

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 May 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 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 – A vote for a referral to commission was adopted during the first session on May 16, 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 – Adopted on first reading at the Senate on March 22, 2013 – in debate on second reading before the National Assembly on June 4 and 5, 2013.
- **Draft law on job securitisation** – Filed on March 6, 2013 – Adopted on first reading before the National Assembly on April 9, 2013 and by the Senate on April 20, 2013 – CMP (agreement) on April 23, 2013. Reading planned on May 14, 2013 – Seisin of the Constitutional Council on May 15 and 16, 2013.
- **Draft law to amend law n°2011-814 of July 7, 2011 on Bioethics by permitting research on embryos and embryonic stem cells under certain conditions** – adopted on first reading by the Senate on December 4, 2012 – in debate on first reading before the National Assembly on March 28, 2013.
- **Draft law to prohibit layoffs in the view of maximising profits and abusive job cuts**, n°869, filed on March 28, 2013 – rejected by the National Assembly on May 16, 2013.
- **Draft law relating to consumption**, n°1015, filed on May 2, 2013 – Remitted to the Commission of Economic Affairs.
- **Draft organic law relating to the transparency of public life**, n°1004, filed on April 24, 2013. In discussion on first reading before the National Assembly from June 17 to 19, 2013.

- **Draft law on the exceptional release of the optional profit-sharing schemes**, n°909, filed on April 9, 2013 – Adopted by the Parliament on first reading on May 28, 2013.

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## Enacted laws

- **Law n°2013-431 of May 28, 2013 relating to various provisions on infrastructure and transport services**, OJ of May 29, 2013.
- **Law n°2013-442 of May 30, 2013 on a general reform of medical biology** - OJ of May 31, 2013.

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## 1. Banking

### France - Electronic money institutions ("EMI")

-Decree n°2013-372 dated 2 May 2013 for the implementation of 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 (J.O n°0104 dated 4 May 2013) creates provisions relating to the issuance and the administration of electronic money and to the providing of payment services by the EMI. In particular, this Decree sets out the limit allowing to benefit from the less restrictive prudential regime and it sets out the three-month period given to the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel* – "ACP") to inform the relevant institutions when they do not comply with the conditions concerning the EMI's activity.

This Decree has come into force on 5 May 2013.

-Order dated 2 May 2013 on the prudential regulation of the EMI (J.O n°0104 dated 4 May 2013) sets out the prudential regime of the EMI. The Order specifies for example the conditions of the granting and withdrawal of the licence of the ACP, the list of transactions relating to the EMI that are subject to (i) prior authorization, (ii) notification ensuring a right to object, or (iii) declaration, to the ACP and the means to protect the funds of the EMI's clients.

This Order has come into force on 5 May 2013.

-Decree n°2013-383 dated 6 May 2013 for the implementation of 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 (J.O n°0107 dated 8 May 2013) specifies the conditions of the exemption set forth in Article L.525-5 of the Monetary and Financial Code as well as the limit of electronic money allowing certain EMI to benefit from a less restrictive prudential regime.

This Decree has come into force on 9 May 2013.

-Decree n°2013-384 dated 7 May 2013 defining the conditions and terms of the appointment of the permanent ad hoc representative mentioned in VI of Article L.561-3 of the Monetary and Financial Code (J.O n°0107 dated 8 May 2013) regulates the intervention of that representative whose appointment is decided by the ACP (i) in the payment institutions or EMI providing payment services if the activity's annual volume in France exceeds 3 million euros; (ii) in the EMI if the annual amount of electronic money in circulation in France exceeds 5 million euros; or, (iii) if such thresholds are not reached, if the ACP notices insufficiencies in the implementation in France of the anti-money laundering and counter terrorist financing system.

This Decree has come into force on 9 May 2013.

-Decree n°2013-385 dated 7 May 2013 setting out the conditions and terms of providing information relating to the funds transfer transactions mentioned in Article L.561-15-1 of the Monetary and Financial Code (J.O n°0107 dated 8 May 2013) sets forth the conditions in which the EMI are

obliged to provide TRACFIN with certain information.

This Decree will come into force on 1<sup>st</sup> October 2013, with the exception of the provisions of 2° of Article D.561-31-1 of the Monetary and Financial Code that will come into force on 1<sup>st</sup> April 2014.

