

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 October 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 relating to consumption**, n°1015, filed on May 2, 2013 – Adopted on first reading by the National Assembly on July 3, 2013 – adopted on first reading by the Senate on September 13, 2013 – filed before the National Assembly on new reading.
- **Draft law relating to the fight against tax fraud and serious economic and financial crime**, n°1011, filed on April 24, 2013 – Adopted on first reading by the National Assembly on June 25, 2013 – Adopted on first reading by the Senate on July 18, 2013 - CMP (disagreement) – adopted on new reading before the National Assembly on September 17, 2013 – Adopted on new reading by the Senate on October 8, 2013 – Final reading by the National Assembly on October 30 and November 5, 2013.
- **Draft law aiming for prospects to the economy and creating jobs in the industrial sector**, n°1037, filed on May, 15 2013 – emergency proceedings – adopted on first reading by the National Assembly on October 1, 2013.
- **Draft law for the access to housing and redeveloped town planning**, n°1179 – filed on June 26, 2013 – adopted on first reading by the National Assembly on September 17, 2013 – adopted on first reading by the Senate on October 26, 2013.
- **Draft law relating to social and solidarity-based economy**, n°805 – filed for first reading before the Senate on July 24, 2013 – in first reading on November 6 and 7, 2013.
- **Draft law relating to various provisions for the transposition of EU Law into French Law in the health sector**, n°1336 – filed for first

reading before the National Assembly on August 2, 2013.

- **Draft law for craft industry, trade and very small businesses**, n°1338 – filed for first reading before the National Assembly on August 21, 2013.
- **Draft law to take various measures to simplify and secure business life**, n°1341 – filed for first reading before the National Assembly on September 4, 2013 – emergency procedure – adopted on first reading by the National Assembly on October 1, 2013.
- **Draft law to guarantee the future and justice of the pension system**, n°1376, filed for first reading before the National Assembly on September 18, 2013 – adopted on first reading by the National Assembly on October 15, 2013 – Debate on first reading before the Senate from October 28 to November 5, 2013.
- **Draft finance law for 2014**, n°1395 – filed for first reading before the National Assembly on September 25, 2013 – Debate on first reading from October 15 to November 15, 2013.
- **Draft law which aims not to include the delivery service to the single price of the book**, n°1189, filed on June 26, 2013 – Adopted on first reading by the National Assembly on October 3, 2013.
- **Draft law on the financing of Social Security for 2014**, n°1412 – filed on October 9, 2013 – in debate on first reading by the National Assembly from October 22 to 29, 2013.
- **Draft law to implement a control of the Work Councils' accounts**, n°679, filed before the Senate on July 18, 2012 – Adopted on first reading by the Senate on October 10, 2013.
- **Draft reform relating to the railway system**, n°1468, filed on October 16, 2013.
- **Draft law for the ratifying of order n° 2013-676 of July 25, 2013 which amends the legal framework of asset management**, n°1467, filed on October 16, 2013.
- **Draft law which authorises the ratifying of the agreement relating to the establishment of a unified jurisdiction for patents**, n°97, filed before the Senate on October 23, 2013 – accelerated procedure by the Government on October 23, 2013.

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#### Enacted laws

- **Organic law n°2013-906 of October 11, 2013 relating to the transparency of public life** – OJ of October 12, 2013.
- **Law n°2013-97 of October 11, 2013 relating to the transparency of public life** - OJ of October 12, 2013.

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#### 1. Capital Markets

##### France - Updated guidelines on how to draft marketing materials for structured debt securities

As part of its effort to monitor financial instrument marketing, the AMF has published an updated version of its guide (AMF Position DOC-2013-13) and informs professionals of practices that may be considered incompatible with current regulations. It also highlights practices that could improve

the quality of information.

### **France - Marketing of structured financial instruments to retail investors**

To safeguard against the risk of structured financial instruments being inappropriately marketed to retail investors, the AMF is adding to its policy and publishing a new position aimed at tightening security for such products. [AMF position 2013-12](#) concerns the need to offer a guarantee when marketing to retail investors shares or units in structured UCITS and AIF, "guaranteed" UCITS and AIF, and debt securities with similar characteristics issued by dedicated issue vehicles.

