

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 January 2013

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Summary of miscellaneous French draft legislation

- **Draft law on the financing of works councils, n°4090**, filed on December 14, 2011 - Adopted on first reading by the National Assembly on January 26, 2012
- **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**, filed on September 6, 2012 - emergency procedure on September 10 - rejected on first reading by the Senate on October 30, 2012 - The joint committee was unable to prepare a common text on December 19, 2012 – New draft law adopted by the National Assembly on January 19, 2013
- **Draft law establishing the generation contract** - Presented to the Council of Ministers on December 12, 2012 - Review by deputies in public session from January 15, 2013 – Adopted on first reading by the National Assembly on January 23, 2013
- **Draft law regarding the separation and regulation of banking activities** - Presented to the Council of Ministers on December 19, 2012 - Resent to the Finance Committee of the National Assembly – Debate on first reading from February 12 to 14, 2013

Enacted laws

- **Law n°2013-61 of January 18, 2013 on mobilization of public land for housing and strengthening the obligations of social housing production** – OJ of January 19, 2013
- **Law n°2013-100 of January 28, 2013 on the implementation of various provisions in the French legislation in conformity with the EU Law in the areas of economic and financial activities** – OJ of January 29, 2013

1. Audiovisual

France - Creation of an aid to the creation of original music from French's CNC

Decree n°2013-23 of 8 January 2013, amending decree n°99-130 of 24 February 1999 on the financial support to the cinema industry sets a new aid from the National Film and Moving Image Centre (CNC) for the creation of original music accompanying cinematographic works.

The CNC grants advances aiming at supporting the development of full-length cinematographic works. Such advances may now be supplemented by aids when the project includes an original music.

2. Banking

France - Creation of electronic money institutions

The Law n°2013-100 dated 28 January 2013 containing various provisions to ensure the compliance of French law with European law on economic and financial matters (OJ n°0024 dated 29 January 2013) implements Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions by means of, in particular, the creation of electronic money institutions which have their own full regulatory status prudential and are subject to less restrictive prudential requirements.

This Law has come into force on 30 January 2013.

3. Competition

European Law - Public consultation on the draft guidelines on regional State aid for 2014-2020

The European Commission launched on 14 January 2013 a Public Consultation on the draft guidelines on regional State aid for 2014-2020. These guidelines are aimed at providing how the Commission will apply the rules on state aids that promote the economic development of certain disadvantaged areas within the European Union. Interested third parties have until 11 March 2013 to comment the Draft.

European Law - Public consultation on the cross-border transfers of registered offices of companies

The European Commission launched on 14 January 2013 a [Public Consultation](#) on the cross-border transfers of registered offices of companies. The purpose of such Consultation is for the Commission to determine the current costs faced by companies that wish to transfer their registered offices abroad and assess the benefits that may result from an European Union action in that matter. Interested third parties have until 16 April 2014 to answer a [Questionnaire](#).

4. Employment

France - National interprofessional agreement on the stabilisation of employment

The [National Interprofessional Agreement on the Stabilisation of Employment](#) dated 11 January 2013 introduces numerous changes aiming more flexibility at work: possibility to negotiate agreements for maintaining employment without social plan under certain conditions, relaxing rules for internal mobility initiated by the employer, new provisions for voluntary mobility outside the company, and new modalities for the economic dismissal procedure. It also gives more rights to the employees: in particular, information/consultation of staff representative bodies and a minimum time of 24 hours per week for part-time positions, subject to some exceptions.

As far as litigation is regarded, lump sums have been fixed according to the seniority of the employee in order to compensate damage caused by the employment contract's termination and would apply at the conciliation stage (first step of the proceedings before the Labour Court). Limitation periods for claims related to performance and termination of contracts are reduced from 5 years to 2 years. They are reduced to 3 years regarding salary claims.

The said Agreement will be implemented after the enforcement of all legislative and regulatory provisions necessary to its application. A bill is currently prepared. If Government's wishes apply, it should be presented to the Council of Ministers in the first half of March, examined through urgent procedure at the Parliament and enacted at the end of May 2013 at the earliest. Some matters also have to be negotiated within the professional branch or within the company.

France - Circular: "vigilance" certificate issued by the contractual partner

A [Circular from the Social security Department DSS/SD5C/2012/186 about the vigilance certificate](#) dated 16 November 2012 has been published on 14 January 2013. The vigilance certificate concerns declarative obligations and payment of social contributions since a Decree dated 21 November 2011.

The Circular therefore details the modalities of the implementation of the obligation to provide the contractual partner with an attestation and to obtain it for the contractor: scope, content, delivery conditions, conditions of issuance and obligations on the subcontractor or the service provider.

France - Circular: gender equality

A [Circular DGT n°1 dated 18 January 2013](#) returns on the legislative and regulatory rules contained in the Act dated 26 October 2012 concerning creation of job for the future "*contrats d'avenir*" (in particular article 6 of said Act) and the Decree dated 18 December 2012 concerning implementation of obligations of the companies on occupational gender equality. These new rules aim to strengthen the effectiveness of the law on gender equality, providing the collective bargaining predomination on the actions plan, the duty to send the

actions plan to the Administration and an increase in the number of actions to be negotiated in the collective agreement or to provide in the actions plan.

