

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 June 2016.

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 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 27, 2014.
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014 – Adopted in second reading by the National Assembly on March 17, 2016, amended in second reading by the Senate on May 12, 2016 – Disagreement in Joint Committee – Text adopted in new reading at the National Assembly on June 23, 2016. Transmission to the Senate on June 24, 2016.
- **Draft law relating to duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in first reading by the National Assembly on March 30, 2015 – Adopted by the Senate on November 18, 2015. Amended in second reading by the National Assembly on March 23, 2016.
- **Law proposal to reform limitations on criminal prosecution**, n°2931, filed on July 1, 2015 – Adopted in first reading by the National Assembly on March 10, 2016 – Under examination at the Senate.
- **Draft law relating to freedom of creation, architecture and heritage**, n°2954, filed at the National Assembly on July 8, 2015 – Adopted in first reading by the National Assembly on October 6, 2015 – Amended in first reading by the Senate on March 1, 2016. Adopted in second reading by the National Assembly on March 22, 2016 – Amended in second reading by the Senate on May 25, 2016 – Convening of a Joint Committee. – Joint Committee's text adopted by the National Assembly on June 21, 2016 and by the Senate on June 29, 2016.
- **Draft law relating to the cancellation of commercial advertising in public television youth programmes**, n°656, filed at the Senate on July 24, 2015 - Adopted in first reading by the Senate on October 21, 2015 - Amended in first reading by the National Assembly on January 14, 2016 – Filed in second reading at the Senate on January 15, 2016.

- **Draft law which ratifies ordinance n°2015-378 dated April 2, 2015 that transposes directive 2009/138/CE on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), n°3005, filed at the National Assembly on July 22, 2015.**
- **Draft law for the enforcement of measures relating to the 21<sup>st</sup> century justice, n°661, filed at the Senate on July 31, 2015 – Adopted in first reading by the Senate on November 5, 2015 – Amended in first reading by the National Assembly on May 24, 2016 - Convening of a Joint Committee – Joint Committee's text transmitted to the National Assembly on June 22, 2016.**
- **Draft law which ratifies ordinance n°2015-899 of July 23, 2015 relating to public procurement – filed before the Senate on October 21, 2015.**
- **Draft law for the integration of the principle of substitution to the legal regime of chemical products, n°3277, filed on November 25, 2015 – Adopted in first reading by the National Assembly on January 14, 2016 – Filed in first reading at the Senate on January 14, 2016.**
- **Draft law relating to the general status of independent administrative authorities and public independent authorities, n°225, filed on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016 - Amended in first reading before the National Assembly on April 28, 2016 – Amended in second reading by the Senate on June 2, 2016.**
- **Draft organic law relating to independent administrative authorities and public independent authorities, n°226, filed at the Senate on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016 - Amended in first reading before the National Assembly on April 28, 2016 – Amended in second reading by the Senate on June 2, 2016.**
- **The Digital Republic bill, n°3318, filed on December 9, 2015 – Adopted by the National Assembly in first reading on January 26, 2016 – Amended in first reading by the Senate on May 3, 2016 - Convening of a Joint Committee – Text of the Joint Committee filed on June 30, 2016.**
- **Draft law to reinforce media freedom, independence and pluralism, n°3465, filed on February 2, 2016 – Adopted in first reading by the National Assembly on March 8, 2016 – Amended in first reading by the Senate on May 26, 2016 - Results of the Joint Committee's work filed on June 14, 2016. Text transmitted to the National Assembly on June 14, 2016 in new reading.**
- **Law proposal for a better definition of abuse of economic dependence, n°3571, filed on March 15, 2016 – Adopted in first reading by the National Assembly on April 28, 2016 – Filed in first reading at the Senate on April 28, 2016.**
- **Draft law on the modernisation of labour law, n°3600, filed on March 24, 2016 – Adopted in first reading by the National Assembly on May 12, 2016 – Amended in first reading at the Senate on June 28, 2016.**
- **Draft law relating to transparency, fight against corruption and modernisation of economic life, n°3623, filed on March 30, 2016 – Adopted in first reading by the National Assembly on June 14, 2016 – Transmission to the Senate on June 15, 2016.**
- **Draft law on Equality and citizenship, n°3679, filed on April 13, 2016 – In debate in first reading at the National Assembly from June 27, 2016.**
- **Draft organic law relating to competence of the defender of rights for the whistleblowers protection, n°3770, filed on May 18, 2016 – Adopted in first reading by the National Assembly on June 14, 2016 – Transmitted to the Senate in first reading on June 14, 2016.**

- **Draft law to supervise corporate compensations**, n°3680, filed on April 13, 2016 – Adopted in first reading by the National Assembly on May 26, 2016.

