

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 February 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 on the establishment of the High Authority of scientific expertise and alert regarding health and environment** - Filed on August 28, 2012 - Adopted on first reading by the Senate on November 21, 2012 – in debate before the National Assembly on January 31, 2013
- **Draft law to make the transition to a basic energy system and on various provisions relating to tariffs for the supply of water and tariffs for electricity produced by wind turbines**, filed on September 6, 2012 - Adopted on first reading by the National Assembly on October 4, 2012 - Rejected on first reading by the Senate on October 30, 2012 - New draft law adopted by the National Assembly on January 17, 2013 – Amended by the Senate on February 14, 2013
- **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
- **Draft law regarding the separation and regulation of banking activities** - Presented to the Council of Ministers on December 19, 2012 – Adopted on first reading by the National Assembly on February 19, 2013 – Debate on first reading at the Senate on March 20, 21 and (perhaps) 22, 2013
- **Draft law relating to various provisions on infrastructure and transport services** – Presented to the Council of Ministers on January 3, 2013 – Adopted on first reading by the Senate on February 12, 2013

Enacted laws

- **Order n°2013-139 of 13 February 2013 on reporting formalities for ships arriving in and departing from ports –** OJ of February 15, 2013
 - **Law n°2013-155 of February 21, 2013 authorizing the approval of the amendment to the agreement for the avoidance of double taxation -** OJ of February 15, 2013
 - **Law n°2013-154 of February 21, 2013 authorizing the approval of the agreement on the exchange of information for tax purposes, concluded between France and the Netherlands in respect of Aruba -** OJ of February 22, 2013
 - **Law n°2013-185 of March 1, 2013 establishing the generation contract -** OJ of March 3, 2013
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1. Banking

France

(a) Due diligence obligations for online payment services

Decree n°2013-183 dated 28 February 2013 on the due diligence obligations for online payment services in relation to the prevention of the use of the financial system for money laundering and terrorist financing (JORF n°0052 dated 2 March 2013) creates article R. 561-16-1 of the Monetary and Financial Code. This provision allows credit institutions or payment institutions that provide online payment services, subject to the risk of money laundering and terrorist financing being low, not to proceed with the verification of the identity of their client(s) with whom they have a business relationship.

This Decree has come into force on 3 March 2013.

2. Capital Markets

France

(a) The *Autorité des Marchés Financiers (AMF)* has adopted in **Position n°2013-06** the guidelines issued by the European Securities and Markets Authority (ESMA) on exchange-traded funds (ETFs) and other issues related to UCITS

Based on the UCITS Directive (2009/65/EC), these guidelines explain how European legislation is to be applied in particular to the management of UCITS compliant with Directive 2009/65/EC: topics covered include the information to be supplied to investors about index funds and ETFs, the special rules that UCITS have to apply if they use over-the-counter derivatives and efficient portfolio management techniques, the criteria for financial indices in which UCITS invest and the implementation deadlines, particularly for existing UCITS.

(b) In a press release dated 21 February 2013, the *Autorité des Marchés Financiers (AMF)* draws attention to the regulations applicable to Internet platforms supporting the investment decision

The *AMF* and the *Autorité de Contrôle Prudentiel (ACP)* remind the market that some services provided by Internet platforms offering to assist investors in their investment decisions are likely to be investment services, including in the following cases: asset management for third parties when the offered service by an Internet platform is to issue orders automatically on behalf of the user, on the basis of information it has previously provided without any intervention of the user; the reception and transmission of orders on behalf of third parties when the Internet platform transmits orders related to financial instruments ordered by the user; and investment advice when the Internet platform provides advice on financial instruments beyond a presentation of facts or figures, and this advice is presented as suitable or based on a review of the situation of the user. To provide each of these services, providers have to be licenced as providers of investment services.

3. Competition

France

(a) Public Consultation on Guidelines on merger control

On 22 February 2013, the Competition Authority published a revised draft of its Guidelines on merger control published on 16 December 2009. The Guidelines aim to provide companies with guidance on the application of national merger control rules. This project emphasizes on the importance of the informal "pre-notification" phase. It describes the eligibility requirements for a simplified procedure and clarifies some aspects of the competitive analysis conducted by the Authority. It also includes a model form for commitments proposals in the event of assets divestiture and a model contract defining the tasks of a trustee. Interested persons are invited to respond to the consultation by 22 April 2013.

