Assembly on 24 February 2014.

These Articles concern:

- the information of the Works Council in case of takeover bid;
- the rules of allocation of free shares.

7. Employment

France: Law on professional training, employment and social democracy

The Law n° 2014-288 dated 5th March 2014 (OJ of 6th March 2014), deeply reforms the professional training system by instituting a unique contribution which simplifies its financing. This contribution shall be set at 1% of the payroll in companies employing 10 employees or more.

Moreover, the law provides for the substitution of the right to individual professional training ("DIF" in French) by the "personal account of professional training" with effect on 1st January 2015.

The law also creates a professional interview which should be held every 2 years in order to study the prospects of professional development of the employee.

France: Circular: modalities concerning the establishment of the economic and social database

By a Circular n°2014/1 dated 18th March 2014, the General Labor Directorate clarifies the modalities of establishment, of access and the content of the economic and social database which companies shall set up by 14th June 2014 for those employing 300 employees or more, and a year later for other companies.

By 14th June 2014, the concerned companies shall integrate to this database all the necessary information for the consultation of the works council on strategic directions of the company. All the recurrent information which must be kept available to the works council shall be integrated to this database by 31st December 2016.

France: Clarification of the conditions of application of the "flexisecurity" law in case of insolvency proceedings

An Ordinance dated 12th March 2014 (n°2014-326) provides that, from 1st July 2014, in case of continuation plan or disposal plan, the delay given to the administration to notify its validation decision or registration decision of a company back-up plan shall be calculated from the date of the request addressed to the administration and no longer from the last meeting of the works council.

France: Focus: censure of the "sanctions" part of the florange law by the constitutional council¹

By a Decision dated 27th March 2014 n°2014-692 DC, the Constitutional Council judged that the employer's obligation to accept a serious purchase offer in the absence of legitimate ground for refusal and the competence given to the commercial court to appreciate it constitutes "*an unconstitutional violation of the right to property and of entrepreneurial freedom*".

¹ Please refer to the Legal and regulatory update - September 2013.

The sanctions attached to such refusal were also censored by the Constitutional Council.

8. Environment

France: Classified Installations: Unique Permit

Following Law n°2014-1 dated 2 January 2014 ([please refer to the Legal and Regulatory Update - January 2014](#)), [Ordinance n°2014-355](#) dated 20 March 2014 published in the Official Journal dated 21 March 2014 authorizes the granting on an experimental basis, in specific regions and for a limited period of time, of a unique permit for projects relating to the operation of classified installations.

This Ordinance defines the conditions under which such single permit can be granted as the legal authorisation pursuant to the classified installations regulation as well as to the French planning code and to the French energy code for the projects concerned.

France: Project Certificate

Following Law n°2014-1 dated 2 January 2014 ([please refer to the Legal and Regulatory Update - January 2014](#)), [Ordinance n°2014-356](#) dated 20 March 2014 and [Decree n°2014-358](#) dated 20 March 2014 published in the Official Journal dated 21 March 2014 establish on an experimental basis, in specific regions and for a limited period of time, a project certificate for projects requiring delivery by the prefect of at least one authorization governed by the French environmental code, the French forest code or the French planning code.

This project certificate aims to give greater visibility to project bearers on the procedures, rules and instruction time period applicable to a given project.

France: ALUR Law

[Please refer to the Real Estate section.](#)

9. Insurance

Following the review of the market practice, the French banking and insurance supervising authority (ACPR) has recently issued a [position](#) dated 13 February 2014 pursuant to which it considers unlawful to charge against the amount of the death benefit paid to the beneficiary all or part of the costs incurred by the research of the latter, irrespective of whether or not such charge is provided for in the insurance policy. The ACPR invites beneficiaries to be vigilant and to refuse the charging of research fees on the death benefit. Shortly thereafter a draft law has been adopted by the French National Assembly which purpose is to grant the French *Caisse des Dépôts* the role of centralising unclaimed assets at the expiration of a ten (10) years period following the insurer becoming aware of the insured's death.

