

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 November 2013.

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

- **Draft law granting amnesty for acts committed in the course of social movements and trade unions' protesting activities** – Filed on November 28, 2012 – Adopted on 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 consumption**, n°1015, filed on May 2, 2013 – Adopted on first reading – in debate before the National Assembly in second reading from December 9.
- **Draft law relating to the fight against tax fraud and serious economic and financial crime**, n°1011, filed on April 24, 2013 – Adopted on final reading by the National Assembly on November 5, 2013 – Seisin of the Constitutional Council on November 6, 2013 by more than 60 senators.
- **Draft law aiming at recapturing the real economy**, n°1037, filed on May 15, 2013 – emergency procedure – adopted on first reading by the National Assembly on October 1, 2013.
- **Draft law for the access to housing and redeveloped town planning**, n°1179 – filed on June 26, 2013 – adopted on first reading by the National Assembly on September 17, 2013 – adopted on first reading by the Senate on October 26, 2013.
- **Draft law relating to social and solidarity-based economy**, n°805 – filed on July 24, 2013 – adopted on first reading by the Senate on November 7, 2013. Passed on to the National Assembly for first reading.
- **Draft law relating to various provisions for the transposition of EU Law into French Law in the health sector**, n°1336 – filed for first reading before the National Assembly on August 2, 2013. In debate in public session on December 19.
- **Draft law for craft industry, trade and very small businesses**, n°1338 – filed for first reading before the National Assembly on August

21, 2013.

- **Draft law to take various measures to simplify and secure business life**, n°1341 – filed on September 4, 2013 – emergency procedure – adopted on first reading by the National Assembly on October 1, 2013 – in debate on first reading by the Senate on December 9, 2013.
- **Draft law to guarantee the future and justice of the pension system**, n°1376, filed on September 18, 2013 – adopted on first reading by the National Assembly on October 15, 2013 – Rejected on first reading by the Senate on November 5, 2013 – adopted on new reading by the National Assembly on November 26, 2013 – in debate in new reading by the Senate on December 16, 2013.
- **Draft finance law for 2014**, n°1395 – filed on September 25, 2013 – adopted on first reading by the National Assembly on November 19, 2013 – Rejected on first reading by the Senate on November 27, 2013.
- **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 on first reading by the National Assembly on October 3, 2013.
- **Draft law on the financing of Social Security for 2014**, n°1412 – filed on October 9, 2013 – The text was adopted by the National Assembly on November 26, 2013, then rejected on new reading by the Senate on November 28, 2013 – Final reading by the National Assembly on December 3, 2013.
- **Draft law to implement a control of the Work Councils' accounts**, n°679, filed before the Senate on July 18, 2012 – Adopted on first reading by the Senate on October 10, 2013.
- **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 which authorises the ratifying of the agreement relating to the establishment of a unified jurisdiction for patents**, n°97, filed on October 23, 2013 – accelerated procedure by the Government – Adopted on first reading by the Senate on November 21, 2013.
- **Draft law which aims at reinforcing the fight against counterfeiting**, n°866, filed on September 30, 2013 – Accelerated procedure by the Government – Adopted on first reading by the Senate on November 20, 2013.
- **Draft law aiming at a better control of the use of phytosanitary products on the national territory**, n°40, filed on October 7, 2013 – adopted on first reading by the Senate on November 19, 2013.
- **Draft amending finance law for 2013**, n°1547, filed on November 13, 2013 – in debate on first reading by the National Assembly from December 3, 2013.
- **Draft law for the modernisation and simplification of law and procedures in relation to justice and home affairs**, n°175, filed for first reading at the Senate on November 27, 2013.

Enacted laws

- **Organic law n°2013-1026 of November 15, 2013 relating to independence of the French public service broadcasting** – OJ of November 16, 2013.
- **Organic law n°2013-1027 of November 15, 2013 which updates organic law n°99-209 of March 19, 1999 relating to New Caledonia** - OJ of November 16, 2013.

- **Law n°2013-1028 of November 15, 2013 relating to independence of the French public service broadcasting** – OJ of November 16, 2013.
 - **Law n°2013-1029 of November 15, 2013 on several provisions relating to French Overseas Departments and Territories** - OJ of November 16, 2013.
 - **Law n°2013-1005 of November 12, 2013 which enables the Government to simplify the relations between the administration and the citizens** - OJ of November 13, 2013.
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1. Audiovisual

France: Reform of the CNC financial support for technical industries and technological innovation

The [Decree n°2013-999 of 8 November 2013](#), which repeals the Decree No. 2006-324 of 20 March 2006, modernizes the financial aid for technical industries and technological innovation in the field of cinema and other arts and animated pictures industries.

