

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 2011.

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For additional information, please speak to your usual contact.

Contact

Bruno Knadjian

Avocat à la Cour

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

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Summary of miscellaneous French draft legislation

- **Proposed legislation to strengthen consumer protection in distance selling**, n°1940, filed September 29, 2009 - adopted on first reading by the National Assembly 20 January 2010
- **Draft Law on commercial zoning**, n°2490, filed May 3, 2010 - adopted in first reading by the National Assembly June 15, 2010 - adopted in first reading March 31, 2011
- **Bill on enhancing the safety of the drug and health products**, n°3714, filed August 1, 2011 - first reading by Parliament October 27, 2011 - CMP (Clash) - adopted new reading by the National Assembly 23 November 2011
- **Bill strengthening the rights, protection and consumer information**, n°3508, filed June 1, 2011 - first reading by the National Assembly 11 October 2011
- **Proposed legislation to strengthen consumer rights with regard to telephone canvassing**, n°354, filed Mar. 11, 2011 - adopted in first reading by the Senate April 28, 2011
- **Project Finance Act 2012**, n°3775, filed September 28, 2011 - Adopted on first reading by the National Assembly 16 November 2011 - the Senate adopted on first reading December 6 - CMP waiting
- **Bill of financing social security for 2012**, n°3790, filed October 5, 2011 - first reading by the National Assembly November 2, 2011 and the Senate November 14, 2011 - CMP (Clash) - new procedure - In consideration to the National Assembly in first reading - passed by Parliament November 29, 2011 - Referral to the Constitutional Council by 60 deputies and 60 senators December 6, 2011
- **Draft Law on the simplification of the law and the easing of administrative procedures**, n°3706 - first reading by the National Assembly 18 October 2011

- **Bill on the remuneration for private copying**, n°3875, filed October 26, 2011. Adopted on first reading by the National Assembly 19 November 2011
- **Bill, as amended by the National Assembly on the allocation of litigation and the relief of certain court proceedings** - adopted new reading by the National Assembly 16 November 2011 following a disagreement in the CMP during the second reading - Referral to the Constitutional Council November 22, 2011

Enacted laws

- **Law n°2011-1416 of November 2, 2011 supplementary budget for 2011** - Official Gazette of November 3, 2011
- **Ordinance n°2011-1539 of November 16, 2011 on floor surface area considered in planning law** - Official Gazette of November 17, 2011
- **Ordinance n°2011-1540 of November 16, 2011 transposing directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters** - Official Gazette of November 17, 2011

1. Banking

France - State guarantees to Dexia

The third *Loi de finances rectificative* n° 2011-1416 dated 2 November 2011 ([JORF n° 0255 dated 3 November 2011](#)) enables the French Minister of Finance to guarantee certain liabilities of Dexia through : (i) a guarantee for refinancing up to a maximum outstanding amount of 32.85 billion euros and a maximum duration of 10 years, and (ii) a guarantee of structured loans to French local authorities for a maximum outstanding amount of 10 billion euros, as part of the transfer of control in the subsidiary "Dexia Municipal Agency" to *Caisse des dépôts et consignations*.

As a condition for these State guarantees, distributions of bonus shares to managers and directors and dividends to shareholders will be blocked, as well as shares purchase offers or options subscription offers and more generally any element of variable compensation.

This Law came into force on 3 November 2011.

2. Capital Markets

France - The *Autorité des marchés financiers* ("AMF") has launched a public consultation on the transposition of certain provisions of Directive 2010/73/EU amending the Prospectus and Transparency Directives

Directive n° 2010/73/EU dated 24 November 2010 amending the Prospectus and Transparency Directives must be transposed by the Member States no later than 1 July 2012.

The main amendments made by the revised directive concern *inter alia* the scope of application of the Prospectus Directive, exemptions to the obligation to draw up a prospectus, prospectus content, prospectus validity and its dissemination, the passport and the abolition of the information document compiling the publications made over the previous twelve months by listed companies.

3. Competition

European Law - Merger control - multiple filing

The Best Practices on Cooperation between EU National Competition Authorities (NCAs) in Merger Review have been made public by the European Commission on 8 November 2011. They aim at fostering cooperation and sharing of information between NCAs for mergers that do not qualify for review by the Commission itself but require clearance in several Member States. They reduce the legal uncertainty caused by multiple filing by limiting the risk of divergent decisions.

The exchange of information between NCAs concerns, in particular, the timing of the review process, the competition concerns and the possible remedies.

4. Consumer law

European Law - Consumer Rights

The Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council has been published in the O.J. of the E.U. of 22 November 2011.