France: AML Guidelines in the field on wealth management

On 14 March 2014, the ACPR published [guidelines](#) regarding anti money laundering and terrorism financing in the field of wealth management in the banking and insurance sectors. These guidelines are a recast of those adopted in 2010 by the Banking Commission and aim at identifying the specific risks associated with this activity and the vigilance measures to be implemented.

France: Consumer Law – Insurance complementary to a good or service

The Consumer Law 2014-344 published on 18 March 2014 creates (Article 58) a new Article L. 112-10 in the French Insurance Code which purpose is to allow an insured who subscribed for non-professional use an insurance contract constituting a complement to a good or service sold by a supplier, to withdraw from the contract without fees nor penalties under the modalities set out in this article, subject to evidencing the existence of a

previous guarantee for a risk covered by this new contract. This article also imposes on the insurer a duty of information under the modalities described in the French Insurance Code.

France: Consumer Law – termination of insurance contracts

The Consumer Law 2014-344 published on 18 March 2014 now imposes on insurers to justify their decision in the event of unilateral termination in accordance with the terms of the insurance contract when the insurance contract covers an individual outside his professional activities (Article 59 codified in Article L. 113-12-1 of the French Insurance Code). The Law (Article 54) also establishes in Article L. 113-12-2 of the French Insurance Code a twelve (12) month period as from the signing of the loan offer for the insured to terminate the credit insurance contract. The possibility of termination will only apply to property loans taken from 26 July 2014. It also establishes under Article L. 113-15-2 of the French Insurance Code a possibility of termination by the insured without fees nor penalties, at the expiry of a period of one (1) year from the first subscription, of the contract or adhesions tacitly renewable for insurance covering individuals outside their professional activities and relating to classes of insurance to be determined by a decree (Article 61). This provision will only apply to contracts entered into or tacitly renewed as from the date of publication of the decree specifying the classes of insurance concerned.

France: Consumer Law – definition of collective Non-life insurance

The Consumer Law 2014-344 published on 18 March 2014 creates a new chapter in Title IX of Book II of the French Insurance Code on collective non-life insurance. Article L. 129-1 of the French Insurance Code defines collective non-life insurance contract as a contract subscribed by a legal person with a view to the adhesion by any person interested in the benefit of the guarantees to cover risks other than those mentioned under Article L. 141-1 of the same code and subjects these contracts to the provisions laid down in Title I and Title II of the French Insurance Code.

10. Intellectual Property

France: French Hamon Law on consumer protection

The French Law n°2014-344 of 17 March 2014 on consumer protection (so-called "Hamon Law") contains provisions aimed at strengthening the protection of the names of regional/local authority and creates a new regime of geographical indications.

As regards the protection of the names of regional authorities, Article L. 712-2-1 of the French Intellectual Property Code (the "IPC") now allows any regional/local authority to request the French Industrial Property Office (the "INPI") to be informed of the filing of any French trade mark application containing its name. In addition, regional/local authorities will now be admissible to file an opposition against the registration of a trade mark, on the basis of their name.

As regards geographical indications, the Hamon Law creates the geographical indications protecting industrial and artisanal products, defined in Article L. 721-1 of the IPC. Contrary to the existing geographical indications, which protect agricultural products and are granted and controlled by the National Institute of Origin and Quality (the "INAO"), these new geographical indications will fall under the authority of the INPI. In addition, these new geographical indications are included in the list of prior rights provided for in Article L. 711-4 of the IPC which can represent bars to the registration of junior signs filed as trade marks. Finally, the regional/local authorities whose name is reproduced in these geographical indications, as well as the organisms in charge of the defense and management of these geographical indications, will be admissible to rely on these geographical indications to file an opposition against the registration of a junior trade mark.

European Law: Directive on collective management of copyright and multi-territorial licensing of rights in musical works for online use

The European Parliament and the Council have adopted the Directive 2014/26/UE of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

The approximation provided for in the directive contemplates to create a common general framework for collective management of copyright and related rights within Member States.