The aid is granted by the CNC (National Centre for Cinema and the moving images) and is restricted to companies having their headquarters or a permanent establishment in France.

It aims in particular to contribute to the financing of (i) investments in tangible and intangible fixed assets in the context of recipients' modernization, (ii) projects and studies for research and development, (iii) expenses related to obtaining and validating of industrial property rights, (iv) studies and external consulting services and (v) improvement of online communication services.

This aid is now open to all companies and organizations which participate to the development of creation and to the quality of multimedia, audio-visual and cinematographic works' broadcasting, through the provision of equipment and technical services. Subject to some conditions, the aid is now open to companies other than SMEs.

France: Publication of laws relating to the independence of the French public service broadcasting

French Parliament adopted on 15 November 2013 the [Organic Law n°2013-1026](#) and the [Ordinary law n°2013-1028](#) on the independence of the French public service broadcasting.

The Organic Law withdraw the French President power to appoint presidents of the French public broadcasting companies (France Television, Radio France, French external broadcasting), who will now again be appointed by the CSA (French Audio-visual Council).

The Ordinary Law amend the composition of the CSA board from 9 to 7 members as well as the rules applying to their designation as their appointment is now shared between the French President, the President of the National Assembly and the President of the Senate. It also amends the CSA sanction procedure, in particular by creating an independent rapporteur in charge of the investigations and prosecutions, and is empowered to decide whether or not the cases require a referral to the CSA sanctioning body.

European Law: European Commission adopts new communication on State aids to the cinematographic industry

Please refer to the [Competition section](#).

2. Capital Markets

France: EMIR - Timetable for applying the obligation to report derivatives transactions

On 7 November 2013, the European Securities and Markets Authority (ESMA) announced the registration of the first European trade repositories. The obligation to report to a trade repository will apply from 12 February 2014. In order to give businesses (financial or other) that use derivatives better support in implementing the European regulation, the AMF draws their attention to the [implementation timetable](#) for the reporting obligation.

France: AMF 2012 annual report on asset management and study on French real estate collective investment schemes (OPCI)

The AMF published its annual report on asset management and the results of a study conducted on French real estate collective investment schemes (OPCI). These publications have for objective to review the evolution of the French asset management industry, its main actors and

products as at 31 December 2012.

3. Competition

European Law: State aid – Adoption of new film support rules

The Communication from the Commission on State aid for films and other audiovisual works was published in the OJ of the EU on 15 November 2013. It replaces the previous 2001 Cinema Communication which expired on 31 December 2012 and extends its scope to include all phases of an audiovisual work from concept to delivery to audiences. The new Communication maintains, largely, the main principles of the 2001 Communication and confirms, in particular, that the intensity of the aid that can be granted to a film continues to be limited in principle to 50% of the production budget and that Member States are still allowed to impose territorial spending conditions on beneficiaries of audiovisual aid measures. Member States should bring their existing support schemes in line with this Communication within two years.

European Law: State aid – Public consultation on Draft Guidelines for supporting firms in difficulty

The European Commission launched on 5 November 2013 a public Consultation on Draft Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. The Draft aims at replacing the current 2004 Guidelines and at defining the conditions under which Member States can grant public funding to rescue and restructure non-financial firms in difficulty; a separate set of rules is in place for banks and other financial institutions. The Draft introduces, in this view, (i) a new concept of temporary restructuring support, (ii) better filters to ensure that state aid is targeted at cases where it is really needed, (iii) suggestions on how burden sharing can be implemented for non-financial firms and (iv) criteria to define the notion of "undertakings in difficulty". Interested third parties are invited to submit their comments until 31 December 2013.