The Directive simplifies four existing EU consumer rights directives into one set of rules and targets e-commerce. It provides, inter alia, an extension to 14 days (instead of 7 days) of the period under which customers can withdraw from a contract, without giving any reason and without any costs. For that purpose, the consumers can use a standard withdrawal form that he will receive from the trader. It also prohibits pre-ticked boxes on websites.

The Directive should now be implemented by Member States within a period of 2 years.

5. Corporate

France - Change in legal advertising formalities for a merger or a division project and reduction of the content of merger projects in the case of a full absorption of a 100% subsidiary

Decree n°2011-1473 dated 9 November 2011 on the procedure for implementation of the law of 17 May 2011 relating to mergers was published in the Official Gazette on 10 November 2011.

Within thirty days, a notice relating to the merger project (or the division project) shall now be inserted by each company involved in the Official Gazette of Civil and Commercial Notices ("OGCCN"). Under the previous regime which provided a publication in legal notice newspapers, the date of publication of the merger was controllable. This is no longer the case, as a publication in the OGCCN is done at the behest of the clerk of a Commercial Court.

Nevertheless, the decree provides another alternative to the publication in the OGCCN, which is online publication. A publication in the OGCCN is not required when, during an uninterrupted period of time starting at least thirty days before the date fixed for the general meeting called to vote on the merger, the company has published on its website the proposed merger, under conditions that ensure the security and authenticity of documents.

Circular 50/2011 dated 17 November 2011 was issued by the National Council of Commerce Courts Clerks in order to specify that companies opting for an online publication of the proposed merger should indicate this in the declaration of regularity and conformity required by the third paragraph of Article L.236-6 of the French Commercial Code.

The decree had also reduced the list of things which have to be stated in the merger treaty in the case of the full absorption of a subsidiary (Article R.236-1, last paragraph).

These provisions came into force on 11 November 2011.

France - Removal of limit on registration fees applicable to acts relating to sale of shares

The finance law for the 2012 bill currently discussed by the French Senate was amended so as to remove the caps on registration fees applicable to acts relating to the sale of companies' shares, whether listed or not. Registration fees applicable to such transaction were previously limited to EUR 5,000. In addition, the rate of registration fees applicable to these sales will be decreased from 3 to 2%.

If this bill is passed, its provisions would come into force starting from 1 January 2012 ([please refer to the Tax section](#)).

6. Employment

France - Social regime of termination indemnities as from 2012

The [Social security finance Act](#) has been passed by the National Assembly.

As from 2012, termination indemnities of employment contracts will be exempted from social contributions within the limit of two social security ceilings and not three as it is the case up to now.

For the termination notified before 31 December 2011, the global amount of the termination indemnities is exempted from social contributions within the limit of three social security ceilings.

For the terminations intervening in the framework of a social plan which was notified to the Labor administration before 31 December 2011, the global amount of the termination indemnities is exempted from social contributions within the limit of three social security ceilings.

For the terminations that will be notified in 2012, the global amount of termination indemnities is exempted up to the conventional dismissal indemnity within the limit of three social security ceiling.

France - Precisions on the financial penalty concerning gender equality

By a [Circular dated 28 October 2011](#), the Minister for Employment, Labor and Social Cohesion gives more details on the financial penalty concerning gender equality.

This Circular indicates that establishments with commercial and industrial activities (French "EPIC"), and establishments with administrative activities are also concerned by the 1% penalty when they have employees subject to private law.

Furthermore, according to this Circular, a company is not exempted from the penalty when an industry-wide collective bargaining agreement dealing with the gender equality is applicable to its activity.

Finally, if a group-wide collective bargaining agreement has been signed, it has to be declined in companies of the group for the companies to be considered as complying with their obligations concerning gender equality.

France - Precisions on the financial penalty concerning hardship conditions

A [Circular dated 28 October 2011 of the General Labour Authority](#) gives precisions about the implementation of the financial penalty related to hardship conditions which is, by provision of the law, applicable to companies having more than 50 employees.

This Circular states that the obligation the company is subject to is an obligation of results.

For companies employing more than 50 employees, the circular indicates that they shall firstly establish a diagnostic of the hardness conditions in order to negotiate later on an agreement or implement an action plan.

In addition, according to the Circular, when an action plan is implemented or when an agreement has been negotiated at the group or at the economic and social unity level, it will be directly enforceable in each company of the group or at the economic and social unity level if the provisions are sufficiently detailed. If the provisions of the action plan or the agreement are not detailed enough and only state general objectives, each company will have to adopt specific measures to reach the objectives decided at the group or economic and social unity level.

Finally, the General Labour Authority indicates that companies employing less than 50 employees may be subject to obligation regarding hardness conditions if they fall within the scope of an extended industry-wide collective bargaining agreement stating specific provisions on this topic.