The directive aims at compelling collective management organisations to act in the best interests of the rightholders. The directive includes, in particular, (i) a series of rights that must be reserved to rightholders, (ii) protective measures for rightholders in their relations with collective management organisations and (iii) strengthened obligations for the persons who manage the business of the collective management organisations.

The directive also includes measures aimed at inciting and facilitating the granting of multi-territorial licences for online rights in musical works.

The implementation period will expire on 10 April 2016.

11. Life sciences

France: Law including provisions for adapting to European Union law on health

Law n°2014-201 of 24 February 2014 introducing various provisions regarding the adaptation of the health field to European Union (the "EU") law, implements several EU directives. It intends to facilitate the recognition of medical prescriptions issued in another member state. As such, there are new obligations for any prescription issued at the patient's request in order to use it in another EU member state, and dealing with immunological products, biological medicinal products, similar biological medicinal products, medicinal products derived from human blood, advanced therapy medicinal products, and tissue engineered products. Pursuant to article L. 5121-1-4 of the Public Health Code, it is required to (i) specify active ingredients of a medicinal product designated by their international non-proprietary name or, otherwise by the name given in the pharmacopoeia, and (ii) use the brand name and, if applicable, the invented name of the prescribed product. Law n°2014-201 provides also an "ethical label" for medicinal products derived from human blood which are made from ethical plasma. It also ratifies Order n°2012-1427 of 19 December 2012 aimed at improving the security of the medicines supply chain, regulating the sale of medicines on the internet and combating the falsification of medicinal products. Furthermore, this law strengthens the monitoring of cosmetics and tattoo products. It also requires chiropractors and osteopaths to subscribe to specific professional liability insurance before 1 January 2015. Finally, this law extends the scope of medicinal products which are likely to be sold online, while maintaining the prohibition of online sales of prescription-only medicinal products.

12. New technologies

France: Hamon law

The revised French consumer law, also dubbed "Hamon Law", ([please refer to the Legal and Regulatory Update - February 2014](#)) was published in the *Official Journal* on 18 March 2014.

France: CNIL sanction against an association

The French data protection authority (the CNIL) issued a €10,000 sanction against a French association providing an online directory of regulated legal professions for refusing to delete the contact details of the persons listed in the directory after they had requested such deletion. The sanction came after a cease and desist letter from the CNIL which the association had failed to comply with.

France: Credit cards

The CNIL updated its recommendation concerning the use of credit cards for remote payments. The new recommendation extends the scope of the recommendation and calls for the implementation of strengthened security measures, such as, for instance, the non-retention of the credit card details on the terminal used by the customer to make his or her purchases.

European Law: Data protection reform

On 12 March 2014, the European Parliament adopted the reform on data protection, namely the draft regulation on the processing of personal data

and the draft directive on data protection in the context of criminal offenses. The adoption of the reform is currently in flux, depending on the renewal of the Commission due for this year 2014.

European Law: EDPS guidelines

On 25 February 2014, the European Data Protection Supervisor (EDPS) published guidelines for European institutions and bodies concerning the processing of personal data in certain fields relevant to them such as recruitment, processing of disciplinary data and video surveillance.

International: Internet Governance

On 14 March 2014, the U.S. government announced in a press release that it was ready to give away its central role in the allocation of domain names on Internet upon termination of its contract with the organizations currently in charge of the assignment (IANA and ICANN), i.e. from 30 September 2015.

13. Procedures

France: Civil procedure: Class actions introduced in French law

The Consumer law n°2014-344 dated 17 March 2014 has introduced class actions in French law under Articles L. 423-1 et seq. of the French Consumer Code. Pursuant to the terms of the law, a nationally representative consumer protection association authorised under Article L. 411-1 of the French Consumer Code will be entitled, subject to certain conditions, to act before the civil courts to obtain compensation for the individual losses sustained by a group of consumers.