(b) Public Consultation on the proposed Government reform of Article L. 441-7 of the Commercial Code relating to the annual convention

A public consultation was launched on the proposed government reform of Article L. 441-7 of the Commercial Code, which provides for the obligation to enter into an annual agreement formalizing the results of trade negotiations between suppliers and distributors (central purchasing or listing body). The Project clarifies the concept of service provider, stating that it refers to the provider related to the distributor. It also indicates that all the provisions of the Convention shall enter into force on the date of its signature. Finally, it strengthens the sanctions in case of non-compliance with the contractual formalism by replacing the criminal sanction of €75,000 by an administrative penalty the amount of which could reach €75,000 for individuals and €375,000 for legal entities and by granting the possibility for authorized officials to issue an administrative injunction whose non-compliance will be punished by a fine of €3,000 for individuals and €15,000 for legal entities. These provisions shall be included in the drafted bill on Consumer Law planned for the first semester of 2013. The consultation is open until the 4 March 2013.

(c) Publication of the 2012 report of the observatory on payment terms

Four years after the implementation of the law on the modernization of the economy (LME), the 2012 Report describes recent developments on payment terms for companies in France and offers thirteen measures to address the challenges faced by the

various players. Among the most important proposals are the establishment of administrative sanctions against bad payers, the automatic payment of default interest by local and social governments or the multiplication of controls by the *DGCCRF* (French General Directorate for Competition, Consumption and Fraud) for SBF120 companies.

(d) The Competition Authority launches a sector inquiry into the pharmaceutical distribution

See Newsflash of 27 February 2013.

European Law

(a) Public Consultation on the proposal for an amendment of the competition regime for transfer technology agreements

A [Public Consultation](#) on the draft proposal of competition rules for technology transfer agreements has been launched by the European Commission on 20 February 2013. A [Draft Regulation](#) and a [Draft Guidelines](#) on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements are subject to consultation. The proposals are intended to update the current system to enhance research and innovation, facilitate diffusion of intellectual property and stimulate growth. To fulfil this aim, the consultation considers removing the exemption for some agreements. Interested persons are invited to respond to the consultation by 17 May 2013.

(b) State aid: new version of the Guide for services of general economic interest

Following the adoption in 2011 and 2012 by the Commission of a new [package on services of general economic interest \(SGEI\)](#), the Commission published on 15 February 2013 a new version of the Guide to the application of the European Union rules on SGEI. The Guide outlines the leeway of Member States for the definition of SGEI, requirements for the legal instrument establishing a SGEI mission to a provider and rules governing the granting of compensation in exchange for providing a SIEG. It also specifies exemption rules and a greater scrutiny carried out by the Commission for aids of significant amount.

(c) No extension for the maritime sector Guidelines

On 19 February 2013, the European Commission announced its intention to not extend or renew the [Guidelines](#) for the application of Article 101 of the Treaty on the Functioning of the European Union to maritime transport services which will expire on 26 September 2013. This measure is part of the general policy of the Commission to phase out the sectorial rules on restrictive practices and abuse of dominant position.

4. Consumer law

France

(a) Legal interest rate for 2013

[Decree n°2013-178](#) of 27 February 2013 establishing the legal interest rate for 2013 has been published in the O.J. dated 1st March 2013. The legal interest rate is set at 0.04%. It applies to any calculation of interests referring to it from the 1st January to the 31st

December 2013.

5. Corporate

France

(a) Creation of a central digital database for legal notices regarding companies and businesses

The Decree n°2012-1547 relating to the publication of legal notices regarding companies and businesses in a central digital database was published in the Official Journal on 30 December 2012.

This Decree results from the Law n°2012-387 of 22 March 2012, which provided that by 1 January 2013, the legal notices regarding companies and businesses will also be published in a central digital database.

These notices are, amongst others, those provided by the Commercial Code concerning the constitution, the functioning, the modification or the dissolution of companies, including those provided by its Book VI concerning corporate difficulties/bankruptcy, excluding the publicity measures peculiar to natural persons provided by the Chapter III of Title V concerning personal bankruptcy and prohibitions to direct, manage, administer or control a company.

The database is organized and operated by a body licensed by the minister of communication and the minister of justice, gathering the publishers of the legal gazettes and the concerned professional bodies.

The Order of 21 December 2012 relating to the annual fee and the modalities of publication of the judicial and legal notices specifies the financial and technical conditions of these publications.

This Decree came into force on 1 January 2013.