### **France - Public consultation on crowdfunding**

The French Ministry of Economy and Finance, the ACPR and the AMF have launched a public consultation on crowdfunding including proposals on how to amend the legal and regulatory sections of the French monetary and financial code, AMF General rules and common ACPR/AMF guidelines on non secured investments in view to enhance crowdfunding whilst offering a better protection to investors. Proposals have been put out to public consultation until 15 November 2013.

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## **2. Corporate**

### **France - Extension of the opposition period granted to the creditors in case of complete transfer of assets and liabilities (transmission universelle de patrimoine)**

[Article 29](#) of the bill against tax fraud, economic and financial crimes amends Article 1844-5 of the French Civil Code by providing an extension of the opposition period granted to the creditors, from 30 to 60 days, in case of dissolution resulting from a complete transfer of assets and liabilities (*transmission universelle de patrimoine*).

The bill was passed definitively by the National Assembly, on 5 November 2013.

### **France - Deletion of the article providing that disposal of property companies' shares requires a notary deed (société civile immobilière and sociétés à prépondérance immobilière)**

The French Senate Commission for Economic Affairs removed from the bill relating to the access to housing (*projet de loi pour l'accès au logement et un urbanisme rénové*), on 9 October 2013, article 70 quarter which provided that transfers of shares requires a notary deed for all disposals of property companies' shares.

The [amended bill](#) was passed by the Senate, on first reading, on 26 October 2013.

### **France - AMF report on Corporate Governance and Executive Compensation in listed companies**

The French Financial Markets Authority (*Autorité des Marchés Financiers*) released its [annual report](#) on Corporate Governance and Executive Compensation in listed companies.

The report draws up a positive statement of the past year and points out, in particular, an increase in the number of lead directors, a greater diversity in boards of directors and also a decrease number of directors who holds several mandates.

The Authority also formulates new recommendations regarding the identification of directors representing the employees, the measurement of

concrete contribution of directors in the board but also the disclosure of service agreements entered into between directors and the company.

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### 3. Employment

#### France - Decrees: decree relating to prohibited work to young people under 18 years old

The [decree n°2013-914 of 11 October 2013](#), entered into force on 14 October 2013, amends and simplifies the procedure of derogation granted by the labour inspector to prohibited work to young people under the age of 18 in vocational training (apprenticeship contract and vocational training contract, students preparing a professional or technological diploma, etc...). Subject to certain conditions, the employer may be authorised to assign young people to prohibited jobs for a length of 3 years.

The [decree n°2013-915 of 11 October 2013](#), entered into force on 14 October 2013, specifies the conditions of employment of young people from 14 to 16 years during school holidays and updates the list of prohibited jobs to young people aged between 15 and 18 years old (notably work harming physical or moral integrity) and prohibited work subject to derogation.

#### France - Law project: law ensuring the future and fairness of pension system

The law project ensuring the future and fairness of the pension system was adopted at first reading by the National Assembly on 15 October 2013 and is submitted to the Senate at the end of October and beginning of November.

The law project creates for any employee an individual account of prevention of the painfulness of work, supplied with points along the career of the employee. The employer must transmit the employee representatives an assessment relating to the painfulness of the employees every year (prevention sheets, conditions of painfulness the employees are exposed to, implemented prevention measures).

#### France - Decree project: decree relating to delays of works council's consultation and expertise and single database

The project of decree implementing the law for the security of employment and relating to the delays of consultation of the Works Council and of expertise was transmitted to social partners on 11 October. It grants the Works Council a period of one month to deliver its opinion as from the employer's communication of information required by the French Labour Code. The deadline is extended in certain circumstances (intervention of an expert, consultation of one or several HSWCC, implementation of a coordination body of HSWCC). The expert consulted on a project introducing a new technology is granted a period of 21 days as from his appointment to submit his report.

The project also specifies the terms of operation of the single database that the companies should implement on 14 June 2014 or 14 June 2015 at the latest depending on the number of employees (more than 300 employees or between 50 and 300 employees).

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### 4. Intellectual Property

#### France - New bill to strengthen the fight against counterfeiting

Mr. Senator Yung and all Senators from the Socialist group in the French Senate have presented on 30 September 2013 a [new bill to strengthen the fight against counterfeiting](#).

This bill aims at strengthening the [Law n°2007-1544 of 29 October 2007 on the fight against counterfeiting](#) (implementing [Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights](#)) and follows several parliamentary efforts in this direction.

