

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 September 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

- **Draft Law on Financing of Works, n°4090**, filed December 14, 2011 - adopted on first reading by the National Assembly 26 January 2012
- **Draft law for creating jobs of the future, n° 146**, filed August 29, 2012 – adopted on first reading by the National Assembly on September 12, 2012 and by the Senate on September 25, 2012 – CMP : agreement on October 4, 2012
- **Draft law on net neutrality, n°190, filed on September 12, 2012**, before the National Assembly
- **Draft law on finance for 2013, n°235, filed on September 28, 2012, before the National Assembly** – first reading from October 16 to 22, 2012
- **Draft law on public finance programme planning for the period 2012 to 2017, n°234**, filed on September 28, 2012
- **Draft law on tiered pricing of energy, n°150**, filed on September 6, 2012

## 1. Audiovisual

### France - Extension of the Scope of the Financial Aid to Producers Implementing New Technologies

The [decree n°2012-1079 of 24 September 2012](#) is amending the [decree n°2011-365 of 1 April 2011 relating to financial aids to producers implementing new technologies](#), and extends the aid to any full-length cinematographic works implementing new technologies, whereas full-length cinematographic works were formerly entitled to receive the aid only when implementing stereoscopic techniques (3D imaging).

The financial aid to producers implementing new technologies is granted by the *Centre National de Cinéma et de l'image animée* (National Center of Cinematography and the moving image - CNC), as a subsidy, to producers of cinematographic works and certain audio-visual works, who are in France and implement 3D imaging or any other innovative technologies, such as digital special effects or computer-generated imagery.

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## 2. Competition

### European Law - Cooperation agreement between European Union and China

A Memorandum of Understanding aiming at increasing cooperation between the European Commission's competition department and China's antitrust authorities has been concluded on 20 September 2012. The Memorandum of Understanding covers legislation, its enforcement and technical cooperation regarding cartels, other restrictive agreements and the abuse of dominant market positions. The Memorandum of Understanding will also authorise sharing of non-confidential information on competition investigations.

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## 3. Corporate

### France - Entry into force of the changes to the rules on the notification of major holdings

In a press release dated 13 September 2012, the AMF pointed out the entry into force, on 1 October 2012, of the changes to the rules applicable to notifications of major holdings, introduced by article 25 of Law n°2012-387 dated 22 March 2012 relating to the simplification of law and administrative formalities.

As of this date, cash-settled derivatives will be taken into account in the calculation of holdings. This entry into force could therefore result in holders of long positions passively exceeding a legal threshold for the notification of major holdings.

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## 4. Employment

### France - Precisions on the act on law simplification

In a Letter Circular dated 21 August 2012 (n° 20120000086), the French Central Agency for Social Security Bodies comments on the main provisions of the Act n°2012-387 dated 22 March 2012 which object is to simplify the understanding of legal requirements ("*Loi de simplification du droit*").

This Letter Circular clarifies the conditions of implementation of the nominative social declaration as from year 2013. This nominative social declaration will replace the salary certificates, the employment certificates and some other formalities that will be later specified by decree.

### France - "Generation contract": precisions on the future draft bill

A document dated 4 September 2012 provides guidelines with regard to the implementation of the "generation contract" (le "*contrat de generation*") that should be discussed with the Parliament before the end of the year.

Based on this document, companies of more than 300 employees will not benefit from state subsidies and will have to sign a collective agreement "generation contract" to remain eligible to the "Fillon" social contribution reduction. Companies employing less than 300 employees will implement the "generation contract" on an individual basis.

Only companies of less than 300 employees will benefit from state subsidies relating to the "generation contract".

### France - Orientations on the national multi-industry national negotiation on job saving plan

A document providing guidelines on the multi-industry national negotiation for a better security of employment has been published on 7 September 2012.

Four themes will be discussed during this negotiation: the struggle against job insecurity, the progress in the anticipation of activity, work and skills evolutions, the improvement of the job preservation mechanisms in a context of economic changes and the improvement of redundancy procedures.

With regard to this last point, the guidelines aim at providing a better legal security for companies.

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## 5. Energy

### **France - Definition of the investment program to be implemented by installations producing hydroelectricity for the renewal of their contracts of obligation of purchase of energy**

The [Order of 10 August 2012](#) setting the investment program for installations of production of hydroelectricity as provided by Article L. 314-2 of the Code of Energy was published in the Official Journal on 5 September 2012.

Law n°2010-1488 of 7 December 2010 relating to the new organisation of the electricity market (also called "Law NOME") has provided that contracts of purchase of energy produced by installations of production of hydroelectricity, for a period of 15 years, ending as from 2012, could be renewed with the same conditions, in particular with respect to prices, and with the same period, subject to the implementation of an investment program to be defined by order.

The Order defines the investments that producers of hydroelectricity must undertake to implement with a view to renewing their contracts of purchase. These investments aim at improving energetic performances and environmental sustainability of these installations.