(b) Anti-money laundering: publication of the AMF guidelines

The AMF has published on 12 February 2013 two positions-recommendations: the Position-Recommendation n°2013-04 "Guidelines on introduction by a third party in the prevention of money laundering and terrorist financing" and the Position-Recommendation n°2013-05 "Guidelines on the concept of beneficial owner in the prevention of money laundering and terrorist financing".

The guidelines result from the implementation of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and of Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council. They aim at clarifying the conditions of implementation of the legal provisions on the concepts of introduction by a third party and beneficial owner in the prevention of money laundering and terrorist financing.

These provisions concern the portfolio management companies and the management companies regarding the investment services they provide or the marketing of the units or shares of collective investment entities under their management or not, the financial investment advisers, the central depositories of financial investments and the securities clearing and delivery systems operators,

which are under the supervision of the AMF and referred to in 6° of article L.561-2 of the Financial and Monetary Code.

6. Employment

France

(a) Draft Bill: Creation of the Generation contract

The Draft Bill on the creation of the generation contract, aiming at implementing the National Interprofessional Agreement dated October 19th, 2012 was passed on February 14th, 2013.

The terms and conditions of the implementation of the generation contract depend on the size of the company.

In any case, a collective agreement supporting training and sustainable employment for young and elder people as well as transmission of knowledge and skills will have to be negotiated for a duration which shall not exceed three years. In the absence of such agreement, an action plan including the same details will have to be implemented. These agreements and action plans will be subject to a compliance control by the French labour administration under conditions provided for by a decree.

A governmental subsidy will be granted to companies hiring a young worker aged less than 26 under a full-time and indefinite term contract and maintaining his/her employment for the duration of the subsidy while keeping an employee aged 57 or at least 55 when he/she was hired under an indefinite term contract for the said duration or until his/her retirement. The amount and duration of this subsidy will be specified by a decree.

(b) Decree: Simplification of procedures regarding garnishments on remuneration

The Decree n°2013-109 dated January 30th, 2013 provides for the terms and conditions of implementation of the Bill dated December 13th, 2011 regarding litigation distribution and reduction of judicial proceedings and determines the applicable procedure as from February 2nd, 2013.

For purposes of simplification, it should be noted that the court clerk now informs the creditors of the suspension of proceedings in case a third party holder notification has been sent to the employer, without any formal notification of the said suspension as formerly.

7. Energy

France

(a) Restriction to night lighting of non-residential buildings

The Order of 25 January 2013 relating to night lighting of non-residential buildings in order to limit light disturbances and energy

consumption was published in the Official Journal on 30 January 2013.

This Order provides that indoors lightings of business premises must be switched off one hour after the end of the occupancy of these premises, that façade illumination must be switched off at 1am at the latest and that lighting of store windows must be switched off at 1am at the latest or one hour after the end of the occupancy of these premises if later.

These provisions apply to lightings of non-residential buildings, including both indoors lightings emitted outdoors and façade illumination. They do not apply however to lighting installations part of move or intrusion detection systems.

This Order enters into force on 1 July 2013.

(b) Appointment of the entity in charge of guarantees of origin of electricity produced from renewable sources.

The Order of 19 December 2012 appointing the entity in charge of the issuance, transfer and cancellation of guarantees of origin of electricity produced from renewable sources of energy or cogeneration has been published in the Official Journal of 15 January 2013.

This Order results from Article L. 314.14 of the French Code of Energy, amended by the Ordinance No. 2011-1105 of 14 September 2011 implementing the Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council of 23 April 2003 in the field of renewable energies and biofuels, which had provided that an entity would be appointed in this respect.

By this Order, Powernext is appointed for a period of five years. It also sets the service tariffs of this entity.

8. Insurance

France

(a) Anti-money laundering legislation – draft bill ratifying the Convention of the Council of Europe

On 6 February 2013 a draft bill was tabled in the National Assembly. It is intended to authorise the ratification of the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism of 16 May 2005, signed by France on 23 March 2011. This Convention updates and expands the scope of the Convention on laundering, search, seizure and confiscation of the proceeds from crime of 8 November 1990.

(b) Life insurance – proposal to create a file to combat fraud

As part of the national plan to fight against fraud approved by the Prime Minister, the National Committee for the Fight against Fraud announced on 11 February 2013 the launch of a consultation to constitute a file of the subscribers of life insurance policies. This file can be based on the existing file for bank accounts (Ficoba), and serve as a tool particularly in the context of the fight against money laundering.

