

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 2014.

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 in 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 for farming, food and forest**, n°1548, filed before the National Assembly on November 13, 2013 – adopted in first reading by the National Assembly on January 14, 2014 and by the Senate on April 15, 2014 – adopted in second reading at the National Assembly on July 9, 2014 and then at the Senate on July 21, 2014 – CMP (agreement) – Seisin of the Constitutional Council on September 15, 2014.
- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 28, 2014.
- **Draft law for the modernisation and simplification of law and procedures in relation to justice and home affairs**, n°175, filed on November 27, 2013 – adopted in first reading by the Senate on January 23, 2014 and by the National Assembly on April 16, 2014 – Failure of the CMP – Filed before the National Assembly in new reading on May 14, 2014.
- **Draft law relating to the limitation of the use of biometric technology**, n°361, filed at the Senate on February 12, 2014 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014.
- **Draft law relating to relating to various provisions in connection with criminal procedure for the transposition of EU Law into French Law**, n°482, filed before the Senate on April 23, 2014.
- **Draft law for the simplification of existing regulations for the business sector**, n°2060, filed on June 25, 2014 – Adopted in first

reading by the National Assembly on July 22, 2014.

- **Draft law relating to various provisions in connection with economic and financial matters for the transposition of EU Law into French Law**, n°2148, filed on July 16, 2014. Adopted in first reading by the National Assembly on September 18, 2014.
- **Draft law relating to energy transition towards green growth**, n°2188, filed on July 30, 2014. Under examination in first reading at the National Assembly since October 1, 2014.

Enacted laws

- **Ordinance n°2014-1090 of September 26, 2014 relating to the accessibility of institutions open to the public, public transport, housing buildings and roads for handicapped people** – OJ of September 27, 2014.
- **Ordinance n°2014-1088 of September 26, 2014 which completes Ordinance n°2014-326 of March 12, 2014 which reforms French insolvency** – OJ of September 27, 2014.
- **Law n°2014-1098 of September 29, 2014 which authorises the approval of the agreement between France and the USA to improve international tax compliance and to implement the law relating to tax requirements for foreign accounts (FATCA)** - OJ of September 30, 2014.

1. Audiovisual

France - Decree amending rules on the aid to press delivery

The decree n°2014-1080 reforming the public fund for the aid to press delivery amends the decree n°98-1009 of 6 November 1998 on the public fund for the aid to press delivery, which allows press businesses to obtain a financial aid to deliver their publications of political or general information to subscribers, without using public postal and shipping services.

Amongst the amendments, the new decree distinguishes two categories of aids to press delivery:

-the aid granted to press publishers ; and

-the aid granted to companies responsible of press delivery on behalf of third-parties press group.

The basis of calculation of the aid has also been amended.

France - Decrees setting the operating subsidy for radio broadcasting and the scale of the selective subsidy to radio broadcasting

Two decrees dated 26 August 2014 respectively set the operating subsidy for radio broadcasting and the scale of the selective subsidy to radio broadcasting, in accordance with articles 5 and 6 of decree n°2006-1067 of 25 August 2006 implementing article 80 of the law n°86-1067 of 30 September 1986 on the freedom of communication.

2. Banking

France - Crowdfunding

Decree n°2014-1053 dated 16 September 2014 on the crowdfunding ([JORF n°0215 dated 17 September 2014](#)) amends the French Monetary and Financial Code in order to set out the thresholds applicable to the equity crowdfunding and crowdfunding loans, the rules applicable to the functioning of crowdfunding and the conditions for exercising the crowdfunding intermediary or crowdfund advisor activities professionally. A label has been created to identify the websites that comply with the new rules implemented.

The equity crowdfunding and crowdfunding loans cannot exceed a million euros per project.

Decree n°2014-1053 has come into force on 1st October 2014.

3. Capital Markets

France - Setting up a legal framework for crowdfunding

The French ACPR and AMF published a position in respect to non-guaranteed placement and crowdfunding that sets out the relevant applicable regime as of 1 October 2014 as well as guidelines entitled «*S'informer sur le nouveau cadre applicable au financement participatif (crowdfunding)* ». The ACPR-AMF position can be consulted on the ACPR website under reference [2014-P-08](#), and on the AMF website, under reference [DOC-2014-10](#).

France - Delay shortening to D+2 for securities clearing and settlement

As of 6 October 2014, the delay for securities clearing and settlement will be two days, as opposed to the 3 days previously agreed ([AMF decision dated 1 September 2014](#)). This is an early transition given that the effective date set by [Regulation \(EU\) n°909/2014](#) is 1 January 2015. These new rules will apply to all securities traded on regulated markets and alternative trading systems such as Alternext.