The passing of the bill would involve significant amendments of current French law. In particular, the bill contemplates (i) to compel the judges to "consider separately" each prejudice (negative economic consequences, moral prejudice, unfair profits made by the infringer) in the allocation of damages to the injured party, (ii) to expressly allow the implementation of the right of information during interlocutory proceedings and by the Pre-Trial Judge, (iii) to sanction by the release of the seized products, and not the nullity of the bailiff report, the non-compliance with the deadline to initiate proceedings on the merits after the performance of a seizure, (iv) to strengthen customs' actions, notably by extending into French law the procedure of customs' detention to all intellectual property rights and to align the same with the Community procedure and, finally, (v) to extend the limitation period for initiating infringement proceedings from three to five years.

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## **5. New technologies**

### **France - Activity report of the HADOPI**

On 10 October 2013, the High Authority of Diffusion on the Art Works and Protection of Rights on the Internet (HADOPI) published its 2012-2013 activity report. Concerning the graduated response, the report reveals that the Commission for protection of rights has only transmitted 60 cases to prosecutors. The report also calls for the strengthening of the fight against commercial counterfeiting as well as for an analysis on the possibility to model a system of proportional remuneration sharing.

### **European Law - Draft Regulation on personal data protection**

On 21 October 2013, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted by a large majority the European Union's proposal for a Regulation on the protection of personal data. The Members of the European Parliament have introduced various additional clauses including measures for stronger protection of transfers of data to countries located outside the European Union, the obligation to obtain the explicit consent of individuals and the right to request, free of charge, the erasure of personal data.

### **European Law - Websites selling digital content**

On 14 October 2013, the European Commission published the results of its "Sweep" on websites selling digital content. Further to this operation, 116 websites have complied with the legislation of the European Union on the protection of consumers. The main issues revealed during these investigations concerned unfair contractual terms and the lack of consumer information.

### **International - OECD guidelines on privacy**

The Council of Ministers of the Organisation for Economic Co-operation and Development (OECD) adopted on 11 July 2013 the new version of its Guidelines on privacy. The main changes to the previous version consist in a new section dedicated to the strengthening of corporate accountability for privacy and the introduction of a notification duty regarding security breaches.

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## **6. Procedures**

### **European Law - Criminal procedure**

#### **Right to be advised by a lawyer**

The [Directive proposed by the European Commission](#) on the right of all citizens in the European Union to be advised by a lawyer when facing criminal proceedings has been adopted by the Council of the European Union on 7 October 2013.

This Directive is part of new measures aiming at guaranteeing minimum rights to a fair trial within the European Union, namely the right to be informed during criminal proceedings and the establishment of minimum standards on the rights, support and protection of victims of crime.

The Directive on the right to be advised by a lawyer provides, notably, for:

- the right for suspected and accused persons to be represented by a lawyer;
- the right for suspected or accused persons to confidential communication with their lawyer; and
- the right for suspected or accused persons deprived of liberty to communicate with third parties and to be in contact with their country's consulate.

The Directive will be published soon in the European Union Official Journal. Member States will then have three years to transpose it into their national law.

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## **7. Public Law**

### **France - Time-limits for payment**

Order dated 20 September 2013, published in the O.J. dated 8 October 2013, establishes a standard agreement between the authorising officer and the public accountant in order to organise their cooperation with the aim of complying with applicable time-limits for payment (Please refer to the Legal and regulatory update - April 2013).

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## **8. Real Estate**

### **France - Rents: index**

The cost of construction index (ICC) for the second quarter of 2013 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°229, 4 October 2013) amounts to 1637 which corresponds to a 1.74% decrease over a year.

The commercial rents index (ILC) for the second quarter of 2013 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°230, 4 October 2013) amounts to 108.50 which represents an increase of 0.79% over one year.

The tertiary activities rents index (ILAT) for the second quarter of 2013 published by the National Institute of Statistics and Economic Studies (INSEE) (Information Rapide INSEE, n°231, 4 October 2013) amounts to 107.18 which corresponds to an increase of 1.11% over one year.

### **France - Planning authorisations' litigation**

Decree n°2013-879 dated 1<sup>st</sup> October 2013 published in the Official Journal of 2 October 2013 modifies in particular the jurisdiction of administrative courts with respect to the recourse against the planning authorisations granted for the housing construction.