(c) Draft banking and financial bill – Loan insurance

The draft banking and financial bill adopted by the National Assembly on 19 February 2013 includes provisions that complement the reform of loan insurance previously undertaken by the "Lagarde" Law. It includes provisions which actually foster competition, in particular a prohibition of delegation fees charged to the borrower and the provision to the borrower of a standardised information form, the format and content of which shall be defined by an order. The draft bill also includes provisions to ensure equality between women and men in terms of rates and insurance benefits and proposes in this respect to amend Article L.111-7 of the Insurance Code (please refer to the Legal and regulatory update - December 2012 and the decree of 20 December 2012 which have already made the necessary changes in the order section of the Insurance Code). The draft bill must be debated in the Senate at the end of March.

European Law

(a) EIOPA – new approach to information disclosure for defined contribution schemes

On 22 February 2013, the European Insurance and Occupational Pensions Authority ("**EIOPA**") published a Report on Good Practices related to the provision of information for defined Contribution schemes addressed to policymakers responsible for information disclosure to pension schemes members. It stresses out the necessity to provide information focused on behavioural purposes and includes a checklist based on insight from behavioural economics and communication science about how people process information and provides examples of good practices for providing information.

(b) Anti-money laundering legislation – Proposal for a 4th directive

On 5 February 2013, the European Commission published a proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and a proposal for a Regulation on information accompanying transfers of funds to secure "due traceability" of these transfers. The aim of these proposals is to bring the EU AML regime in line with recent amendments to international standards and to reinforce the existing rules on anti-money laundering and fund transfers. They provide for a more targeted and risk-based approach. The proposal update of the legal rules will have to be adopted by the European Parliament and the Council of Ministers under the ordinary legislative procedure (likely at the end of 2013 or early in 2014).

(c) Acquisition Directive – European Commission Report

On 11 February 2013, the European Commission published a report on the application of the Acquisition Directive 2007/44/EC (the "**Directive**"). While the report concludes that, overall, the regime created by the Directive is working satisfactorily, some shortcomings in the application of the Directive could be addressed to ensure consistent application throughout the EU and across financial sectors to provide acquirers with more legal certainty. In order to achieve this objective, the report proposes in particular to request the European Supervisory Authorities to update and clarify their level 3 guidelines. Comments are requested by 31 March 2013. Based on the received comments, the Commission will communicate by the end of 2013 if the regime needs to be reinforced.

9. Intellectual Property

European Law

(a) Unitary patent: signature of the agreement on Unified Patent Court

On 19 February 2013, Ministers from twenty-four participating Member States for the enhanced cooperation in the area of the unitary

patent have signed the [Agreement on Unified Patent Court](#).

On 5 March 2013, [Bulgaria also signed the agreement](#), that is now therefore signed by all the twenty-five participating Member States for the enhanced cooperation.

The purpose of this agreement is to create a court specialized in patent law with exclusive jurisdiction for litigation relating to European patents and to the upcoming unitary patents among the participating Member States.

Prior to entering into force, the agreement will have to be ratified by at least 13 Member States including France, Germany and United Kingdom. An amendment of the [Council Regulation EC n°44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters will also be required](#).

The Agreement on Unified Patent Court follows the adoption of [Regulation EU No. 1257/2012](#) implementing enhanced cooperation in the area of the creation of unitary patent protection and [Regulation EU n°1260/2012](#) relating to the cooperation with regard to the applicable translation arrangements, of 17 December 2012.

10. New technologies

France

(a) Employees monitoring

The French Data Protection Authority (CNIL) considered that a video surveillance system used in building was disproportionate, as it allowed the monitoring of the building's security staff. The CNIL has given formal notice to remove the video surveillance and to implement less intrusive measures in the future. The CNIL took this opportunity to remind that the continuous monitoring of employees in the workplace shall only be implemented in very specific exceptional circumstances, such as the constant exposure to particularly high risks.

(b) Communicating meters

In a deliberation published in the *Journal Officiel* on 18 January 2013, the CNIL raised several security and confidentiality issues created by communicating meters, which allows a more precise definition of household consumption in order to provide new related services. The CNIL recommendations includes that the load curve should not be collected without prior free, specific and informed consent from individuals, and that the meters should not collect the load curve at an interval faster than every ten minutes.