European Law: State aid - Public consultation on a Draft Guidance paper regarding evaluation in the field of State aid

The European Commission launched on 22 November 2013 a public Consultation on a Draft Guidance paper regarding evaluation in the Field of State aid. The Draft aims at helping Member States to better evaluate to what extent public support schemes have achieved their purpose and what their impact was on markets and competition. The Draft Guidance paper contains methodologies, best practices and examples on how to carry out ex-post evaluations. It also aims at setting minimum standards on evaluation modalities and techniques in order to foster a common approach among Member States, thereby ensuring high quality evaluations. The Draft is in particular intended for assessing aid schemes with large budgets since those are likely to have the biggest impact on the market and the highest efficiency gains. Interested third parties are invited to submit their comments until 24 January 2014.

4. Corporate

France: AMF report on Corporate Governance and Executive Compensation in small and medium caps

The French Financial Markets Authority (*Autorité des Marchés Financiers*) released its annual report on Corporate Governance and Executive Compensation in small and medium caps companies.

The report draws up a positive statement of the past year and points out, in particular, a greater diversity in boards of directors, a wider application of the recommendations set out in the MIDDLENEXT Code relating to variable compensation, allocation of free shares or stock options.

The Authority also formulates new recommendations regarding a stringent application of the "comply or explain" principle or the implementation of "Say on Pay" advisory vote of shareholders on managers' remuneration.

France: AMF report on the information released by listed companies relating to social, societal and environmental responsibility

The French Financial Markets Authority (*Autorité des Marchés Financiers*) has published, on 5 November 2013, its report on the information released by listed companies relating to social, societal and environmental responsibility.

AMF points out a better structuring of extra-financial information, which is very useful for investors in their investment decisions.

The Authority also formulates new recommendations regarding the information medium and the manner in which information is presented, extra-financial indicators chosen or the objectives put forward by the companies on social, societal and environmental responsibility.

France: Additional penalty relating to criminal offences in Company Law

The sanction of misuse of company assets, abuse of authority, distribution of fictitious dividends, and publication of untrue or inaccurate financial statements is increased by the Law n°2013-907 relating to Transparency in public life, published in the Official Journal on 12 October 2013. The executives of SARL and joint stock companies may be sentenced by an additional penalty of a deprivation of civil, civic and family rights when they will be found convicted of one of these offences.

European Law: Amendment of the Transparency Directive

The Directive n°2013/50/EU amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market was published in the Official Journal of the European Union on 6 November 2013.

This amendment of the Directive consists in an easing of requirements regarding financial information: small and medium size issuers are no longer required to publish quarterly financial reports and the deadline for publishing these reports has been extended from 2 to 3 months.

In addition, all financial instruments of similar economic effect to holdings of shares and entitlement to acquire shares are to be notified by the investors to the relevant authorities.

European Law: Adoption of the European Directive regarding gender parity in listed companies

The Directive relating to gender parity in listed companies was adopted by the European Parliament on 20 November 2013.

It provides that by 2020, at least 40% of their non-executive directors are women. Fines should be imposed for failing to follow transparent appointment procedures and also the exclusion from public calls for tenders.

5. Employment

FRANCE: Law: silence on the part of the administration will soon amount to acceptance

Law n°2013-1005 dated 12 November 2013 (OJ of 13 November 2013) sets out that a lack of response on the administration's part will, after two months, be considered an implicit acceptance, minus some exceptions. The list of procedures for which this new rule will be applicable will be available on a website that is under the Prime minister's care.

This principal of tacit acceptance will enter into effect after a one-year period following the law's enactment, for acts that are under the State administration or its public administrative establishments' competence, and after a two-year period for the acts of local authorities and their respective public establishments, as well as for social security agencies and other agencies in charge of handling an administrative public service.

France: Order: order on the establishment of the social security ceiling for 2014

An Order dated 7 November 2013 (Nor: AFSS1327624A-OJ of 19 November 2013) sets the monthly ceiling for French social security at 3,129€ for the year 2014 (as opposed to 3,086€ for the year 2013)

6. Environment

France: Restriction of use of certain hazardous substances in electrical and electronic equipment

Decree n°2013-988 dated 6 November 2013 published in the Official Journal of 7 November 2013 transposes the 2011/65/UE Directive of the European Parliament and of the Council dated 8 June 2011 on the restriction of use of certain hazardous substances in electrical and electronic equipment ("RoHS") by in particular extending the list of categories of equipment subject to the RoHS' regulation and modifying the obligations applicable to the manufacturers, importers and distributors.

The previous-mentioned modifications are inserted in new provisions of the French environmental code (articles R.543-171-1 to R. 543-171-12 of the French Environmental code).