### **France - European Supervisory Authorities**

Decree n°2013-388 dated 10 May 2013 adapting the powers and missions of the supervisory authorities in banking and finance because of the creation of the European Supervisory Authorities (J.O n°0108 dated 11 May 2013) completes the transposition of the directive 2010/78/UE dated 24 November 2010, concerning the competences of the European Banking Agency, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. This Decree sets out, for example, the terms relating to the information to be provided to the European Supervisory Authorities and, if applicable, to the national supervisory authorities within the framework of cross-border groups.

This Decree has come into force on 12 May 2013.

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## **2. Capital Markets**

### **France - Approbation of the AFG Code of Ethics specific to Employee Savings Scheme Management Firms**

The *Autorité des Marchés Financiers* (AMF) approved the provisions of the Code of Ethics specific to French FCPE and SICAVAs prepared by the French asset management association (AFG) as a set of professional standards and decided to extend such provisions to all asset management companies. This code sets out amongst other, the provisions applicable for the prevention of conflicts of interest and the business organisation and continuity and also provides guidelines in this respect.

### **France - Publication of the AMF recommendation relating to pro forma financial information requirements**

The *Autorité des marchés financiers* (AMF) released recommendation n°2013-08 in order to assist the professionals in the preparation of their prospectus or financial annual report and for its easier review by investors and shareholders. It sets out pro forma financial information required in case of acquisition, sale, spin-off, merger or partial transfer of assets.

### **Guidelines for investment management companies on the impact of the EMIR regulations on their assets management**

The *Autorité des marchés financiers* (AMF) published a guide for the attention of investment management companies in order to help them fulfil their obligations under the European regulations on over-the-counter derivatives, central counterparties and trade repositories (EMIR). This pedagogical guide explains the new obligations and gives the key dates in the implementation timetable.

### **France - Reminder of the rules applicable to crowdfunding in France**

The *Autorité des marchés financiers* (AMF) and the Autorité de Contrôle Prudentiel (ACP) provide a reminder of the rules applying to crowdfunding transactions for the general public and for funding platforms and project leaders.

The AMF and ACP wished to clarify the current regulatory framework governing this new funding method that is set to change after the summer, further to the conclusions of the upcoming Entrepreneurship Meetings (*Assises de l'Entrepreneuriat*).

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## **3. Competition**

### **France - Notice of the French Competition Authority on the online sale of drugs**

Opinion n°13-A-12 of 10 April 2013 of the French Competition Authority on a draft decree relating to good practices in the dispensing of medicinal products by electronic means has been published on the Authority's website. The Authority has delivered an unfavourable opinion on the draft decree considering that it would distort competition. It advocates for an expansion of the scope of online sale to all drugs not subject to prescription, the possibility for operators to offer medicinal and parapharmaceutical products on the same website and the operators' freedom to set different prices for online sales and in their physical pharmacy.

#### **France - European Commission Annual Report on Competition Policy for 2012**

The 2012 Report on Competition Policy and the Commission Working Document indicates that its activity in 2012 focused on financial services, energy markets, telecommunications, digital economy and pharmaceuticals. The Report also stresses that the state aid regime modernisation has been launched. Finally, in his Speech, the Vice-President of the Commission prospects for the year 2013 a merger control reform and a legislative proposal for damage actions following anticompetitive practices.

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### **4. Consumer law**

#### **France - Draft bill on Consumer Law**

The Draft bill on Consumer Law has been adopted by the Council of Ministers and introduced at first reading at the National Assembly on 2 May 2013. The draft bill aims in particular at establishing class action to repair pecuniary losses suffered by consumers in connection with the sale of goods, provision of services or anticompetitive practices. It also contains several provisions to strengthen pre-contractual information and consumers' contractual rights (door-step selling, distance selling, guarantees, payment ...) and the powers of investigation under Article L.450-3 of the French Commercial Code. The text also aims at reforming the system of penalties for non-compliance of payment terms between businesses and non-compliance with the contractual formalism for trade relations between professionals.