(c) HADOPI report

On 25 February 2013, the High Authority of Diffusion on the Art Works and Protection of Rights on the Internet (HADOPI) submitted its report on the means of fighting streaming and the direct download of copyrighted contents. This report proposes to increase the liability of hosting providers, and to promote a dynamic of self-regulation amongst the ecosystem stakeholders, and, in particular, payment intermediaries, advertisers, and search engines.

(d) Digital economy taxation

The Collin and Colin report on taxation of the digital economy has been submitted on 18 January 2013. The report emphasizes more specifically the problem of the offshoring of profits by certain companies in the sector of in digital technologies. Their proposals relate to the creation of a taxation based on users' personal data and the implementation of a tax environment allowing to foster the creation of new companies.

(See The Collin and Collin Report).

European Law

(a) Copyright levies

The European Commission published its recommendations on copyright levies on 31 January 2013. The Commission calls for the *"promotion of the conclusion of individually tailored licensing agreements allowing the authors to be directly remunerated"* while making these agreements *"more transparent, simpler and legitimate for the consumers and the concerned operators"*.

(b) Online payment security

The European Central Bank published on 1 February 2013 a set of recommendations relating to the security of online payments. The main recommendations relate to the access to sensitive data, the creation of systems monitoring the transactions, and the creation of multiple security levels as well as warning systems for the consumers.

(c) Google's privacy policy

Further to the implementation by Google of its new security rules, the European data protection authorities addressed their recommendations. Google had four months to justify the implementation and compliance with such measures. Without any specific response from Google within this deadline, the European authorities decided to create a working group led by the CNIL in order to coordinate a repressive action, which will be subject to validation by article 29 data protection working party.

11. Procedures

France

(a) Civil procedure

(i) Simplification of the tasks of the Court Clerk in matters relating to remuneration

Decree n°2013-109 of 30 January 2013 on the simplification of the procedure to attach remuneration, entered into force on 2 February 2013. It simplifies *"the procedural formalities incumbent on the Court clerks of the civil courts"*. From now on, when the debtor receives several remunerations, it is the Clerk and not the Judge who will be in charge of determining which employers will make deductions pursuant to Article 6 of this Decree resulting from Article 3 of Act no. 2011-1862 of 13 December 2011 relating to the

distribution of litigation and the simplification of certain court proceedings. Moreover, simple notices have replaced notifications sent by registered letter with acknowledgement of receipt when the latter did not start a limitation period.

(ii) **Towards a change of the judicial map**

A report of the mission in charge of assessing the judicial map has been communicated to the Minister for Justice on 19 February 2013. The report acknowledges that the reform has enabled to “*share the means of actions*”, “*significantly improve material working conditions*” and obtain a “*beneficial concentration of skills favouring collective work.*” Yet, the report highlights a “*real*” problem of proximity resulting from the reluctance of some people to bring an action and the increase of the time periods before judgments are delivered. Therefore, the report suggests, notably, the creation of chambers specialized in local litigation in six French towns.

(b) Penal procedure

(iii) **Ratification of the order on the criminal reform in maritime matters**

Bill n°729 ratifying order n°2012-1218 of 2 November 2012 on the criminal reform of maritime law was submitted to the Council of Ministers on 13 February 2013. This order creates new maritime courts in charge, in tortious matters, of punishing maritime torts, notably breaches of the rules governing the traffic of ships off the French coasts. Moreover, the order provides that two experienced assessors will assist the three professional judges. Such a modernisation of the criminal judicial system should reinforce maritime security at each French coastal façade.

European Law

(a) French Senate in favour of the creation of a European Public Prosecutor's Office

The French senators have spoken in favour of the creation of a European Public Prosecutor's Office during the consultation carried out by the European Commission. The outcome of the consultation will lead to the drafting of a directive in June 2013. The European Public Prosecutor would be responsible for investigating, prosecuting and bringing, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests. Looking further ahead, the European Council could decide to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension.

12. Real estate

France

(a) Planning documents: modification of elaboration, modification and revision procedures

Decree n°2013-142 dated 14 February 2013 published in the Official Journal of 16 February 2013 taken to enforce Ordinance n°2012-11 dated 5 January 2012 clarifies and simplifies the elaboration, modification and revision procedures of planning documents.

These provisions apply as from 17 February 2013.

(b) Lighting of non-residential buildings

Order dated 25 January 2013 published in the Official Journal of 30 January 2013 regulates the lighting operation of non-residential buildings in order to limit the lighting nuisances and energy consumption.

These provisions will apply as from 1st July 2013.