7. Insurance

France: Reform of life insurance

The project of amending finance bill for 2013 adopted by the French National Assembly on 3 December 2013 creates (Article 7) two new categories of products: the euro-growth (*euro croissance*) and the contract life generation (*contrat vie génération*). With a view to encouraging their purchase, these new products would benefit from a tax arrangement in the event of conversion or transmission. The French Senate will vote on the project of amending finance bill in the course of December 2013.

8. Intellectual Property

European Law: Proposal for a Directive on the protection of trade secrets

The European Commission adopted on 28 November 2013 a proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure by third parties. This directive aims at deeply reforming trade secrets law in order to approximate the legislations and their enforcement within the European Union.

The main changes introduced by the draft Directive are the following:

- A common definition of "trade secrets".
 - A statute of limitation of 2 years maximum from the date when the claimant becomes aware, or ought to be aware, of the last event on which the action is grounded.
 - Introduction of a common set of sanctions for unlawful use or disclosure of trade secrets, including (i) provisional or permanent injunctions, (ii) seizure of infringing products and their destruction if the use or unauthorized disclosure of trade secrets is proven, (iii) compensatory damages (but not punitive) related to the injury.
 - However, the current draft Directive does not introduce a procedure aimed at solving the evidence issues.
 - This draft Directive follows a report on trade secrets ordered by the European Commission to Hogan Lovells.
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9. New technologies

France: Digital safes

On 25 November 2013, the French data protection authority (the CNIL) published a recommendation on digital safe services for individuals. The recommendation sets out a range of recommended good practices for providers of these services. The CNIL also recommends the implementation of enhanced security measures as well as a detailed regulation on the protection of health data received by data controllers.

France: Military planning law

Although the government is required to submit any draft law on the protection of individuals with regard to the automatic processing to the CNIL, the provisions of article 13 of the draft law for military planning and its provisions regarding real-time access to electronic communications connection data by agents of the Ministries of the Interior, of the Defense and of the Budget have not been submitted to the CNIL. However, during a hearing held by the Senate Committee of laws and defense, the CNIL requested the strengthening of the guarantees granted to individuals.

European Law: European digital agenda

A European resolution relating to the European Digital Agenda was adopted on 1 November 2013. This resolution calls for an easier access to the

financing of innovation to support the rise of start-ups. It also aims to target investment strategic effort towards technological and commercial experiments on cloud computing, connected objects and the processing of massive data.

10. Real estate

France: Building permit applications: feasibility study

Decree n°2013-979 dated 30 October 2013 and Order dated 30 October 2013 published in the Official Journal of 3 November 2013 in particular extend the obligation to conduct a feasibility study of energy supply to new buildings whose surface is comprised between 50 and 1,000 sqm, while limiting the number of variants to be included in this study.

These provisions apply to building permit applications that will be filed as from 1st January 2014.

11. Tax

France: Tax credit for competitiveness and employment ("CICE")

The French Tax Authorities ("FTA") have modified their guidelines related to the CICE (Article 244 quater C of the French Tax Code ("FTC")) (BOI-BIC-RICI-10-150).

The rules regarding the pre-financing mechanism of the CICE within a tax group are relaxed: the parent company which is the entity able to proceed with the pre-financing of the CICE can make four partial disposals of debts. However, the number of partial disposal of debts cannot exceed the number of entities comprising the tax group.

In addition, the FTA have provided details on the concept of managers and the calculation methods of the basis for the determination of the CICE (employees whose statutory working time is determined with reference to an annual number of working days, professional fees and back-pay), as well as the reporting obligations of companies.

France: Reporting requirements for accounts opened, used or closed out of France

Following French case law concerning the tax consequences of the disclosure failure of a PayPal account, the FTA have inserted an exception to the French reporting requirements in their guidelines (BOI-CF-CPF-30-20 n°85 dated 12 November 2013).