7. Energy

France - New circular relating to wind energy development areas

The Minister of ecology and sustainable development adopted, on 25 October 2011, [a circular relating to wind energy development areas](#).

The circular, which completes the previous circular of 19 June 2006, results from the entry into force of the law No. 2010-788 of 12 July 2010 relating to the national commitment for environment (known as "law Grenelle 2"). This law has indeed created additional criteria for the creation of wind energy development areas: biodiversity, archaeological heritage and public safety.

It specifies, as a result of this new requirement of additional criteria, the transitional regime of the wind energy development areas which were under investigation before the entry into force of this law but had not yet been created by order.

It also specifies how the new wind energy development areas have to be investigated in the light of these additional criteria. In this respect, it mentions that the investigation of any proposal of wind energy development areas cannot replace the investigation of the applications for authorizations of the projects of wind farms.

8. Environment

France - Classified installations: terms of periodic inspection

[Decree n°2011-1460](#) dated 7 November 2011 published in the Official Journal of 9 November 2011 amends the procedures for periodic inspection of certain classified installations subject to declaration, including those relating to the frequency of checks and to the monitoring of the facilities' compliance.

These provisions apply as from 10 November 2011.

9. Insurance

France - Insurance undertakings - Regulated commitments

[Decree n°2011-1418](#) dated 31 October 2011 published in the Official Journal on 1st November 2011 has amended the list of authorised assets covering the provisions of underlying liabilities of insurance undertakings. The decree adds a new category to this list for investments composed of

debt securities which are the result of securitisation. However the authorised assets are strictly framed and are required to be amount receivables from the State or a public institution. These securities may represent up to 5% of the underwriting liabilities of insurance undertakings. Articles R. 332-2 and R. 332-14-2 of the French Insurance Code among other provisions are modified accordingly.

10. Intellectual Property

France - Ten Countries And The European Union Signing The Anti-Counterfeiting Trade Agreement (ACTA)

The Anti-counterfeiting trade agreement (ACTA) has been signed on 1st October 2011 by 11 countries and regions, including the European Union, the United-States and Japan. The ACTA sets guidelines allowing to reinforce and harmonize the global fight against counterfeiting. ACTA establishes a legal framework in the areas of criminal enforcement, enforcement at the border, civil and administrative actions that signatories have to implement in their national law. The ACTA sets a strengthened standard that builds on the standards of the TRIPs agreement. A comity centralizes the administration of this agreement of which Japan is depositary. This Agreement could mark a considerable improvement in international fight against the proliferation of counterfeiting and piracy. The next step for signatories countries is the deposit of instruments of ratification.

11. Life sciences

France - Bertrand draft bill

The so-called Bertrand bill, or bill on the increase of health safety of medicinal and health products was examined by a mixed joint commission to resolve differences in the bills voted by the *Assemblée Nationale* and the Senate. The new draft bill was approved in second reading by the *Assemblée Nationale* on 23 November 2011. It is scheduled for a floor debate in the French Senate on 13 December 2011. If the Senate were to vote substantial amendments to the draft bill, the *Assemblée Nationale's* final bill would prevail over the Senate's.

12. New technologies

France - .FR Domain names

On 3 November 2011, the governmental decision (*arrêté*) of 21 October 2011 approving the new internal rules applicable to AFNIC, the Registry for .FR domain names and other French extensions, was published in the French Official Journal. These rules define the new alternative resolution procedure called SYRELI, applicable for .FR domain names further to the suspension of the PREDEC and PARL procedures ([please refer to the Legal and regulatory update - April 2011](#)). The new procedure entered in force on 6 December 2011 and applies to all domain names registered or renewed after 1 July 2011.

France - CNIL Labels

The first two evaluation referentials which will allow the French data protection authority (the CNIL) to label data processing audit procedures as well as data protection trainings were published in the French Official Journal on 3 November 2011. These labels once awarded will constitute guarantees with regards to the quality and compliance of these services to the requirements imposed by French data protection legislation and the CNIL. Submissions for labelling are now open.

France - Financial sanction for unfair collection of personal data

The sanctioning committee of the French data protection authority (the CNIL) handed a €10,000 sanction against a French company which was collecting personal data in the field of real estate. These actions were illicit due to the fact that the company was automatically collecting real estate listings posted on the internet by private individuals to then sell them to professionals without prior information of the private individuals in question.

France - Digital books

A decree of 10 November 2011 published in the French Official Journal of 11 November 2011 specifies the characteristics of digital books which fall within the scope of the statute of 26 May 2011 regarding the price of digital books ([please refer to the Legal and regulatory update - June 2011](#)) and defines the criteria allowing publishers to set different prices for a single work sold digitally or in hard copy.