The provisions relating to the jurisdiction of administrative courts apply to recourses initiated between 1<sup>st</sup> December 2013 and 1<sup>st</sup> December 2018.

### **France - Development of housing construction**

Order n°2013-889 dated 3 October 2013 published in the Official Journal of 4 October 2013 allows under certain conditions the authority which delivers planning authorisations to grant exemptions to certain rules of the local planning rules for housing projects.

These provisions entered into force on 5 October 2013.

### **France - Sale of plots of land belonging to the private domain of the French public entities in order to build social housing**

Decrees n°2013-936 and n°2013-937 dated 18 October 2013 published in the Official Journal of 20 October 2013 specify notably the French public entities concerned and the rules to determine the sale price of the plots of land.

These provisions entered into force on 21 October 2013.

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## **9. Tax**

### **France - Trustees' reporting obligations**

The Decree amending Articles 344 G sexes and 344 G septies of Appendix III of the French Tax Code was published in the Official Journal of the French Republic dated 25 October 2013 (Decree n°2013-949 dated 23 October 2013).

The purpose of this Decree is to make the following obligatory for trustees:

- To use official returns established by the French tax authorities to fulfil their reporting obligations in that capacity, and
- To use French language to complete the above mentioned returns.

These new requirements will apply to returns filed by trustees as of 1 January 2014.

As a reminder, if in a trust, one at least of the settlors, beneficiaries deemed to be settlors, or beneficiaries, is French resident for tax purposes, or if the trust has a property or a right located in France, the trustees are subject to reporting obligations in France.

### **France - VAT: new invoicing rules**

The French tax authorities have updated their administrative guidelines to take into account the new invoicing rules regarding VAT, issued by the *2010/45/EU Directive*, implemented in France by the Amending Finance Act for 2012 (*Article 62 of Law n°2012-1510 dated 29 December 2012*) and *decree n°2013-346 dated 24 April 2013* regarding the VAT obligations for invoices and for the storage of electronic invoices and *decree n°2013-350 dated 25 April 2013* regarding invoices sent electronically.

These new invoicing rules apply to invoices issued on or after 1 January 2013.

However, given that companies need time to adapt their processes to comply with these new requirements, the French tax authorities admit that in the case of a tax audit, some of the new obligations would be subject to favourable consideration with respect to invoices issued until 31 December 2013. This tolerance provided by the French tax authorities applies in particular to the obligations related to the time limit for issuing an invoice (*i.e.*, no later than the 15<sup>th</sup> of the month following the month during which the taxable event occurred), and obligations related to the establishment of a reliable audit trail or using an electronic signature to ensure the authenticity of the origin and integrity of content and readability of the invoices ([BOI-TVA-DECLA-30-20 and followings](#)).

### **France - Extension of the research tax credit to certain innovation expenses for SMEs**

The French tax authorities have commented the extension of the research tax credit to some innovation expenditure for micro, small and medium-sized enterprises within the meaning of Community law ("**SMEs**"), issued by the Finance Act for 2013 (*Article 71 of Law n°2012-1509 dated 29 December 2012*). This new rule enables SMEs to take into account certain expenses related to the development of prototypes or the installation of pilot plants for new products in the basis for the calculation of research tax credit. Eligible expenses are capped to 400,000 euros per year and the rate of the research tax credit for these expenses is 20% (*Article 22 quater B, II-k of the French Tax Code – BOI-BIC-RICI-10-10-30 and BOI-BIC-RICI-10-10-45 dated 9 October 2013*).

#### **France - Amendment to the Franco-Belgian double tax treaty**

The amendment dated 7 July 2009 of the Franco-Belgian double tax treaty dated 10 March 1964 introducing an exchange of information clause in accordance with the latest OECD standard has been published in the Official Journal of the French Republic (*Decree n°2013-881 dated 1 October 2013*).

This agreement entered into force on 1 July 2013.