Thus, the reporting requirements set out by Article 1649 of the FTC do not apply to accounts held in foreign financial institutions when the following cumulative conditions are met:

- The account is intended to make online purchases or receipts payments related to the sale of goods;
 - Opening such account assumes possession of another account opened in France and which it backs;
 - The sum of annual receipts credited to this account and related to sales made by its holder does not exceed € 10,000. This threshold is assessed, where appropriate, by the sum of all receipts made on all accounts held by the same holder and designed to make online shopping payments or receipts relating to sales property.
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12. Telecoms

France: ARCEP submits draft decisions on broadband and superfast broadband market analysis to public consultation

On 27 November 2013, ARCEP has submitted draft decisions (which will apply from mid-2014 to mid-2017) to public consultation (which will run until 8 January 2014) which define asymmetrical regulation (applicable only to Orange) governing broadband and superfast broadband markets, namely: (i) wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (market 4); (ii)

wholesale broadband access (market 5); (iii) wholesale terminating segments of leased lines, irrespective of the technology used to provide leased or dedicated capacity (market 6).

The changes being suggested by ARCEP relate in particular to:

- the perimeter and possible use of Orange civil engineering that can be accessed for the deployment of optical local loops;
- access to TV services on DSL in unbundled areas, and the expansion of unbundling;
- securing the terms and conditions of the Orange fibre backhaul solution (LFO) and, more generally, the solutions needed to deploy and operate optical local loops;
- increased monitoring of submarine cable tariffs;
- changes to regulation governing active optical fibre plans for businesses, to take into account changes in market competition;
- various operational changes to existing wholesale solutions (unbundling, civil engineering, sub-loop unbundling, revival of bundled offers aimed specifically at businesses, etc.);
- strengthened non-discrimination obligations, in accordance with the European Commission recommendation of 11 September 2013 on "consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment".

France: ARCEP published its electronic communications market indicators in France in the third quarter of 2013

On 28 November 2013, ARCEP published its electronic communications market indicators (for wholesale and retail fixed broadband and superfast broadband services) in France in the third quarter of 2013.

- Retail market: 70% more FTTH accounts than the year before.

As of 30 September 2013, there were more than 1.8 million superfast broadband subscriptions (maximum download speed equal to or higher than 30 Mbit/s), which represents an increase of 24%. Among the total of broadband subscriptions, FTTH plans are the ones enjoying the highest rate of increase (+71.5%).

The number of broadband subscriptions (maximum download speed below 30 Mbit/s) stands at 22.8 million (+180,000 compared to Q2 and +2.9% compared to Q3 2012). 98% of these are xDSL plans.

All in all, the number of broadband and superfast broadband subscriptions stood at 24.6 million on 30 September 2013 (+260,000 on the previous quarter and +1 million over Q3 2012).

- Wholesale market: investments in superfast networks continue, with 235,000 additional households made eligible for FTTH in Q3 2013

In total, then, at the end of the third quarter of 2013, 9.1 million homes in France were able to subscribe to a superfast broadband service, including 3.7 million (41%) homes located outside of very high-density areas - with some having a choice between two superfast solutions: one supplied over the upgraded cable network and the other over an FTTH system. This figure of 9.1 million eligible households is to be set against the 30.9 million lines in France supplied by the legacy copper network.

France: ARCEP launches a public consultation on the wholesale value-added services (VAS) market

On 29 November 2013 ARCEP launched a public consultation on a draft recommendation, providing operators with clarifications on the changes to be made to their interconnection agreements, to ensure a smooth implementation of the retail price reforms. This project aims at regaining consumers' trust in the VAS market by improving operational aspects and the transparency of the declining VAS market. The retail tariff reform

arises from the ARCEP's decision n°2012-0856 (July 2012) which modernises the operating rules for special numbers starting with 08 and the short numbers that consumers use to access these services. The main reforms, which are to be introduced gradually between now and 1 January 2015, include:

- harmonising rates for calls to VAS from fixed and mobile lines;
- introduction of free numbers for calls originating on fixed and mobile lines;
- clear separation of the price of the service supplied by the service provider ("S") and the price of the call ("C"), which is to be the same as the price of a call to a fixed number;
- simplifying the range of time-based rates and creating a range of call-based rates (in other words regardless of the length of the call) for service providers;
- measures against fraud and abusive practices.

The document is also submitting to public consultation three proposed adjustments to VAS retail market reforms, in response to changes in the marketplace that operators had not yet identified when the previous consultation was held.

ARCEP proposes to (i) extend the provision on actions against ping calls to short numbers; (ii) have numbers starting with 0809 be free for another year, to allow certain existing phone cards that are valid beyond 1 January 2015 to continue to work properly; (iii) require that a VAS charges the same rate, excluding VAT, for the service component in both Metropolitan France and the French overseas markets.

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