The Circular explains in particular the combination between the Report of situation ("*Rapport de situation comparée*") and the collective agreement or the actions plan.

5. Environment

France - Soil pollution

Decree n°2013-5 dated 2 January 2013 published in the Official Journal of 4 January 2013 modifies the regulations applicable to classified installations. This Decree determines, in particular, the conditions for establishing public easements on polluted sites and the obligations of some specific operators of classified facilities (those subject to financial guarantees) in case of soil pollution.

6. Insurance

France - ACP – recommendation on the collection of information related to the knowledge of the customer in the context of the duty to advise in life insurance

On 8 January 2013 the ACP published a recommendation on the collection of information related to the knowledge of the customer. On the same day the French Financial Markets Authority (the *Autorité des Marchés Financiers* ("**AMF**")) published a position applicable to the marketing of financial instruments. The recommendation applies to both insurance companies and intermediaries, including those marketing life insurance contracts with repurchase value and capitalisation contracts in France by means of the European passport whether with physical presence of the parties or through distance selling means. It aims at listing best practice rules in terms of modalities of collection and traceability of the information, the content of the information to collect, and on the exploitation of such information. This recommendation will apply as from 1st October 2013.

France - ORIAS – Renewal and registration on the register

The *Organisme pour la tenue du registre des Intermédiaires en assurance, banque et finance* ("**ORIAS**") reminds entities that were already registered that they had until 31 January 2013 to renew their registration. As for intermediaries in banking operations and payment services, financial investment advisors and tied agents of investment services providers, they can proceed with their registration on the Register as from 15 January 2013.

France - Life insurance contract – Repurchase value

On 20 December 2012, the tax administration published a Ministerial reply in the *Bulletin Officiel des Finances Publiques-Impôts*, thus making it binding upon taxpayers. It states that the repurchase value of unsettled life insurance contracts underwritten with mutual funds is part of the assets of the community subject to inheritance laws under common law conditions.

European Law - EIOPA – Launch of long-term guarantee assessment

On 28 January 2013, the European Insurance and Occupational Pensions Authority ("**EIOPA**") launched a technical assessment of the long-term guarantee package agreed by the European Parliament, the Council of the EU and the European Commission. The aim

is to test various options contained in the Solvency II Directive in order to assess the impacts that the implementation of such measures may have on policyholders, beneficiaries, insurance and reinsurance undertakings, supervisory authorities and the financial system as a whole. EIOPA has published Technical Specifications that insurance undertakings (which are informed about their participation by the respective National Supervisory Authority) should follow when providing data for the purpose of the assessment. The report presenting the technical results of the assessment and the conclusion of the EIOPA are planned to be published in June 2013.

7. Intellectual Property

European Law - Creation of a worldwide classification system for patent documents

The European Patent Office and the United States Patent and Trademark Office have launched on 2 January 2013 the "Cooperative Patent Classification", a common classification system for technical documents, and in particular patent documents.

The classification is compatible on the international scale and is aimed to be used by both offices in their delivery procedures.

8. New technologies

France - Regulation of the sale of medicines on the internet

A decree of 31 December 2012, published in the Official Journal (*Journal Officiel*) of 1 January 2013, sets out new provisions aimed at strengthening the safety of the supply chain for drugs in order to fight against the sale of counterfeit drugs, and regulating the sale of drugs by online drugstores. The decree also provides for new obligations regarding the manufacture, distribution and importation of raw materials for pharmaceutical use.

European Law - European Commission's 2013-2014 priorities for the digital economy

The European Commission's 2013-2014 priorities for the digital economy and society were announced on 18 December 2012. These priorities include the launch of a directive relating to cybersecurity, an update of the legal framework relating to copyright and the development of cloud computing by means of public sector contracts. According to the Commission's estimations, these projects could result in a 5% increase of the European GDP.

European Law - Inauguration of the European Cybercrime Centre

The European Cybercrime Centre, EC3, was inaugurated on 11 January 2013, in accordance with the project announced by the European Commission in 2012. The Centre will allow the European Union to fight cybercrime, child pornography and online fraud linked to criminal organisations by centralizing technical expertise and information, and by providing a help desk for law enforcement authorities of the Union's Member States.

9. Public law

Law n°2013-100 dated 28 January 2013, published in the O.J. dated 29 January 2013, applies the same rules governing time-limits for payment to all purchase contracts entered into by contracting authorities. It also creates a compensation for recovery costs in case

of late payment. These rules shall be completed by decrees for their implementation. The Law shall apply to all contracts entered into after 16 March 2013.

France - Board of public undertakings

Decree n°2013-64 dated 17 January 2013, published in the O.J. dated 19 January 2013, sets out the list of public undertakings which must have representatives of consumers and users in their board of directors (SNCF, La Poste, RFF, RATP), as well as the procedures for appointing them, in accordance with law n°83-675 dated 26 July 1983 on public sector democratisation.

