

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 June 2012.

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

- 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
- Proposed law relating to commercial zoning, n°2490, filed May 3, 2010 - adopted on first reading by the National Assembly June 15, 2010 - adopted on first reading by the Senate March 31, 2011
- Bill strengthening the rights, protection and consumer information, n°3508, filed June 1, 2011 - first reading by the National Assembly 11 October 2011 and by the Senate December 22, 2011
- Proposed legislation to strengthen consumer rights regarding telephone solicitation, n°354, filed Mar. 11, 2011 - adopted on first reading by the Senate April 28, 2011
- Draft Law on Financing of Works, n°4090, filed December 14, 2011 - adopted on first reading by the National Assembly 26 January 2012

#### 1. Audiovisual

##### **France - Decree of 25 June 2012 on the distribution between publishers of audiovisual communication services via hertzian terrestrial broadcasting of the necessary costs of frequencies redevelopment for the broadcasting of new services**

The decree 2012-821 of June 25, 2012, published in the Official Journal dated 27 June 2012, determines the manner to distribute the redevelopment costs of the necessary frequencies to the broadcasting of new services. The decree states that these costs include expenditures resulting from technical operations on facilities, and those related to information and management costs incurred by the National Frequency Agency (ANFR). The

costs are shared between audiovisual communication service publishers according to their potential audience and the average flow rate required for the broadcasting of their services

### **International - Adoption of the Beijing treaty on audiovisual performances**

On 26 June 2012 a majority of WIPO Member States and organisation including France and the EU adopted the [Beijing Treaty on Audiovisual Performances](#). After twelve years of negotiation, the new Treaty establishes a minimum level of protection to the benefit of performers and defines the rights of exploitation they benefit for their performances. The new Treaty should mostly ensure an international protection according to the national treatment rule, with reciprocity.

The new Treaty will enter into force after ratification of a minimum of thirty contracting parties and the Commission should launch the procedure in view of the ratification and of the Treaty.

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## **2. Capital Markets**

### **France - Revision of the Prospectus Directive: Summary of the answers to the public consultation**

The AMF published on 30 May 2012 [the summary of the answers to the public consultation launched on 28 November 2011](#) relating to directive n°2010/73/CE revising the Prospectus and Transparency directives, which took effect on 12 December 2010 and has to be transposed by the member states on 1 July 2012 at the latest (France has not yet finished this transposition).

The major changes brought by the revised Directive deal with the exemptions to the obligation of drafting a prospectus, its content and its publication.

The AMF board approved the launch of a public consultation on a project of modification of the measures of Book II of the General Regulations of the AMF. There are 13 answers to this consultation (5 from law firms, 5 from banks and 6 from professional associations in Paris).

The AMF has also published on its website a [chart](#) summarising the main modifications brought by the revision of the Prospectus Directive and the effective date.

### **France - The AMF accepts bonds liquidity contracts as market practice**

The AMF published on 8 June 2012 its [decision](#) to recognise bond liquidity contracts as market practice. This decision echoes the request of market participants to benefit from a secure framework for issuers to assure liquidity of their own bonds, a request supported by the Paris Europlace association in particular concerning the secondary market.

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## **3. Competition**

### **European Law - State aid: public consultation on the use of General block exemption Regulation**

The European Commission has launched on 20 June 2012 a public consultation on the use of General block exemption Regulation. Interested persons are invited to answer to a [Questionnaire](#) by 12 September 2012.

### **European Law - State aid: public consultation on draft Guidelines for broadband networks**

The European Commission has launched on 1 June 2012 its second public consultation on the [Draft](#) guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks. The new Draft aims at clarifying and simplifying the existing rules, for example by easing some conditions for investments in rural areas. Interested persons are invited to submit their contribution by 1 September 2012.

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## 4. Corporate

### **France - Public consultation launched by the French Administrative Authority in charge of capital markets (*Autorité des Marchés Financiers – AMF*) regarding the modification proposals of the AMF General Regulation on certain provisions on notifications of major shareholdings and declarations of intent**

In a [press release dated 19 June 2012](#), the AMF launched a public consultation on certain amendments to its General Regulation regarding notifications of major shareholdings and declarations following the Law dated 22 March 2012 regarding the simplification of law and easing of administrative process, which provides, in particular, that cash-settled derivatives should be taken into account when calculating major shareholdings in compliance with Article L. 233-7 of the Code of commerce.

The main contemplated amendments to the General Regulation are the following:

- the extension of aggregation to cash-settled derivatives will be transposed into the General Regulation, with an exception concerning the method used to calculate the trigger point for mandatory bids;
- the notification must be renewed by the declaring entity when it acquires the underlying shares of the derivatives and such acquisition results in the number of shares and voting rights effectively held exceeding a legal threshold;
- a new principle has been introduced whereby the same security may only be aggregated once by the reporting entity.