13. Tax

France

(a) Guidelines on the share for fees and expenses for long term capital gains

The French tax authorities have issued guidelines regarding the new calculation method of the share for fees and expenses due by companies realizing capital gains on the sale of securities under the long-term regime (BOI-IS-BASE-20-10-10-20130212 and BOI-IS-GPE-20-20-60-20130212 dated 12 February 2013).

As a reminder, the Finance Act for 2013 (*Article 22 of the Finance Act dated 29 December 2012 n°2012-15009*) has changed the basis and the rate of the share for fees and expenses to reinstate to the taxable result of the company OU which has to be subject to standard corporate income tax. Thus, when a company realizes a net long term capital gain, the share for fees and expenses which has to be reintegrated OU subject to standard corporate income tax is calculated as follows:

- the basis of the share for fees and expenses is assessed on the gross long term capital gain (before this basis was assessed on the net long term capital gain of the company); and,
- the rate of the share for fees and expenses is increased from 10% to 12%.

In its comments, the French tax authorities precise that the taxation of the share for fees and charges is independent of the existence or not of a net long term capital gain: a share for fees and expenses of 12% shall be reinstated to the taxable result of the company, each time a gross long term capital gain is realized.

(b) Guidelines on the new tax credit to boost competitiveness and employment

The French tax authorities have issued guidelines regarding tax credit to boost competitiveness and employment (BOI-BIC-RICI-10-150-20130226 dated 26 February 2013). As a reminder, this tax credit has been established by the 3rd Amending Finance Act for 2012 (*Article 66 of Law 2012-1510 of 29 December 2012*) and allows companies subject to French corporate income tax having employees, to obtain a tax credit equal to 4% in 2013 and 6% in 2014, assessed on the global amount of wages inferior to 2.5 times the French minimum wage, *i.e.*, the SMIC.

(c) VAT eligibility criterion for ancillary financial operations

The French tax authorities have changed their definition of ancillary financial products, provided in their Guidelines. The criterion is now the direct, permanent and necessary extension of the taxable activity for taxation or exemption of the financial products for the concept of ancillary financial operations ([BOI-TVA-DED-20-10-20-20130215 n°210 dated 15 February 2013](#)). As a reminder, following the ECJ judgment "*Régie Dauphinoise*" (ECJ Case 306/96, 11 July 1996, *Régie Dauphinoise - Cabinet Forest*), the French tax authorities have limited the application of this definition to property management companies only. Drawing the consequences of the judgment of the French Supreme Administrative Court (*Conseil d'Etat*, 21 October 2011, n°315469), the French tax authorities have revoked, as from 15 February 2013, their Guidelines limiting the application of the criterion of direct, permanent and necessary extension of the taxable activity only to property management companies.

(d) Basis of the *Cotisation sur la Valeur Ajoutée des Entreprises* ("CVAE")

The French tax authorities have changed the rules determining the value added used to assess the CVAE ([BOI-CVAE-BASE-20-20130221 dated 21 February 2013](#)). Now, liabilities write-offs other than commercial character are no longer considered as income (or expenses) in order to determine the value added subject to the CVAE. This amendment comes after the 2nd Amending Finance Act for 2012 (*Article 17 of Law n° 2012-958 dated 16 August 2012*) making non-deductible aids other than commercial character granted to another company, except those granted under an agreement established or approved in accordance with Article L. 611-8 of the French Commercial Code or those granted to companies for which a safeguard procedure, an in-court rehabilitation proceeding, or liquidation procedure is opened (*Article 31 of the Law n°2012-15009 dated 29 December 2012*). These provisions apply to accounting period ending as from 4 July 2012.

(e) Amendment to the double tax treaty concluded between France and the Philippines

The Decree promulgating the amendment to the agreement for the avoidance of double taxation and prevention of tax evasion regarding income taxes signed between France and the Philippines was published in the Official Journal of the French Republic ("**JORF**") ([Decree n°2013-131 dated 8 February 2013](#)). This amendment extends the scope of the provision on the exchange of information.

(f) Tax agreement concluded between France and the Netherlands in respect of Aruba

The law authorizing the approval of the agreement on the exchange of information for tax purposes, concluded between France and the Netherlands in respect of Aruba, was published in the JORF ([Law 2013-154 dated 21 February 2013](#)).