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### **5. Corporate**

#### **France - The AMF issues a recommendation on the elaboration of pro forma financial statements**

The AMF issued a "Pro forma financial information" Recommendation n°2013-08 dated 17 May 2013. It specifies the guiding principles and the points of vigilance on the pro forma financial information which has to be communicated in case of threshold crossing of 25% (of the turnover, the financial income...) on a full-year basis. This Recommendation is made in the framework of different texts (Prospectus regulation, AMF general regulation, CRC 99-02 regulation related to consolidated financial statements in French accounting rules, etc...) which provide such information. It is aimed at giving to the investor or the shareholder an overview of the impact of the threshold crossing operation (acquisition, sale, spin-off, merger or partial transfer of assets) on the historical financial statements of the issuer if it had taken place before its occurrence date. This information is required when the operation has an upwards or downwards superior to 25% impact on the financial statements of the issuer.

The AMF recommendation specifies all the information that the issuer has to include in its annual financial report or its prospectus in case of acquisition, sale, spin-off, merger or partial transfer of assets.

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### **6. Employment**

#### **France - Law proposal: optional and statutory profit-sharing schemes exceptional release**

The Law Proposal concerning the exceptional release of the optional and the statutory profit-sharing schemes has been adopted by the National Assembly and the Senate respectively on May 13 and May 28, 2013.

The Law Proposal will allow the beneficiaries to withdraw, between July 1 and December 31, 2013 the whole or part of the frozen assets in one of

those profit-sharing schemes, except those placed within collective savings plan in view of retirement ("PERCO") and those invested in solidarity funds.

The amount of the released sums will be generally limited to € 20,000 per beneficiary.

### **France - Draft law: employment safeguarding**

The Draft Law on Employment Safeguarding has been definitely adopted by the National Assembly on April 25, 2013 and by the Senate on May 14, 2013 and should enter into force on July 1, after publication in the Official Journal.

However, some senators brought article 1 of the Draft Law before the Constitutional Court.

Article 1 deals with the "designation covenant", through which a collective bargaining agreement designates one or several insurance companies with which the employers will have to insure their employees for the purpose of complementary health insurance.

### **France - Law proposal: secularism within companies**

A Law Proposal aiming at insuring the respect of the secularism principle within private companies has been registered on May 15, 2013.

The Law Proposal would create an article L. 1121-1 bis in the French Labour Law Code forbidding the employees to wear any conspicuous religious symbol or clothing.

Moreover, the employees would also have to restrain themselves from performing any activity showing a religious belief.

Finally, the new article L. 1121-1 bis of the French Labour Law Code would have to be mentioned within companies' internal regulations, except companies with a religious activity to which it would not apply.

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## **7. Energy**

### **France - Modification of the rules for the fixing of the regulated sale prices of natural gas**

The Decree n°2013-400 of 16 May 2013 amending the decree No. 2009-1603 of 18 December 2009 relating to the regulated sale prices of natural gas was published in the Official Journal on 17 May 2013.

This Decree modifies the rules for the fixing of the regulated sale price of natural gas provided by this decree No. 2009-1603 of 18 December 2009. Thus, for each supplier, an order defines a price formula which takes account of all the procurement costs of natural gas and the valuation methodology for the costs unrelated to procurement. Every year, the Commission of regulation of energy must deliver to the Government a detailed analysis of all these costs borne by the suppliers. Based on this analysis, an order sets every year and for each supplier the tariff grids taking account, as the case may be, of the supplier's proposals.

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## **8. Environment**

### **France - Classified installations: industrial emissions**

Decree n°2013-374 dated 2 May 2013 published in the Official Journal of 4 May 2013 defines the implementation conditions of Ordinance n°2012-7 dated 5 January 2012 which transposed Chapter II of the IED 2010/75/UE Directive of the European Parliament and of the Council dated 24 November 2010 on industrial emissions (integrated pollution prevention and control).

It introduces, in the French environmental code, a new section dedicated to installations which are set out in appendix I of the 2010/75/UE Directive (articles R.515-58 and sub. of the French Environmental code).

It defines the specific rules applicable to these installations in relation to their commissioning, operating and definitive cessation of activity procedures.

#### **France - Classified installations : new sections of the classified installations nomenclature**

Decree n°2013-375 dated 2 May 2012 published in the Official Journal dated 4 May 2013 transposes appendix I above-mentioned of 2010/75/EU Directive adding 40 new sections to French classified installations nomenclature.