14. Public law

European Law: New rules on public procurement and concession contracts published

New EU rules on public procurement and concessions were published on 28 March 2014 in the Official Journal of the European Union, after the Council and the Parliament approved them respectively on 15 January 2014 and 11 February 2014 (please refer to the Legal and Regulatory Update - February 2014). Those three directives will enter into force on 17 April 2014. France, as the other Member States, has two years to implement the provisions into national laws. Nonetheless, a Decree should be enacted by the end of the year in order to transpose into national law the provisions considered by the French Government as the most urgent (creation of innovation partnerships, simplification of applications and reduction of financial capacities required for bidders, particularly SMEs).

European Law: Amendment to the WTO Agreement on Government Procurement

The European Commission adopted, on 25 March 2014, a notice concerning the entry into force on 6 April 2014 of the Protocol amending the Agreement on Government Procurement (GPA), negotiated within the World Trade Organization (WTO). The GPA is the sole legally binding WTO agreement on public procurement. This revised agreement reinforces competition among companies and takes into account the widespread use of electronic procurement tools. The revision also incorporates transitional measures that are intended to foster the accession to the Agreement by developing and least-developed countries.

15. Real estate

France: ALUR Law

Law n°2014-366 dated 24 March 2014 published in the Official Journal of 26 March 2014 notably modifies planning law, environmental law, as well as the law applicable to residential leases, co-ownerships and real estate professionals.

16. Tax

France: Exemption of the additional corporate tax contribution on dividend distribution ("Contribution of 3%") for real estate investment companies

The French Tax Authorities have incorporated into their Administrative Guidelines the continuation of the exemption of the "Contribution of 3%" for real estate investment companies ("**SIIC**"), provided by the Amended 2013 Finance Law. The exemption of the "Contribution of 3%" only concerns amounts distributed to comply with the SIIC distribution requirements (*BOI-IS-AUT-30-20140306 n° 150 dated 6 March 2014*).

This exemption applies to amounts paid as from 1 January 2014.

France: Increase of the "SIIC" distribution requirements

The French Tax Authorities have incorporated into their Administrative Guidelines the increase of the "SIIC" mandatory distribution thresholds, provided by the Amended 2013 Finance Law.

For financial years ending after 31 December 2013, SIIC have to distribute (*BOI-IS-CHAMP-30-20-40-20140304 n°10 dated 4 March 2014*):

- 95% of their profits resulting from the rental of immovable properties and assimilated;
- 60% of their profits resulting from capital gains on the disposal of immovable properties and assimilated.

France: Capital gains on the disposal of offices, business premises intended to be transformed into living quarter

The French Tax Authorities have updated their Administrative Guidelines by incorporating the changes introduced by the Amended 2013 Finance Law which has extended the application of *Article 210 F of the French Tax Code* to disposals realized after 31 December 2014, if a reciprocal promise of sale is signed before 1 January 2015 (*BOI-IS-BASE-20-30-20140311 n°30 dated 11 March 2014*).

As a reminder, *Article 210 F of the French Tax Code* is a temporary mechanism which allows the taxation of capital gains on the disposal of offices, business and storage premises at the reduced rate of 19% when the seller takes the commitment to transform them into a living quarter within 3 years.

France: Updating of the annual tax on offices, business and storage premises collected in the Ile-de-France region

The French Tax Authorities have integrated into their Administrative Guidelines the tariffs for 2014, of the annual tax on offices, business and storage premises and parking surfaces which is collected in the Ile-de-France region. These tariffs were those introduced by the *Ministerial Decree dated 23 December 2013* (*BOI-IF-AUT-50-20-20140321 n° 200 and following dated 21 March 2014*).

As a reminder, the Amended 2013 Finance Law have specified that as from the tax due for 2015, the annual updating of the tariffs will no longer be made through a ministerial decree, but will be made through an updating of the Official Public Finances and Taxes Bulletin.

France: Change of the rate of the banks tax of systemic risk

The French Tax Authorities have incorporated into their Administrative Guidelines the new rate of the banks tax of systemic risk, as laid down by the Amended 2014 Finance Law (BOI-TFP-RSB-20140304 n° 220 dated 4 March 2014).