Responses to the consultation must be sent in by Monday, 6 August 2012 at the latest.

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## 5. Employment

### **France - Introduction of a draft bill on sexual harassment**

The [Draft Bill on sexual harassment](#) has been introduced in Council of Minister on June 13.

It is providing a unique definition of the offense of sexual harassment described in three levels of severity and a single definition of the offense of moral harassment within the French Criminal Code.

A new offense of discrimination specific to sexual harassment would also be integrated into the same Criminal Code.

### **France - Partial Restoration of retirement at 60 years old**

The [Decree n°2012-847](#), dated July 2, 2012 concerning the age of entitlement to an old-age pension takes over the provisions of the draft Decree dated July 6, 2012 regarding a partial restoration of retirement at 60 years old for employees who started working at 18 or 19 years old.

It is also establishing the inclusion of two additional quarters of contributions related to pregnancy and for compensated unemployment periods.

### **France - Increase of hourly minimum wage**

The Minister of Labor has announced that the hourly gross minimum wage would rise to 9.40 euros from July 1 2012, compared to the current 9.22 euros.

This revaluation of 2% takes into account a forecast of inflation increase of 1.4%. Therefore this revaluation only represents an increase of 0.6% without inflation.

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## 6. Insolvency proceedings

### France - Setting up the production recovery

The minister for production recovery has presented during the Ministers Council held on 13 June 2012 a communication announcing the withdrawal of the commissaries for reindustrialization and the appointment of commissaries for production recovery in each region of metropolitan France. Their two main missions will be (i) preventing the companies' difficulties and (ii) negotiating with the creditors of the SMEs facing actual difficulties.

These commissaries should be appointed as of beginning July 2012.

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## 7. Insurance

### European Law - EIOPA – Guidelines on complaints handling by insurers

On 27 June 2012, the European Insurance and Occupational Pensions Authority ("EIOPA") published Guidelines on complaints-handling by insurers. The principles laid down in these guidelines are addressed to competent supervisory authorities only. They aim at providing guidance on appropriate internal systems and controls for complaints-handling by insurers and on the provision of information and procedures for responding to complaints with a view to ensuring adequate protection of policyholders and beneficiaries. They are supplemented by a Best Practices Report which aims at enhancing customer protection.

### International - International regulators – Identification of systemic insurers

On 31 May 2012, the International Association of Insurance Supervisors released for consultation an Assessment Methodology for the Identification of Global Systemically Important Insurers. It is planned for this purpose to take into account certain criteria including size, interconnectedness, non-traditional insurance and non-insurance activities, and substitutability. The qualification of systemic insurers would result in the application of specific constraints for these institutions. The supervisors, insurers and other interested parties are encouraged to submit comments on the proposed methodology by 31 July.

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## 8. Intellectual Property

### European Law - Entry into force of the new guidelines for examination in the European Patent Office

The Guidelines, adopted in 1978, for examination in the European Patent Office (the "EPO") have been restructured and revised. The revised Guidelines have entered into force on 20 June 2012 (<http://www.epo.org/law-practice/legal-texts/html/guidelines/e/index.htm>). Those Guidelines, adopted by the President of the EPO, give instructions about the practice and procedure to be followed in the various aspects of the examination of European applications and patents, in accordance with the European Patent Convention and its Implementing Regulations. They are regularly updated to take account of developments in European patent law and practice.

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## 9. New technologies

### France - Cloud Computing

On 25 June 2012, the French Data Protection Authority (CNIL) published its analysis on the applicable legal framework relating to Cloud computing as well as practical recommendations. Notably, the CNIL provided, templates of relevant contractual clauses for businesses to incorporate into their Cloud computing services contracts.

## International - New gTLD applications

The Internet Corporation for Assigned Names and Numbers (ICANN), the entity in charge of the management of the top-level domain name space, revealed, on 13 June, 2012 the list of the 1930 applications for the new Internet extensions (new gTLDs). The list is available here:

<http://newgtlds.icann.org/en/program-status/application-results/strings-1200utc-13jun12-en>

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## 10. Procedures

### France - Civil proceedings

#### *French Code of Civil Enforcement Procedures*

Decree n°2012-783 of 30 May 2012 concerning the regulatory section of the French Code of Civil Enforcement Procedures has come into force on 1<sup>st</sup> June 2012. This Decree codifies the existing regulatory provisions with respect to enforcement procedures and constitutes, together with the Annex to Order n°2011-1895 of 19 December 2011 concerning the legislative section of the French Code of Civil Enforcement Procedures, the French Code of Civil Enforcement Procedures. The codified texts mainly consist of former Decrees implementing rules codified in the legislative section of the abovementioned Code such as Decree n°92-755 of 31 July 1992 implementing Law no. 91-650 of 9 July 1991 and Decree n°2006-936 of 27 July 2006 implementing Order n°2006-461 of 21 April 2006.