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## **9. Insurance**

### **France - ACP – Increase of contributions rate for supervision expenses**

The order dated 29 March 2013 increases the rate of the contribution by insurers to the supervisory costs of the French supervising authority (*Autorité de Contrôle Prudentiel – "ACP"*) from 0.15 per mill in 2012 to 0.21 per mill in 2013. The rate which is set in Article L. 612 -20 of the Monetary and Financial Code is calculated on the basis of the premiums or contributions issued and accepted during the fiscal year ending in the previous calendar year. The order will enter into effect on 5 June 2013.

### **France - Competence of the European supervisory authorities**

The decree n°2013-388 of 10 May 2013 adapts the powers and duties of the supervisory authorities in banking and financial sectors following the creation of the European supervisory authorities by the Directive 2010/78/EU. It adapts the Monetary and Financial Code, the Insurance Code, the Mutuality Code and the Social Security Code. It includes communication and information obligations to the European authorities and other national supervisory authorities as well as the conditions under which disciplinary proceedings can be introduced by the ACP against a group established in France but having its head office in another Member State of the EEA. The decree also complements the modalities of control of financial conglomerates. It came into effect on 12 May 2013.

### **France - Adoption of law on the generalisation of additional healthcare**

The law on protection of jobs which was adopted on 14 May 2013 by the Senate (Article 1) imposes a collective healthcare coverage for all employees from 2016 onwards. The law transposes the national interprofessional agreement ("**NIA**") reached on 11 January 2013 by employers' associations and three labour unions.

### **European Law - EIOPA – Consultation on guidelines for complaints handling by insurance intermediaries**

On 5 April 2013, the European Insurance and Occupational Pensions Authority ("**EIOPA**") launched a public consultation regarding guidelines on complaints handling by insurance intermediaries. The proposed guidelines cover guidance on insurance intermediaries' internal systems and control for complaints handling, the provision of information to consumers and procedures for responding to complaints. They are addressed to national competent authorities who would comply with the guidelines by incorporating them into their regulatory or supervisory framework in an appropriate manner. Comments are requested by 28 June 2013.

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## **10. Intellectual Property**

### **France - Bill on consumer rights**

On 2 May 2013, the French government has presented to the National Assembly a bill n°1015 on consumer rights.

The bill is aimed to enhance the protection of consumers on various aspects. It also contains amendments to the French Intellectual Property Code, as far as geographical indications are concerned.

The changes involve in particular (i) a new definition of geographical indications, (ii) new powers for the French Industrial Property Institute ("the INPI") which will be now entitled to decide on applications for approval of geographical indications' specifications, (iii) the adding of geographical indications as a prior right likely to hinder the registration of a junior trade mark, (iv) the possibility for the INPI to alert a territorial authority in case of a trade mark application comprising the name of the said authority, (v) the ability for a territorial authority or for an organization of defense and management of a specific geographical indication to initiate opposition proceedings against a trade mark application and (vi) the possibility of using a geographical indication that is similar or identical to a registered trade mark, subject to certain requirements.

For a complete overview of the provisions of the bill on consumer protection, [see the Consumer law section](#).

### **France - Remuneration of screenwriters**

A [Ministerial Order dated 6 May 2013](#) issued on the basis of [Article L 133-25 of the French Intellectual Property Code](#) renders compulsory some of the provisions of the protocol agreement dated 20 December 2012 that sets out contractual practices between screenwriters and fictions producers.

The Ministerial Order applies to any audiovisual production company and relates more specifically to contractual provisions on the remuneration of screenwriters. Its provisions pertain in particular to (i) the obligation to pay the screenwriter on due dates, (ii) the possibility of using the work done by a first screenwriter who is no longer working with a producer provided that the said screenwriter has been duly paid and indemnified by the producer and (iii) the payment by the producer of a 30 % bonus based on the initial remuneration of the screenwriter for previously unreleased works.

Those provisions are compulsory for any agreement signed starting from 17 May 2013 and will be applicable for three years.

### **France - Financial support to the production and making of cinematographic works**

The [Decree n°2013-396 dated 30 April 2013](#) introduces a new article 8-2 in the [Decree n°99-130 dated 24 February 1999](#) relating to the financial support of cinematographic industry.

This new provision now excludes public establishments and their subsidiaries from the benefit of selective financial support for the production and making of full-length cinematographic works as well as short films. Such selective financial support is implemented through the grant of State aids to organizations that fulfil the requirements set out in the Decree dated 24 February 1999.