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## Enacted laws

- **Law n°2016-832 of June 24, 2016 for the fight against discrimination at the rate of social precariousness** – OJ of June 25, 2016.
- **Ordinance n°2016-827 of June 23, 2016 relating to markets in financial instruments** – OJ of June 24, 2016.
- **Law n°2016-819 of June 21, 2016 to reform the repression system of market abuse** – OJ of June 22, 2016.
- **Law n°2016-816 of June 20, 2016 relating to maritime related economy** - OJ of June 21, 2016.
- **Ordinance n°2016-800 of June 16, 2016 relating to research involving human subjects** - OJ of June 17, 2016.
- **Law n°2016-731 of June 3, 2016 which reinforces the fight against organised crime, terrorism and their financing and which improves efficiency and guarantees of criminal procedure** - OJ of June 4, 2016.
- **Ordinance n°2016-728 of June 2, 2016 relating to the status of police superintendents** - OJ of June 3, 2016.
- **Ordinance n°2016-727 of June 2, 2016 relating to the appointment of bailiffs on a usual basis and judicial auctioneers as liquidators or as Assistant Judges in some procedures under the terms of title IV of Book VI of the Commercial Code** - OJ of June 3, 2016.

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## 1. Commercial Law

### France - Use of French language for contractual agreements

Article 5 of the Toubon Law requires the use of French language for agreements entered into with a legal entity governed by French public law, or with a legal entity performing a mission of public service.

In the course of the implementation of this provision, the Committee in charge of examining commercial practices was requested to issue an opinion on the question of whether a French legal entity could draft its contractual documents in English in the course of its business relationship with another French legal entity. In its [Opinion n°16-10](#) of 12 May 2016, the Committee confirmed that the obligation provided in Article 5 of the Toubon Law does not apply to two private legal entities.

However, in the event of litigation, relevant documents may be translated and the use of British or American legal terms may create interpretation hurdles or misunderstandings.

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## 2. Corporate

### France - Reform of the repression system for market abuses

The Law n°2016-819 of 21 June 2016 reforming the repression system for market abuses modifies the sanctions for market abuses under the Financial and Monetary Code, in particular for use or disclosure of inside information and communication of false or misleading information relating to an issuer.

Articles L465-1 to L465-3-56 of the Financial and Monetary Code now provides for sanctions corresponding to a sentence of five years of imprisonment and a fine of EUR 100 million.

Furthermore, the new Article L465-3-6 of the Financial and Monetary Code prevents the accumulation of administrative and criminal sanctions since it prohibits the implementation of any criminal action for application of these sanctions where the AMF has issued a notice of complaint for the same facts.

These provisions came into force on 3 July 2016.

### European Law - Entry into force of the Market Abuse Regulation

The Regulation (UE) n°596/2016 of 16 April 2014 on market abuse (the "Market Abuse Regulation") came into force on 3 July 2016 and amended various aspects of the French financial market law.

In particular, the Market Abuse Regulation amends the rules for insider lists, requiring additional information relating to the persons on the insider list.

Furthermore, the scope of the managers' transactions to be notified is extended, and the notification shall be made within 3 business days.

### European Law - Market Abuse Regulation: publication of the Implementing Regulation relating to the public disclosure and delay of the public disclosure of inside information

The Regulation (UE) n°596/2016 of 16 April 2014 on market abuse (the "**Market Abuse Regulation**") laid down rules relating to the public disclosure of inside information. As an exception to the principle of immediate public disclosure of the inside information by the issuer, the Market Abuse Regulation enables the issuer, under conditions, to delay the public disclosure of inside information.

The Implementing Regulation (UE) n°2016/1055 of 29 June 2016 lays down technical standards with regard to the public disclosure and delay of the public disclosure of inside information by the issuer.

Furthermore, some requirements apply to the issuer's website, which shall in particular ensure that the disclosed inside information clearly indicates the date and time of disclosure and that the information is organized in chronological order.