10. Real estate

France - Rents: index

The cost of construction index (ICC) for the third quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°2, 4 January 2013) amounts to 1648 which corresponds to a 1.48% increase over a year.

The commercial rents index (ILC) for the third quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°3, 4 January 2013) amounts to 108.17 which represents an increase of 2.72% over one year.

The tertiary activities rents index (ILAT) for the third quarter of 2012 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°4, 4 January 2013) amounts to 106.46 which corresponds to an increase of 2.72% over one year.

France - Law on mobilization of public land for housing and strengthening the obligations of social housing production

Law n°2013-61 dated 18 January 2013 published in the Official Journal of 19 January 2013 notably introduced measures relating to the mobilization of public land for housing and building production obligations of social housing.

11. Tax

France - Limitation of the tax deductibility of interest expenses

The French tax authorities have updated the maximum annual interest rate used by companies to calculate the limit in the tax deductibility of interest under the provisions of Article 39, 1-3 ° of the French Tax Code, in respect of accounting period (12 months) ending between 31 December 2012 and 30 March 2013 (BOI-BIC-CHG-50-50-30-20130124 n°40).

The maximum deductible interest rate is now:

-3.39% for accounting period ending between 31 December 2012 and 30 January 2013;

-3.31% for accounting period ending between 31 January 2013 and 27 February 2013;

-3.22% for accounting period ending between 28 February 2013 and 30 March 2013.

France - List of companies covered by the financial transactions tax

The list of companies' the head office of which is located in France and whose market capitalization exceeds a billion euros on 1st December 2012 had been published by Decree (*Decree dated 11 January 2013 OJ n°0015 dated 18 January 2013*). As a reminder, the acquisition of the shares of these companies is subject to the financial transaction tax, established by the first Amending Finance Act for 2012 dated 14 March 2012.

France - Rates of the annual tax on offices located in the Ile-de-France area

The rates of the annual tax on offices, shops and warehouses located in the Ile-de-France area have been increased by 4.58% in 2013 compared to 2012 (*Decree dated 31 December 2012 OJ n°0004 dated 5 January 2013*).

France - Update of the lists of the airlines eligible to VAT exemption

The French tax authorities have updated the lists of the airlines eligible to the VAT exemption provided by the Article 262, II-4° of the French Tax Code as from 26 December 2012 (*BOI-ANNX-000215 and BOI-ANNX-000216*).

France - Conditions to benefit from corporate philanthropy in favour of SMEs

The conditions to benefit from corporate philanthropy in favour of authorized organizations whose sole purpose is to participate in the creation, recovery or development of small and medium enterprises have been specified (*Decree n°2013-57 dated 16 January 2013*). As a reminder, this extension of the corporate philanthropy scope was established by the first Amending Finance Act for 2012 dated 14 March 2012.

France - Removal of the tax deductibility of provisions for investment

The French tax authorities have updated their Administrative Guidelines in order to take into account the second Amending Finance Act for 2012 dated 16 August 2012. Provisions for investments made by companies other than production workers cooperatives (SCOP) in the framework of employee profit sharing are no longer tax deductible for financial years ending as from 17 August 2012.

France - Precision regarding the 5% penalty in the case of insufficient payment of the last corporate income tax instalment

The French tax authorities have provided details for tax consolidated group regarding the application of the 5% penalty due in the case of lack of payment of the last corporate income tax instalment, when the amount of corporate income tax is estimated as from the projected profit and loss statement. Now, each company of a tax group has to produce a projected profit and loss statement, even if this company is not bound to do so according to the French Commercial Code (*BOI-CF-INF-10-30-20121228 n°230*).

France - Swiss lump-sum tax regime

The French Tax Authorities have revoked the administrative tolerance regarding the tax residency of Swiss tax residents who benefit from the Swiss lump-sum tax regime with effect as from 12 September 2012. Individuals subject to the lump-sum tax regime are no longer considered as Swiss residents under the Franco-Swiss Double Tax Treaty (*BOI-INT-CVB-CHE-10-10-20121226 n°10*).

12. Transport

European Law - Technical requirements for inland waterway vessels

Directive 2012/48/EU of 10 December 2012 amending the Annexes to Directive 2006/87/EC of the European Parliament and of the Council laying down technical requirements for inland waterway vessels has been published in the O.J.E.U dated 10 January 2013.

Directive 2012/49/EU of 10 December 2012 amending the Annex II to Directive 2006/87/EC of the European Parliament and of the Council laying down technical requirements for inland waterway vessels has been published in the O.J.E.U dated 10 January 2013.

European Law - Agreement providing a general framework for enhanced cooperation between the European Union and the European Organisation for the Safety of Air Navigation

The Council Decision of 29 October 2012 on the signing, on behalf of the Union, and provisional application of the Agreement providing a general framework for enhanced cooperation between the European Union and the European Organisation for the Safety of Air Navigation has been published in the O.J.E.U dated 19 January 2013.

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