France - Setting up a framework for high frequency trading (HFT)

A French *Arrêté* dated 28 August 2014 approved two new clauses to the [AMF General regulations](#) in order to set a framework on automated and high frequency trading. These clauses further specify the rules set out in the Law on the Separation and Regulation of Banking Activities dated 26 July 2013 and more particularly the obligations for investment service providers using a defined automated processing service.

4. Competition

European Law - Competition – Publication of results of retail food study

The results of a comprehensive [study](#) about the evolution of choice and innovation in food products in Europe during the last decade were published on 2 October 2014 by the European Commission. Following repeated concerns raised by various stakeholders, the Commission had launched in December 2012 a comprehensive study on the modern retail sector to measure (i) how choice and innovation evolved for consumers on shelves and (ii) the evolution of a number of factors affecting markets.

Interested third parties can submit their views and comments until 30 January 2015.

5. Consumer law

France - French class action – Adoption of the implementing Decree

Decree n°2014-1081 on class actions (*action de groupe*) in relation to consumer protection was issued on 24 September 2014 to provide for the implementation of Articles L. 423-1 et seq. of the French Consumer Code, which was created by Article 1 of the Consumer Protection Law no. 2014-344 of 14 March 2014. The *action de groupe* offers consumers an alternative way to deal with collective redress and provides for the possibility to regroup claims of damages from a large number of consumers in a similar situation who have suffered damages caused by the same professional. The Decree clarifies that the territorial jurisdiction is conferred to the court of first instance of the defendant's domicile. When the defendant is established in another country or has no identified domicile or residence, jurisdiction falls with the Paris court of first instance. The Decree also provides clarifications on the content of information provided to concerned consumers, as regards the ordinary and simplified procedure, and the consequences of them joining the group of consumers seeking redress.

The Decree entered into force on 1st October 2014.

France - Information and right of withdrawal – Adoption of the Decree implementing Directive 2011/83/UE

Decree n°2014-1061 on pre-contractual and contractual information requirements for consumers and on the right of withdrawal was issued on 17 September 2014. The Decree completes the transposition into national law of Directive 2011/83/EU of 25 October 2011 on consumer rights. The text pursues a threefold objective:

-It sets out the general information that professionals, sellers of goods or providers of services, have to communicate to consumers at points of sales prior to the conclusion of a contract or an act of purchase, but also prior to the conclusion of a contract by means of distance communication or away from business premises.

-In relation to distance and off-premises contracts, the Decree provides a model withdrawal form, mandatory document, which these contracts have to contain and a standard information notice on the exercise of the right of withdrawal by the consumer.

-The text repeals the provisions of the French Consumer Code establishing a threshold above which the consumer can withdraw from the contract that binds him to a professional who did not comply with his obligation to deliver and those setting out the exceptions to the principle prohibiting sales with bonuses and the list of exceptions to the principle prohibiting such operations.

The text entered into force on 22 September 2014.

6. Corporate

France - Ordinance related to corporate law

Ordinance n°2014-863 dated July 31st, 2014, that was passed pursuant to Article 3 of Law n°2014-1 dated January 2nd, 2014, comprises several substantial measures:

-Modification of the rights constituting odd lots: in the event of a capital increase (via capitalizing earnings, retained earnings or share premiums), the general assembly may decide that the rights constituting odd lots are not negotiable, non-transferable and that the relevant equity shares will be transferred. These provisions will come into force as of April 1st, 2015.

-Modification of the regulated agreements regime in limited companies (*sociétés anonymes*): agreements entered into with a wholly owned subsidiary are now outside the scope of the regulated agreements regime. The Ordonnance also institutes from now on an obligation for board of directors or supervisory boards to justify their decision authorizing such agreements.

-Announcement of the modification of the pre-emptive subscription right regime: the subscription period and the negotiation period do not totally coincide anymore; the difference is expected to be of two days. These provisions will enter into force at a date determined in a decree (which shall also give more specific information with respect to the methods of information of the shareholders as to how they may exercise and negotiate their pre-emptive right) and no later than October 1st, 2016.

- Authorization of chains of *EURL*.

France - Publication of the application decree of the Warsmann law determining the conditions under which the management report of corporations subject to the obligation to publish their annual accounts shall be made available

Decree n°2014-1063 dated September 18th, 2014 aims at simplifying certain corporate law provisions:

-The methods of appointment of auditors when a *société anonyme* (SA) is incorporated or in the event of a capital increase of a *société à responsabilité limitée* (SARL) or a SA is now aligned on the contribution in kind regime applicable to the incorporation of a SARL;

-A new obligation is made to make available to share subscribers or shareholders the decision not to appoint a contribution appraiser for certain contribution in kind;

-It is no longer required to provide the members of the board of directors and the auditors with the list and object of agreements dealing with usual transactions and entered into under normal conditions.