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## 6. Insolvency proceedings

### **France - Eligibility of holding companies to the accelerated financial safeguard proceeding**

The Decree n°2012-1071 dated 20 September 2012 ([JORF n°0221 dated 22 September 2012](#)) implementing the Article 28 I. 2° of the Law No. 2012-387 dated 22 March 2012 broadens the scope of the accelerated financial safeguard proceeding. Pursuant to the new Article D. 628-1 of the French Commercial Code, such proceeding may be opened against any company (i) whose balance sheet exceeds 25 million euros, or (ii) whose balance sheet exceeds 10 million euros if it controls a company with more than 150 employees or with a revenue exceeding 20 million euros or when the controlled company shows a balance sheet of 25 million euros.

This Decree has come into force on 23 September 2012.

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## 7. Intellectual Property

### **France - Private Bill on Net Neutrality: a Single Procedure for Blocking Access to the Internet**

On 12 September 2012, Deputy Laure de la Raudière filed the [Private Bill n°190 relating to Net Neutrality](#), which mainly retrieve the proposals already expressed in the 13 April 2011 [Information Report on Net and Networks Neutrality](#) presented before the French National Assembly by the information mission conducted by the committee on economic affairs.

Overall, the Private Bill aims at affirming a principle of Net neutrality, ensuring the universality and quality of Internet access and gathering the various legal procedures for blocking access to the Internet into a single procedure.

As far as blocking access to the Internet is concerned, Article 4 of the Private Bill seeks to amend Article 6 of [Act n°2004-575 of 21 June 2004 on the](#)

Confidence in Digital Economy (LCEN Act), which, in particular, allows the judicial authority to order, in summary proceedings or on request, the blocking of Internet access for the sake of preventing or putting an end to any harms. The Private Bill thereby seeks to integrate within the access blocking procedure provided by the LCEN Act the various existing legal procedures for blocking access and, in particular, the access blocking allowed by Article L. 336-2 of the French Intellectual Property Code in case of infringement to an author's right or related right (such provisions were provided by the so-called "HADOPI" Act No. 2009-669 of 12 June 2009.

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## **8. Tax**

### **France - Abolishment of the former administrative doctrine and creation of the new database "Bofip – impôts"**

As from September 12<sup>th</sup>, 2012 a new database "Official Bulletin of Public Finance – Taxes" has been opened on the Internet site "bofip-impots.gouv.fr". This new database replaces the whole former administrative doctrine which was previously published. The latter is abolished for the future but still remains binding for the French Tax Administration for the past.

### **France - Details of the reporting obligations of trustees**

The decree as of September 14<sup>th</sup>, 2012, clarifies the reporting requirements imposed on trustees in case (i) a settlor of a trust or at least one of its beneficiaries has its tax domicile in France or (ii) the trust includes a property or a right situated in France. Trustees have to file out the two categories of reporting requirements:

-The first one is to declare the creation, termination or modification of a trust within the month following its creation, termination or modification. For a trust created, or whose termination or modification occurred between July 31<sup>st</sup>, 2011 and September 15<sup>th</sup>, 2012 the report must be filed out not later than December 31<sup>st</sup>, 2012.

-In the second report the trustees have to declare at the latest on June 15<sup>th</sup> of the year the value on January 1<sup>st</sup> of each year of the property, rights or products. However, the deadline for the year 2012 was fixed on September 30<sup>th</sup>, 2012.

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## **9. Telecoms**

### **France - Publication of a new regulatory model of unbundled access and collection costs**

Following the public consultation conducted by ARCEP in May and June 2012, the Authority has published the responses of the operators and a summary of this consultation as well as a new regulatory model of the costs of unbundled access and of collection. This model enables ARCEP to obtain information on the "implementation of regulations, the follow-up on the deployment and the prospective" and to assess the competitive dynamics.

### **France - Publication by ARCEP of guidelines on the reorganisation of the ranges of numbers starting by 08 and of short numbers**

Following its decision n°2012-0856 dated 17 July 2012, on the reorganization of the numbering plan relating to special numbers and short numbers, ARCEP published a "Guidelines for electronic communications operators and providers of value added services". In this document, the Authority explains the main changes resulting from this decision as well the timeline for implementation.

### **France - Submission to the Parliament and the Government of ARCEP's report on net neutrality**

On 20 September 2012, ARCEP submitted to the Parliament and the Government its report on net neutrality, in which the Authority analyses the context, highlights the main issues and details its work since 2010, in particular regarding transparency, traffic management, quality of internet access services, and interconnection. The Parliament will decide what measures should be taken in view of this report.

## France - Definition of the relevant market for wholesale terrestrial television broadcasting services

In its [decision n°2012-1137 dated 11 September 2012](#), ARCEP confirmed, for the cycle that runs from 2012 to 2015, that the market for wholesale terrestrial television services is a relevant market, and found that TDF has a significant influence on this market.

Consequently, ARCEP decided to impose certain obligations to this operator and, in particular, obligations related to access, non-discrimination, transparency, including an obligation to publish a reference offer, and regarding the sites qualified as "non-replicable" an obligation of cost-oriented tariffs. This decision is applicable as of 17 September 2012.

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## 10. Transport

### European Law - Communication from the European Commission on transport technologies

A [Communication](#) on the Research and innovation for Europe's future mobility – developing a European transport-technology strategy, has been published on 13 September 2012 in the frame of an initiative launched by the Commission aiming at coordinating and focusing research and innovation in transport. This initiative lists ten different fields of interest for which roadmaps will be developed.

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