This new measure has been announced as a support for companies of the independent private sector.

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## **11. Life Sciences**

### **France - Remaining French Sunshine regulations have finally been adopted**

[French Decree n°2013-414](#) dated 21 May 2013 implementing the French Sunshine regulations was published in the Official Journal of 22 May 2013.

The Sunshine regulations were introduced to French law pursuant to a law dated 29 December 2011 (aka. *Bertrand law*) setting out the obligation for enterprises working in the health sector to publish benefits granted and agreements entered into with several players in the health sector, including healthcare professionals.

A further governmental publication will be adopted soon by the French State Health Department (*Direction Générale de la Santé – DGS*) to specify the interpretation of the French Administration on the various concepts contained in the Decree. The Circular is expected to be published in the coming days.

[Please see the newsflash of 23 May 2013](#).

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## 12. New technologies

### France - 250 websites analysed by the CNIL

The Global Privacy Enforcement Network (GPEN), a network involving the main data protection authorities around the world, undertook a joint action on 6 May 2013, the Internet Sweep Day. In France, 250 websites were reviewed by the French data protection authority (CNIL) to check the compliance of such websites and their data privacy policy with French law on privacy, data protection and freedom of information. Sanctions could be taken by the CNIL.

### France - Mission Lescure Report

The Mission for Act II for the French Cultural Exception, the so-called Mission "*Lescure*", delivered on 13 May 2013 its report called "*Contributions to the cultural policies in the digital age*". The report contains 80 proposals including modifications of the Cultural Exception concept itself, the online legal offer of cultural content, and the remuneration for the creators, and recommends the creation of a 1% tax on smartphones and digital tablets in order to finance the digital transition of the cultural industry.

### France - Drug distribution on the Internet

[See related article in the Competition section.](#)

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## 13. Procedures

### France - Civil procedure

#### - "Consumer" bill introducing class actions in France

The "Consumer" bill n°1015 has been submitted on 2 May 2013 during a session of the Council of Ministers.

The key measure of this bill relates to the introduction of a French type of class actions in Articles L. 423-1 and following of the French Consumer Code. Pursuant to these provisions, a nationally representative consumer protection association authorised under Article L. 411-1 of the French Consumer Code will be entitled to act before the civil courts to obtain compensation for the individual losses resulting from damages caused to consumers' assets. To fall under the scope of a class action, the loss will have to be sustained by consumers in an identical or similar position and be caused by the same professional. Furthermore, the loss will have to result from a breach of the legal or contractual obligations of the professional, whether in the scope of the sale of goods or the provision of services or of anticompetitive practices.

In practice, the bill provides for three stages: (1) an examination and decisional stage regarding the liability of the professional, (2) a stage during which a group of consumers is defined following publicity measures ordered by the Judge and (3) a stage during which the professional compensates the victims' loss.

Pursuant to Article L. 423-8 of the French Consumer Code, the applicant association can take part in a mediation to obtain compensation for the individual losses. If this mediation leads to an agreement on behalf of the group, it will be submitted to the judge for approval and will become enforceable.

This bill will be submitted to the National Assembly on 24 June 2013.

### France - Criminal procedure



## **-Parliamentary bill authorising associations defending taxpayers to join criminal proceedings as civil parties**

A parliamentary bill n°558 authorising associations defending taxpayers to join criminal proceedings as civil parties in cases involving embezzlement of public funds defined in a broad sense has been submitted to the Senate on 2 May 2013.

The parliamentary bill covers offences of passive bribery, unlawful taking of interest, evasion and embezzlement of funds as well as violations to the freedom of access and equal treatment of candidates with respect to public contracts and public service delegations.

The parliamentary bill introduces a new Section 2-5-1 in the French Code of Criminal Procedure. Under the current terms of this bill, any association duly registered for at least five years that is willing to defend the interests of taxpayers could exercise the rights granted to civil parties with respect to the abovementioned offences as well as all related offences.

## **-Introduction of a financial Public Prosecutor**

The organic parliamentary bill on the financial Public Prosecutor (accelerated procedure) has been submitted on 7 May 2013 during a session of the Council of Ministers and submitted to the National Assembly on the same day.