The decree entered into force on September 21st, 2014.

France - An Ordinance deeply modifies regulations with respect to corporations in which the State or its public entities own shares, including minority ownership.

Ordinance n°2014-948 dated August 20th, 2014, that was passed pursuant to law 2014-1 dated January 2nd, 2014, relates to the governance and operations on the capital of companies with public participation, and Decree 2014-949 of the same day modifies the rules applicable to certain commercial companies in which the State or its public entities own a participation.

The provisions regarding the operations on the capital of companies with public participation (transfer and acquisition of State's participation) entered into force on August 24th, 2014. However, board of directors or supervisory boards of the relevant companies should determine the date on which they will start complying with the new regulations regarding governance matters (such date not being later than the day following the first ordinary shareholder's meeting that will occur after January 1st, 2017). Articles of incorporation of the relevant companies should be modified accordingly no later than during the shareholder's meeting mentioned above.

France - Proposed law with a view to simplifying, clarifying and updating of the Commercial Code

This proposed law (proposed law Soilihi, August 4th, 2014) is part of the global process aiming at simplifying the legal environment of companies in order to develop the competitiveness of French economy and to make budget cuts. It comprises several provisions regarding corporate law, in particular *sociétés civiles*, *sociétés commerciales* and specifically SARL, SA and *sociétés par actions simplifiées* (SAS), transferable securities and auditors.

European Law - Commission Services launch a consultation on trans-borders mergers and demergers

The consultation aims at collecting information that will allow the Commission to assess the necessity to change the current regulations on trans-border operations. See the press release.

European Law - Publication in the Official Journal of the European Union of an implementing regulation establishing forms, templates, and standardized procedures for notices regarding the right of establishment and freedom to provide services

An implementing regulation n°926/2014 adopted by the Commission on August 27th 2014, published in the Official Journal dated August 28th, defines technical implementing norms regarding forms, templates and standardized procedures for notices regarding the right of establishment and freedom to provide services.

This regulation deals with the following formalities:

- Notice related to the right of establishment of a branch;
- Notice related to the changes in the branch information; and
- Notice related to the freedom to provide services.

This regulation enters into force the 20th day following its publication in the Official Journal of the European Union, i.e. as of September 17th, 2014.

7. Employment

France - Determination of the contents of the additional mandatory health insurance plan for employees

The Decree n°2014-1025 published in the Official Journal on 10th September 2014 provides for the minimum level of health insurance coverage that companies must put in place for their employees by 1 January 2016. As a consequence, companies will have to begin negotiations on this topic as soon as possible.

France - Information and consultation of the Works Council regarding vocational training

The Decree n°2014-1045 published in the Official Journal on 14th September 2014 links the provisions of the French Labor Code concerning the information and consultation process related to vocational and apprenticeship training with the modifications of the French Labor Code provisions introduced by Law n°2014-288 on 5th March 2014 in relation to vocational training, job training and social democracy. (Please refer to the Legal and regulatory update - March 2014).

Firstly, it lists the documents to be transmitted to the Works Council, including:

- the replacement of the employer's declaration to the Administrative Authority related to its participation in the development of vocational training by sending information on the qualifying rules of its employees for vocational training,
- the replacement of the individual right to training (*Droit Individuel à la Formation*) with the personal training account.

It also specifies the conditions under which companies can internally organize the consultation schedule of the Works Council on vocational training.

France - Flexibility on the right of residency and employment of foreigners

The Decree n°2014-921 published in the Official Journal on 21st August 2014 provides for a flexibility of the rules regarding the right of residency and work for certain categories of foreigners. This flexibility means:

- a medical examination when applying for an "employee on assignment" or "skills and talent" card is no longer necessary,
- the application for temporary residence permits for foreign graduates has been simplified,
- Codification of the temporary long stay visa "vacation – work".

8. Environment

France - Classified installations

Decree n°2014-996 dated 2 September 2014 published in the Official Journal of 4 September 2014 amends the classified installations' nomenclature, notably by raising the threshold of the authorisation regime as regards the biogas plants under the section 2781-1 of the nomenclature. This threshold increases from 50 to 60 tons of material processed per day.