As of 1 January 2014, the new rate is 0.539%.

17. Telecoms

France: ARCEP authorises 4G experiments overseas

By a decision of 11 March 2014, the *Autorité de régulation des communications électroniques et des postes* (ARCEP) authorised the *Société réunionnaise du radiotéléphone* (SRR) to use 1800 MHz and 2600 MHz frequency bands in order to conduct experiments on the LTE technology.

The experiment will be carried out on three sites in Réunion, located in Saint Denis and Sainte Marie, and will allow testing the 4G network deployment.

This experiment intervenes within the framework of the launch of the calls for application announced by the Government and the ARCEP on 20 February 2014 with a view to awarding new 4G frequency licences in the overseas territories.

France: Publication of the Order relating the digital economy

On 14 March 2014, within the framework of Article 1 of the Law n°2014-1 of 2 January 2014 enabling the Government to simplify and secure the life of companies by way of orders, was published Order n°2014-329 dated 12 March 2014 relating the digital economy.

The Order concerns in particular:

- the postal and electronic communications sector as it introduces a new sanction procedure based on the *Commission nationale de l'informatique et des libertés* (CNIL) model. Prosecution and sentencing functions are now assigned to different bodies within the Executive Board of the *Autorité de régulation des communications électroniques et des postes* (ARCEP). An upcoming decree will specify the implementation of this new sanction procedure;

- the indoor installations of fibre to the home (FttH) networks as it simplifies and improves the applicable legal framework. The text (i) specifies the building (co)owner(s) and the operator's respective responsibilities and (ii) expands the field of application for connection procedures to all types of shared residential premises, buildings or subdivisions.

France: ARCEP's recommendation on VAS

On 20 March 2014, after having conducted a public consultation at the end of 2013, the *Autorité de régulation des communications électroniques et des postes* (ARCEP) published a recommendation relating the wholesale market of the value added services (VAS) interconnection.

This recommendation concerns the relationships between originating operators and terminating operators. It recalls in particular the regulatory obligations of the different actors and the implementation conditions of the current regulatory framework.

France: ARCEP's new decision relating the gathering information on interconnection and routing on the internet

On 26 March 2014, the *Autorité de régulation des communications électroniques et des postes* (ARCEP) published the decision n°2014-0353 of 18 March 2014 amending the decision n°2012-0366 of 29 March 2012 relating to the periodic campaigns for gathering information on the technical and pricing terms governing interconnection and routing.

The main input of this decision is to:

- distinguish the installed and configured capacity on each interconnection link covered by the decision;
- allow ARCEP to request additional information periodically, to enable it to assess the level of a presumed traffic overload on interconnection links;
- reduce the amount of information that operators are required to provide, and the number of relationships covered by the decision.

Stakeholders must submit the new questionnaire, including the amendments brought by the decision, in the second half of 2014.

France: Electronic communications and postal markets observatories: simplification and decrease of the amount of information gathered from companies

For the sake of simplicity and in order to reduce the amount of information required from operators, the *Autorité de régulation des communications électroniques et des postes* (ARCEP) decided to unify the information gathering decisions in the telecoms and postal sectors and published on 27 March 2014 a single decision for both sectors:

- Decision n°2014-0234 of 13 March 2014 establishing annual survey for the year 2013 in the postal sector;
- Decision n°2014-0230 of 25 March 2014 establishing annual and quarterly surveys in the electronic communications sector.

A public consultation will be launched by the end of April 2014 regarding (i) the scope of the information collected, (ii) the methods used to collect it and (iii) the content and format of resulting publications and outputs.

European Law: Draft revised Recommendation on relevant markets: the European Commission requests BEREC opinion

On 24 March 2014, the European Commission formally requested BEREC's opinion on the draft text of the revised Recommendation and its accompanying Explanatory Note on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services which were published on 24 January 2014.

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