### European Law - Criminal Proceedings

#### *Release of the Directive on the Right to Information in Criminal Proceedings*

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings was published in the Official Journal of the European Union on 1<sup>st</sup> June 2012. With this Directive, persons who are suspected or accused of having committed a criminal offence shall be provided with information as to their rights and will be informed of the accusation they are facing. Thus, pursuant to the provisions of such Directive, these persons shall promptly be provided with information concerning their right to be assisted by a lawyer, their right to obtain free legal advice and the condition for obtaining such advice, their right to be informed of the accusation, their right to be assisted by an interpreter or translator as well as their right to remain silent. Besides, such information shall be given orally or in writing, in simple and accessible language (Article 3). Also, the documents relating to the case, which are essential to effectively challenge the lawfulness of the arrest or detention shall be made available to arrested persons or their lawyers (Article 7). Member States shall bring into force the domestic regulations to comply with such Directive by 2 June 2014.

#### *European Convention on Mutual Assistance in Criminal Matters*

Decree n°2012-813 of 16 June 2012 publishing the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, signed in Strasbourg on 8 November 2011 was published in the Official Journal of 20 June 2012. This Decree publishes the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which has come into force for France on 1<sup>st</sup> June 2012. This Second Additional Protocol aims at improving mutual assistance in criminal matters between the States that are part of the Council of Europe by laying down common rules concerning, notably, the temporary transfer of detained persons to the territory of the requesting Party, the execution of requests between Member States, hearings of experts or witnesses, the personal appearance of transferred sentenced persons as well as the creation of joint investigation teams. In this respect, France has expressed a reservation: it will not apply the second paragraph of Article 17 of such Protocol according to which "[w]here, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border [of their State] the observation of a person presumed to have committed offences".

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## 11. Tax

### France - VAT: "répondant" tolerance's removal

The Official Administrative Guidelines n°3 A-5-12 published on 7 June 2012 draws the consequences of the European Court of Justice decision "Commission v French Republic" dated 15 December 2011 and withdraws the so called French administrative tolerance of the "répondant". The Official Administrative Guidelines also modifies the reporting rules for the exchange of goods declaration (DEB) in the case of (i) an installation/assembling sale, or (ii) importation for a later sale when performed by a taxable person located outside France.

### France - Erratum and developments to the Official Administrative Guidelines dated 8 March 2012 (No. 5 I-4-12)

The Official Administrative Guideline n°5 I-5-12 dated 15 June 2012 modifies and develops the Official Administrative Guideline No. 5 I-4-12 dated 8 March 2012 concerning the income distributed by quoted real-estate investment companies (SIIC) or limited liability companies having a variable share capital (SPICAV). The provisions of the Official Administrative Guideline dated 8 March 2012 relating to (i) the taxation of such income to social contributions, and (ii) the determination of the amount of distributed income excluded from the benefit of the 40% reduction are modified.

### France - Tax reporting by computerized processes

The Official Administrative Guideline n°13 K-4-12 publishes the list of the organisms benefiting from the approval of the Computerized Services Establishment of Reims (*Etablissement de Services Informatiques de Reims*) to send their tax returns for salary (n°2460), professional fees (DAS 2) and dividends (IFU 2561) by computerized processes.

### France - International taxation

- The decree n°2012-816 dated 25 June 2012 publishes the amendment to the double tax treaty signed between France and Mauritius Islands.
- The decree n°2012-818 dated 25 June 2012 publishes the amendment to the double tax treaty signed between France and Austria.

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## 12. Telecoms

### France - Opening of the public consultation on the draft decision on monitoring the service quality of Internet access and fixed telephone services

On June 1, 2012, ARCEP held a public consultation on the draft decision regarding the measurement and publication of indicators of the quality of service provided by fixed Internet access and telephone service points. This initiative is part of the work regarding the neutrality of the Internet which is being led by the authority.

This review will give consumers clear and comparable information about the quality of service compared with various fixed ISPs. In a preventative approach this device will also allow the Authority to assess the appropriateness of setting a minimum quality of service.

Based on the consultation, the draft decision will sets out indicators for the service quality of Internet access that will be measured and made public and also with different access categories which will be defined in the decision (speed, use of Web video, latency, packet loss) and will define the framework within which these measures will be carried out and published.

Interested parties have until July 3, 2012 to respond to the public consultation.

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## 13. Transport

### France - Eco-tax for heavy goods vehicles in Alsace

Order of 8 June 2012 concerning the certification of technical equipment and the certification of chains collection, automatic control and manual control of the Alsatian tax and the state tax on goods vehicles has been published in the O.J. of 13 June 2012. It specifies the procedure for certification of technical equipment and certification chains collection and control and sets the specifications, pursuant to Order No. 2011-845 of 15 July 2011 relating to the certification chains collection and control of the Alsatian tax and the state tax on goods vehicles transporting goods and specifications for the homologation.

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