9. Insolvency proceedings

France - French insolvency reform

Following the enabling law of the 2nd January 2014, the Government issued on the 26 September 2014 a second order that corrects and completes some of the provisions of the order n°2014-326 of the 12th March 2014. The main contributions are the following:

The order confirms the impossibility for the Court to examine a matter of its own motion which was provided for in Article L 621-12 of the French Commercial Code in the case of a conversion of safeguard proceedings into reorganization proceedings. The same applies for the submission of a matter to a court on its own motion in the case of a judicial liquidation after completion (Article L643-13 of the French Commercial Code). The suppression of this referral case was decided in compliance with the case law of the French Constitutional Court.

Furthermore, the order completes Articles L 631-7 and L 641-1 of the French Commercial Code by adding a procedural rule that consists in inviting the debtor to submit his observations before the Court decides on another bankruptcy proceedings than the one asked for (judicial liquidation instead of reorganization proceedings; reorganization proceedings instead of judicial liquidation).

10. Insurance

France - Consumer law – precontractual and contractual information

Decree 2014-1061 dated 17 September 2014 implementing consumer Law 2014-344 amends the French Insurance Code to refer to the new provisions introduced in the Consumer Code on distance contracts relating particularly to pre-contractual information. It also includes a withdrawal form, which is a mandatory document, to be included in distance contracts and a sample information notice concerning the exercise of the right of withdrawal by the consumer. The decree entered into effect on 20 September.

France - Insurance of persons – Coinsurance

The law n°2014-856 dated 31 July 2014 on the social and solidarity based economy impacts the insurance industry notably by allowing coinsurance between actors governed by the French Insurance Code, the French Mutuality Code and the French Social Security Code. This possibility, however, is restricted to mandatory and voluntary collective operations (subject for voluntary operations to exceptions to be defined by an order), covering the risk of death, risk affecting the physical integrity of the person or maternity, risks relating to work incapacity or disability. The modalities are defined in Articles L. 145-2, I of the French Insurance Code, L. 227-1, I of the French Mutuality Code, L. 932-14-1, I of the French Social Security Code.

France - Life insurance – contracts "eurocroissance"

Decree 2014-1008 dated 4 September 2014 implementing Article L. 134-5 of the French Insurance Code created by Order of 26 June 2014 (please

refer to the [Legal and regulatory update – June 2014](#)) amends the regulatory part of the French Insurance Code by including a Chapter IV in Book I. It specifies the content of the contracts covering commitments giving rise to creation of a diversification provision, the term of their guarantee (which may be total or partial) and the operation of the auxiliary affectation accounting to be held by insurers. In particular, it provides that the amount of capital or annuity is guaranteed in the event of death at the term defined by the contract, which may not be less than 8 years. The decree is supplemented by an [Order dated 12 September 2014](#), setting out notably the modalities of information of policyholders wishing to redirect their savings into a contract covering commitments giving rise to creation of a diversification provision. The Decree and the Order came respectively into effect on 5 September and 13 September.

France - Life insurance – contracts "vie generation"

[Decree 2014-1011 dated 5 September 2014](#) in implementation of Law 2013-1279 dated 29 December 2013 ([please refer to the Legal and regulatory update – January 2014](#)) specifies the assets eligible and procedures for assessing and monitoring investment quotas to benefit from the favorable tax regime attached to contracts "vie generation". It sets out the conditions to be met by companies whose securities are eligible as units of account for these contracts and the modalities to assess the 33% investment quota in riskier or priority areas. The Decree came into effect on 8 September.

11. Intellectual Property

France - Report from the French Court of Auditors' on anti-counterfeiting policies

Following its control of the public policy on the fight against counterfeiting, the First President of the French Court of Auditors addressed several observations to the Prime Minister in a [report published on 2 September 2014](#).

According to the Court, public policies in this field must be strengthened. The Court thus expresses six recommendations, including:

- the creation, at inter-ministerial level, of a body dedicated to strategic thinking and operational control on the fight against counterfeiting ;
- the strengthening of the National Anti-Counterfeiting Committee (CNAC); and
- providing the judicial courts with all necessary means to punish infringement more frequently and severely (including by issuing a government circular on criminal policy in the field of counterfeiting and by specializing the judges in the field of intellectual property);

The Prime Minister, to whom the report was communicated in advance, replied on 22 August 2014. Even though, overall, the Prime Minister supports the recommendations made by the Court, he notably indicated that his government is reluctant to a specialization of judges.

12. Procedures

France - Civil procedure

Class action

Publication of the implementing decree of September 24, 2014 relating to class actions in the consumers sector

[The implementing decree n°2014-1081 of September 24, 2014 relating to class actions in the consumers sector](#) resulting from the Consumer Law of March 17, 2014, entered into force on October 1st, 2014, thus allowing the first class actions to be filed before French courts.