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## **10. Telecoms**

### **France - ARCEP proposes adjustments to the boundaries between very and less densely populated areas for fibre to the home (FTTH) network rollouts**

On October 21, 2013 ARCEP launched a public consultation on a draft decision that brings changes to the list of municipalities designated as very densely populated areas, to satisfy a dual regional development and competition objective. For now, the general terms and conditions governing FTTH network sharing in the whole of France are defined in ARCEP Decision n°2009-1106 (of 22 December 2009) which also defines very high density areas as densely populated municipalities where infrastructure-based competition close to customer premises is possible. The 2009 decision is based on data issued by INSEE on population and residential distribution data for every French municipality to draft the list of very high density areas. This is why the Economic Modernisation Act - or LME (*loi de modernisation de l'économie*) - of 2008 provides for an exception in these areas, and particularly depending on the size of the building being considered, to reduce infrastructure sharing schemes to only the indoor portion of the network. In the rest of France, the shared section of the FTTH network generally covers several neighbourhoods and, with certain exceptions, the concentration point serves a minimum one thousand households. The draft decision that ARCEP is suggesting that experience and feedback be taken into account and that adjustments be made to the list of areas designated as being densely populated. The most sparsely populated municipalities and those where FTTH rollouts have not yet begun from the list of very high density areas would be removed from the list of very densely populated areas (the list of very densely populated areas would decrease from 148 municipalities representing around 6 million households to 107 municipalities or around 5.5 million households). Therefore the project would increase resource pooling in 42 municipalities - representing 525,000 households - that were originally listed as very high density areas. This change would enable the locations in question to benefit from increased FTTH network sharing, which would help improve both the appeal of performing rollouts in those areas and the prospects for a more competitive market, in terms of the services made available to local consumers and businesses. Lastly, with a view to achieving these same regional development and competition objectives, ARCEP will be submitting a draft recommendation to public consultation before the end of the year, which will specify the regulatory provisions that apply to small buildings (fewer than 12 residential or business premises) located in very high density areas. The public consultation will end on November 18, 2013.

### **European Law - The Body of European Regulators for Electronic Communications (BEREC) publishes its statement on the legislative package "Connected Continent"**

On October 17, 2013 BEREC has published its opinion of the European Commission's (EC) proposal in order to complete the European single market and to achieve a Connected Continent. BEREC supports the EC's objectives to promote the single market and to ensure optimal conditions for greater investment in the sector of telecommunications. However, BEREC regrets the precipitation in which the draft is to be approved although the proposals represent a shift away from the current approach based on pro-competitive regulation. BEREC express concerns about the fact that the draft regulation will jeopardise the integrity of the EU framework and its achievements, with respect to investment, competition and consumer benefit. BEREC also notes that the proposals represent an aggregation of several unrelated measures and thus thinks that the proposals might undermine legal certainty even if the EC's main objective is to create a predictable regulatory environment. BEREC is also concerned that the proposals represent a substantial shift in the balance of power between the EC, member states and national regulatory authorities, centralising competences at the EU level. These proposals risk to undermining the ability of national regulators, whether acting individually or collectively, to take appropriate and proportionate regulatory action in all the relevant markets. BEREC would have welcomed the opportunity to cooperate with the Commission during the conception and elaboration of this legislative initiative, which was also not subject to a public consultation, and therefore did not benefit from the input of consumers, industry stakeholders and national regulators. As a result, the Commission has not had the opportunity to test the extent to which its proposals will deliver on its stated objectives, or the extent to which they are operationally feasible or effective, or might otherwise have unintended consequences.



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## 11. Transport

### France - Draft bill on railway reform

The Bill on the railway reform was presented to the Council of Ministers and registered at the National Assembly on 16 October 2013. It aims at modernizing the organization of the railway transport system and at anticipating the opening up to competition of the sector. Under the Bill, a new SNCF group will be formed comprising the French National Railways (SNCF) and the infrastructure manager, the French Railway Network (RFF), putting an end to their current separation which engendered additional costs and problems of rail traffic coordination. Besides, the Bill seeks to stabilise the debts of SNCF and RFF, and limits will be imposed on SNCF Network which will restrict the amount the infrastructure manager is able to borrow to finance infrastructure projects. The aim of this measure is to ensure public bodies requesting investment in the network, such as regional governments, make a fair contribution towards the cost of enhancements.

### European Law - Adoption of a new Union Customs Code

The EU Regulation n°952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code was published in the OJ of the EU on 10 October 2013. It essentially aims at harmonizing customs rules and procedures between Member States, at facilitating the procedure by shifting to a paperless fully electronic environment and at accelerating it *vis-à-vis* the authorised economic operator. The new Customs Code will enter into force on 1<sup>st</sup> June 2016.

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