(g) Amendment to the double tax treaty concluded between France and the Sultanate of Oman

The law authorizing the approval of the amendment to the agreement for the avoidance of double taxation regarding income taxes signed between France and the Sultanate of Oman, was published in the JORF ([Law 2013-155 dated 21 February 2013](#)).

(h) Report regarding digital economy taxation

[Please refer to the New Technologies section.](#)

[\(See The Collin and Collin Report\).](#)

14. Telecoms

France

(a) Publication of the ARCEP guidelines regarding the completeness and the final connection of the optical fibre networks

The ARCEP publishes two a synthesis and a guideline documents, with the contributions of the stakeholders, on legal questions relating to the final connection of FTTH networks and to the deployments in private properties and on the implementation of the completeness rule of the FTTH deployments in rural areas.

The publication of these documents follows the entry into force of the Law No. 2009-1572 of 17 December 2009 regarding the fight against digital divide, which modifies article 34-8-3 of the *Codes des postes et des communications électroniques*, which entrusts the ARCEP with defining the access procedures to optical fibre networks to the subscribers (FTTH), and the consultations launched by the ARCEP on this subject in 2012.

(b) Creation of quarterly statistical survey on the investment and the deployment of fixed and mobile operators

The ARCEP has rendered a Decision No. 2013-0064 relating to the creation of a quarterly statistical survey for the follow-up of the investments of the electronic communication operators and of the deployment of the public terrestrial mobile networks.

Article L135 of the *Code des postes et des communications électroniques* entrusts the ARCEP with monitoring the investments and the deployment of the networks the operators. It provides that the operators have the duty to give to the ARCEP the statistical information concerning the use, the cover area and the access procedures to their service. The ARCEP wants therefore to strengthen its control by implementing these provisions.

The companies concerned by this survey are the public terrestrial mobile networks which hold use of mobile frequencies authorizations and the operators which exploit a public fixed network, which number of clients on the French retail market is superior to one million.

European Law

(a) The Commission requests from the Polish regulator that it withdraws its deregulation decision of the wholesale broadband market

The European Commission, by a Decision of 8 February 2013, has asked the Polish regulator to withdraw its decision to deregulate the access procedure to the network of the operator Telekomunikacja Polska in 11 cities of Poland.

In March 2012, the Polish regulator had realized a market analysis of the wholesale broadband market and concluded that no region in Poland was sufficiently competitive to permit that the access procedure of other operators to the network of a dominant operator would be completely deregulated. The regulator had taken measures to strengthen this regulation.

The Polish regulator has then decided to deregulate the market on the basis of a market analysis of March 2011. The Commission, having been notified of this decision, has considered that this decision was based on a non-up-to-date market analysis and has asked

the Polish regulator to withdraw its decision.

(b) The Commission asks the Italian regulator to modify its project of regulation of the call termination rates

The EU Commission, by a [Decision of 7 February 2013](#), has requested from the Italian regulator that it modifies its project of regulation of the call termination rates, in order to protect the consumer. Call termination rates are those that the telecommunication networks charge each other to deliver calls from a network to another. These costs are reflected on the prices paid by the final consumer.

The Italian regulator, AGCOM, had set termination rates which were comprised between €0.00206 and €0.00127 per minute for 2013 and 2014, which were significantly higher than those applied by the regulators of the other Member States. The Commission, having been notified of this decision, has considered that these rates were too high and did not correspond to the principles and objectives of the European rules in telecommunication matters, which require from Member States that they promote competition and the interests of the European consumers.

15. Transport

France

(a) Publication of an Order for ships arriving in and departing from ports

[Order](#) n°2013-139 of 13 February 2013 on reporting formalities for ships arriving in and departing from ports was published in the Official Journal of 15 February 2013. It allows in particular the introduction of a single service outlet platform for the processing of formalities and defines a standardized electronic format at the European scale.

(b) [Decree](#) relating to the area of competence of State representatives at sea

[Decree](#) n°2013-136 of 13 February 2013 relating to the area of competence of State representatives at sea has been published in the Official Journal of 15 February 2013. The Decree simplifies in particular rules of allocation of administrative police powers on the shore between the mayor and the representative of the State on the sea, and use, in order to ensure harmonisation the single criterion of the limit of the territorial waters.

European Law

(a) Publication of Guidelines on intelligent transport systems

The Commission has published on its website a set of documents relating to intelligent transport systems (ITS). Three guidelines were published, on [multimodal transport](#), [smart ticketing](#) and [traffic management](#) as well as Best Practices in Urban ITS

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