13. Public Law

France - Simplification of public procurement rules

Decree n°2014-1097 dated 26 September 2014, published in the O.J. dated 28 September 2014, implements into national law some provisions of EU Directives 2014/24/UE and 2014/25/UE on public procurement (please refer to the Legal and regulatory update - February 2014) to accelerate the application of new public procurement rules.

The Decree sets limits on the requirements regarding the bidders' financial capacities in order to provide larger access to public procurement contracts. Moreover, the decree reduces various obligations for bidders such as transmitting documents which are freely available online or which have been transmitted to the contracting authority for the purpose of a previous tender and still remain valid. The decree also creates a new type of public contract (an innovation partnership) which is aimed at supporting research and development in public procurement contracts. It will enter into force on 1 October 2014.

14. Tax

France - Corporate income tax

Termination of business: evolution of the criteria characterizing a change of business activity

The French Tax Authorities (FTA) updated their guidelines and detailed the criteria characterizing a change of business activity leading to the termination of business for French tax purposes, thereby tightening the conditions to be met so that the transfer of losses is granted with respect to restructuring operations (BOI-BIC-CESS-10-20-30; BOI-IS-CESS-10).

Special profit-sharing reserve: updates on the calculation

The FTA updated their guidelines and drew the consequences of the decision of the Conseil d'Etat dated 20 March 2013 (n°347633) providing that for the purpose of the calculation of the special profit-sharing reserve:

-the corporate income tax corresponding to the profits that a company realized during a given fiscal year, which must be deducted from such profits with respect to the calculation of corporate income tax, is to be understood as the corporate income tax, at the ordinary tax rate, resulting from the common rules governing corporate income tax basis and assessment; and

-the eventual tax credits deductible from corporate income tax shall not be taken into account for the purpose of the calculation of the special profit-sharing reserve (BOI-BIC-PTP-10-10-20-10 n°200 et n°210).

Updates on the applicable VAT rates

The FTA updated their guidelines in order to take into account the changes of VAT rates effective since 1 January 2014 (BOI-TVA-LIQ-10; BOI-TVA-LIQ-20; BOI-TVA-LIQ-20-10; BOI-TVA-LIQ-20-20; BOI-TVA-LIQ-30; BOI-TVA-LIQ-30-10-10; BOI-TVA-LIQ-30-10-20; BOI-TVA-LIQ-30-20-30; BOI-TVA-LIQ-30-20-90; BOI-TVA-LIQ-30-20-90-10; BOI-TVA-LIQ-30-20-90-30; BOI-TVA-LIQ-30-20-90-40; BOI-TVA-SECT-80-10-10; BOI-ANNX-000208; BOI-ANNX-000428).

France - Taxation of investors and managers

Real estate taxation: new rules regarding capital gains realized upon the transfer of building plots

The FTA updated their guidelines regarding capital gains realized upon the transfer of building plots (*terrains à bâtir*) as from 1 September 2014 (BOI-RFPI-PVI-20-20; BOI-RFPI-PVINR-20-10).

-the tax regime applicable to capital gains realized upon the transfer of building plots is harmonized with the regime applicable to the transfer of all other real estate properties as regards both individual income tax and social contributions; and

-the tax rebates for holding period applicable with respect to individual income tax and social security contributions are to be uniformly applied to all real estate properties.

As a reminder, capital gains realized upon the transfer of real estate properties are fully exempt after 22 years of ownership as regards individual income tax and 30 years of ownership as regards social contributions.

Besides, an additional 30% tax rebate applies with respect to capital gains realized upon the transfer of building plots, preceded by an undertaking to sell signed between 1 September 2014 and 31 December 2015.

15. Telecoms

France - ARCEP launches a public consultation on its draft analysis of the market for fixed and mobile voice call and SMS termination

After having held a first consultation in 2013, and solicited the opinion of the French Competition Authority, ARCEP launches a new public consultation on its draft analysis of the market for fixed and mobile voice call and SMS termination in Metropolitan France and the overseas territories, from 2014 to 2017, which includes the proposed pricing framework. The consultation will run until 12 October 2014. This draft analysis will then be notified to the European Commission, with the final decision due to be adopted before the end of the year.

The 2011-2013 regulatory pricing period provided the opportunity to complete the process of decreasing fixed and mobile CT rates down to target incremental cost levels. The central aim of the 2014-2017 regulatory period is to consolidate the newly acquired status quo. ARCEP considers a moderate change in maximum fixed and mobile voice call termination rates to be justified.

Furthermore, to promote the conditions that will ensure fair and balanced trade between the regions, ARCEP is proposing a similar maximum termination rate for Metropolitan France and the French overseas territories.

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