This bill completes the parliamentary bill on the fight against tax fraud and against large-scale economic and financial crime. It provides, in particular, for the introduction of a financial Public Prosecutor's office that would have jurisdiction in France to fight against bribery and tax fraud. This office would be headed by the financial Public Prosecutor under the authority of the Prosecutor General of the Paris Court of Appeal.

The financial Public Prosecutor will have jurisdiction over matters related to damages caused to probity, offences of bribery of foreign public agents, of complex tax fraud committed by organised groups and laundering of all the above mentioned offences as well as all related offences.

## **France - Administrative procedure**

### **-Publication of Decree no. 2013-409 of 17 May 2013 on the first-instance representation of parties before Administrative Courts of Appeal**

Decree n°2013-409 of 17 Mai 2013 on the first-instance representation of parties before Administrative Courts of Appeal was published in the Official Journal on 19 May 2013.

It provides for the mandatory assistance of a lawyer for parties in first instance cases before Administrative Courts of Appeal. The assistance of a lawyer for parties is not mandatory in actions claiming that a Government authority has acted *ultra vires* or in actions claiming the enforcement of a final judgement.

The administrative authorities are not concerned by this mandatory assistance of a lawyer.

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## **14. Tax**

### **France - Tax group – Details regarding the required conditions**

The French tax authorities have detailed in their guidelines the new required conditions for the election for the tax group to newly established companies (BOI-IS-GPE-10-40-20130516 n°100 dated 16 May 2013):

-The requirement for a new company to be registered with the Trade and Commercial Registry before joining a group has been deleted. The French tax authorities have drawn the consequences of two decisions of the French Council of State (*French Conseil d'Etat 7 March 2012, n° 335046, Société Alimentation générale de la Cigale* and *Conseil d'Etat 7 March 2012, n° 335047, Société Alimentation générale du Mail*);

-A new company must end its first financial year before joining a group.

## **France - Taxation of capital gains on disposal of securities distributed by a *Fonds Commun de Placement* (« FCP »)**

The French tax authorities have updated their guidelines of the new rules arising from the Amending Finance Bill for 2012 (*Article 20 of Law n°2012-1510 dated 29 December 2012*), regarding the taxation of capital gains on disposal of securities distributed by a FCP.

As a reminder, the tax deferral regime provided by the Article 38, 5-1° of the French Tax Code can no longer apply to capital gains on the disposal of securities when distributed by a FCP as from 1 January 2013.

Now, capital gains on the disposal of securities distributed by a FCP are taxed under the common law system in the hands of the professional shareholders. They are included in the taxable income of the year in which they are distributed and are excluded of the long term capital gains tax treatment (*BOI-BIC-PVMN-10-10-30-20130516 n°305* and *BOI-BIC-PVMN-30-30-40-20130516 n°55 dated 16 May 2013*).

This change is the result of the new definition of distributable income provided by the Article L.214-17-2 of the French Monetary and Financial Code.

## **France - Wealth tax – Dutreil Pact**

The French tax authorities have indicated in their guidelines that in a case of a partial sale of securities beyond the overall period of six years, the transferor loses the benefit of the tax exemption for all the securities (including those retained) for the year of the transfer and the subsequent years (*BOI-PAT-ISF-30-40-60-20-20130522 n°150 dated 22 May 2013*).

As a reminder, securities held by a taxpayer and subject to a lockup agreement (under certain conditions) are exempt from wealth tax up to 75% of their value.

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## **15. Telecoms**

### **France - The ARCEP specifies the content of the accounting and cost redistribution obligations imposed on mobile operators**

By a Decision n°2010-0200 dated 11 February 2010, the ARCEP specified the accounting and cost redistribution obligations imposed on the operators deemed to be SMP on the mobile call termination wholesale markets. The accounting obligations of the mobile operators are designed to provide the ARCEP with a better knowledge of the costs of the operators as well as the means to verify the implementation of the non-discrimination obligation and the absence of abusive cross-subsidies on those markets.

By a Decision n°2013-0520 dated 16 May 2013, the ARCEP repealed its former decision in order to take into account the evolution of the regulation on those mobile vocal call terminations, in particular the Recommendation 2009/296/EC of the European Commission, providing that the mobile vocal call termination levels are determined by reference to the long run incremental costs, and the evolution of the technological context, in particular with the data traffic development and the 4G mobile networks.