European Law - Filtering of P2P networks

On 24 November 2011, the European Court of Justice (ECJ) issued a ruling in a dispute between SABAM (a Belgian collecting society for musical works) and a Belgian internet service provider. The ECJ ruled against the general filtering by internet service providers of their clients' electronic communications in order to block the transfer of files infringing copyrights received or transferred using peer-to-peer software and networks.

13. Public law

France - Regulatory part of the General Code of Property of Public Entities

Decree n°2011-1612 dated 22 November 2011, published in the OJ of 24 November 2011, creates the regulatory part of the General Code of Property of Public Entities (*Code général de la propriété des personnes publiques*). It comprises four parts relating to the acquisition, management, and disposition of public property and other real estate operations implemented by public entities. It includes specific provisions on administrative long-term leases (AOT-LOA) for the needs of justice, police and gendarmerie, armies or the Ministry of Defence. The Decree repeals various provisions, resulting in particular from the regulatory part of the Public Domain Code. The Decree is enforceable from 25 November 2011.

14. Real estate

France - Planning law: floor surface area

[Ordinance n°2011-1539](#) dated 16 November 2011 published in the Official Journal of 17 November 2011 unifies and simplifies the definition of the surfaces considered in planning law. The concepts of gross surface area and net surface area are replaced by the concept of floor surface area.

These provisions shall enter into force on 1 March 2012 for planning documents and for planning authorisation applications. These provisions are immediately applicable in concerted development areas and allotments, with some exceptions.

France Hotels: safety regulation against the risk of fire and panic

[Order](#) dated 25 October 2011 published in the Official Journal of 4 November 2011 amends the safety regulation against the risk of fire and panic in hotels and other accommodation establishments.

These provisions apply as from 1 January 2012.

France - Fire: evacuation of disabled people from their workplace

[Decree n°2011-1461](#) dated 7 November 2011 published in the Official Journal of 9 November 2011 relating to the evacuation of disabled people from their workplace in case of fire requires the creation of a protected place for the safekeeping of disabled people prior to their transfer outside the building.

These provisions apply to building permits and declarations of works' applications filed as from 10 May 2012, as well as to works carried out as from 10 May 2012.

15. Tax

France

We draw your attention to one of the amendments approved by the senators within the framework of the Finance Bill for 2012, which could have serious financial consequences for companies.

Registration duties applicable to share purchase agreements would no longer be capped to Euros 5,000. However, their rates would decrease from 3% to 2%.

16. Telecoms

France - Issuing of order to comply to WLL license holders with their rollout commitments in regard of the use of the wireless local loop dated 23 November 2011

Seven holders of WLL licenses in the 3.4 - 3.6 GHz band have been issued with orders to comply with their rollout commitments and their compliance with the obligations of commercial use in the terms of their licences, especially to deploy and launch a commercially available service.

France - A new mobile number portability system comes into effect in France in November 2011

The ARCEP publishes a press release about the new mobile number portability system which comes into effect on 7 November 2011. The mobile number portability is now possible in three working days thanks to a new unique system of information of the client. The new system may be contacted to supply the client with the operator identity statement or RIO which is crucial to requesting retention of a mobile number when transferring to a new mobile carrier through the 3179 shared by all carriers.

France - Call for applications for the creation of new television channels broadcasted in HD by digital terrestrial transmission dated 27 October 2011

The CSA (the French Audiovisual Regulator Authority) has released a new call for applications for the launch of new HD Television channels broadcasted by digital terrestrial transmission. The closing date for application is the 10th of January 2012.

European Law - European Commission presses 16 Member States including France to comply with new EU telecoms rules 24 November 2011

The European Commission has written to sixteen Member States including France which have failed to implement into national law the Better Regulation directive and the Citizen's Rights directive which together amended several existing EU directives and give customers new rights regarding telephony (fixed and mobile services) and Internet access. For instance, the right to switch mobile carriers in one day without changing their phone number. These directives should have been implemented into national law six months ago (25 May 2011).

17. Transports

France - New format for driving licence

Decree No 2011-1475 of 9 November 2011 relating to various regulatory measures transposing Directive 2006/126/EC concerning driving license has been published in the O.J. of 10 November 2011. It introduces a new model of driving license from January 2013 and harmonizes, in particular, the rules concerning the validity of driving licenses, their renewal and categories of vehicles whose conduct is allowed.

France - Information about the carbon cost of transport services

Decree No 2011-1336 of 24 October 2011 concerning information on the amount of carbon dioxide emitted during a transport service has been published in the O.J. of 25 October 2011. From a date to be determined (between the 1 July 2013 and the 31 December 2013), transport services providers (passengers, cargo or removal) will have to inform their customers of the amount of carbon emitted. For that purpose, the Decree sets methods for calculating the carbon cost and terms of customer information.

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