### **France - The ARCEP recommends the implementation of a unique national identifier for every line on the fiber-to-the-home networks**

The ARCEP issued a Recommendation dated 25 April 2013 aimed at ensuring the interoperability of the fiber-to-the-home (FttH) networks in a standardisation approach. Within the FttH network development framework, the definition of an identifier for each line which could be used for any intervention of this line is a necessary step.

The ARCEP thus recommends the implementation of a unique identifier, with a standardised format of 10 characters, having to be granted by an identifier manager to each line. The identifier will have in principle to be labelled on the optical terminal plug in order to ease its visibility by the subscriber and the different interveners. It is also considered that it appears on the invoicing support and on the Internet customer space of the operator.

### **France - The ARCEP launches a public consultation and issues a report on the vocal fix, mobile and SMS call terminations**

The ARCEP launches a Public Consultation from 28 May to 28 June 2013 on the analysis of the wholesale markets of the vocal fix, mobile and SMS call termination of metropolitan France and overseas territories for the 2014-2016 period and issues a document related to the regulation Appraisal and Perspectives.

The ARCEP gathers for the first time the three categories of vocal fix, mobile and SMS call termination wholesale markets because of the structural similarities and common competition issues of the three sectors. In accordance with articles L. 37-3 and D. 301 of the French Code des Postes et des Communications Electroniques, the ARCEP submits its decision draft to public consultation before obtaining the advice of the antitrust regulator and notifying it to the European Commission, to the Electronic communications European regulators body and to the competent authorities of the European Union Member States.

#### **France - The ARCEP extends its capacity service wholesale markets analysis decision**

By a Decision n°2013-0653 dated 21 May 2013, the ARCEP extended until 1 July 2014 its Decision n°2010-0402 of capacity services wholesale market analysis. This extension decision follows the public consultation and the favourable advice of the antitrust regulator.

#### **France - The copper experts Committee issues a favourable advice on the introduction of VDSL2 on the local copper loop of France Télécom**

The independent copper experts Committee, gathering several operators including France Télécom, owner of the copper networks and the equipment suppliers, rendered an Advice dated 26 April 2013 in favour of the introduction if the VDSL2 technology on the local copper loop of France Télécom.

The copper experts Committee authorizes the deployment of the VDSL2 on the copper local loop network of France Télécom on all the NRA lines put into service after 1 January 2005 and on the sole direct distribution lines of the NRA put into service before 1 January 2005.

#### **European Law - The Commission suspends the high-speed leased lines regulation project of the Austrian regulator**

The EU Commission, by a Decision of 3 May 2013, has requested from the Austrian Telecoms regulator (RTR) to review its draft of regulation of the high-speed leased lines, which, according to it, do not warranty equitable competition conditions.

RTR wanted to regulate high-speed leased lines from July 2013 whereas, in certain municipalities, those ones were supplied on competitive conditions. This measure concerned in particular the leased lines of the A1 Austria Telekom historical operator.

The Commission, having been notified of this draft decision under Article 7a of the Telecoms Directive, has considered that several operators intervened on the high-speed leased lines wholesale market and that the A1 Austria Telekom regulator only owned 15% of market stake, having therefore little impact on the functioning of the market. According to the Commission, the reintroduction of regulation on this market, submitted to competitive conditions since for several years, could have a negative impact on the alternative operators, being in this way obliged to provide more advantageous access conditions in order to compete with the historical operator regulated services. RTR has two months to find a solution with the Commission and the Electronic communications European regulators body. During this time, the implementation of those rates is suspended.

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## **16. Transport**

#### **France - Law concerning various provisions on infrastructure and transport services**

Law n°2013-431 of 28 May 2013 concerning various provisions on infrastructure and transport services has been published in the Official Journal of 29 May 2013. This Act contains provisions relevant to the rail, road, air and sea sectors. Regarding the maritime sector, the Law strengthens the rules of public authorities' intervention on abandoned ships and maritime security in relation to the implementation of water investigations, criminal penalties for non-compliance of navigation or civil liability regime in case of marine pollution. It provides that certain provisions of labour law and social law will apply to the entire crew of the vessel engaged in cabotage regardless of nationality. With regard to the road sector, the Law simplifies the implementation of environmental taxes for heavy trucks whose mechanism was provided in Decree of 4 May 2012.

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