These provisions came into force on 3 July 2016.

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### 3. Employment

#### France - New grounds of discrimination in the Labor and Criminal codes

Law n°2016-832 dated 24 June 2016, J.O n°0147 dated 25 June 2016 aiming at fighting against discrimination on the grounds of social precariousness institutes a new ground of discrimination in the Labor and Criminal codes. From now on, a condemnation can be ruled on the grounds of a discrimination based on the "*particular vulnerability of a person resulting from its socio-economic situation.*"

The law also implements measures in favor of protecting the people facing extreme poverty or social precariousness.

#### France - Precision on the modalities to inform and consult the Employee Representatives

Decree n°2016-868 dated 29 June 2016, J.O n°0151 dated 30 June 2016 relating to the modalities of the Employee Representatives' information and consultation specifies the new rules resulting from the Law n°2015-994 dated 17 August 2015.

In addition to the consultation timeframe of the Employee Representatives, the Decree specifies the content of information to be delivered during the annual consultation on the economic and financial situation of the company and its social policy. The Decree also specifies the modalities of the "*rescrit social*" for professional equality.

#### France - Measures in favor of qualification of a burn out as occupational disease

Decree n°2016-756 dated 7 June 2016, J.O n°0133 dated 9 June 2016 relating to the improvement of the qualification of mental diseases as occupational diseases and organization of the regional committees for the qualification of occupational diseases (CRRMP) resulting from the law n°2015-994 dated 17 August 2015, has modified the rules regarding the regional committees for the qualification of occupational diseases in order to allow the qualification of occupational diseases for burn out based on individual expertise with a specialist doctor for mental diseases.

The CRRMP is allowed to qualify a disease as occupational when the disease (i) is listed in the table for occupational disease but does not meet all criteria or (ii) is not listed in the table but it is established that the disease is a direct consequence of the regular work of the victim and result in a disability rate of at least 25%.

#### France - Modalities of the painfulness criteria for 2016

Interministries instruction n°2016-178 dated 20 June 2016, NOR: ETST1614584J relating to the implementation of the personal painfulness prevention account states that, from 1 July 2016, 10 painfulness factor are taken into account for the exposition of workers to painfulness: painful posture, manual handling of heavy loads, hazardous chemical agents, mechanical vibrations, extreme temperatures, noise, night working, alternative successive teams, hyperbaric activities, repetitive work.

The instruction also specifies the appreciation of the painfulness exposition whether the implementation is *via* a collective bargaining agreement or an approved branch benchmark or in the absence of such documents.

The date of the declaration of employees exposed in the "Déclaration Sociale Nominative" or the "Déclaration Annuelle des Données Sociales" is also specified whether the employment contract is terminated or not. The instruction states that it is possible to rectify an error in the declaration within three years of the payment of social contributions.

## France - The unemployment fund agreement seeks extension

The Ministry of work has confirmed in a Statement dated du 16 June 2016 that, after failure to negotiate, the current unemployment fund agreement will be extended until a new agreement is signed.

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## 4. Insolvency proceedings

### France - New functions for court bailiffs and legal auctioneers in insolvency procedures

The ordinance (*ordonnance*) n°2016-727, published in the official journal of 3 June 2016, entitles court bailiffs and legal auctioneers to perform the functions of creditor's representative (*mandataire judiciaire*) in the course of professional recovery proceedings (*procédures de rétablissement professionnel*) and judicial liquidations opened in respect of companies with no employees and with an annual turnover lower than or equal to 100,000 euros.

### France - Publication in the official journal of two ministerial decrees (*arrêtés*) relating to the simplified recovery procedure of small claims (*procédure simplifiée de recouvrement de petites créances*)

Ministerial decree (*arrêté*) dated 3 June 2016 published in the official journal of 8 June 2016 establishing a model of letter and forms regarding the simplified recovery procedure of small claims.

Ministerial decree (*arrêté*) dated 3 June 2016 published in the official journal of 8 June 2016 relating to the electronic implementation of the simplified recovery procedure of small claims.

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## 5. Insurance

### France - Law on the fight against organised crime, terrorism and their financing

The Law n°2016-731 of 3 June 2016 (the "**Law**") strengthens the existing provisions for the fight against money laundering, terrorist financing and counterfeiting. The Law strengthens TRACFIN's powers and authorises the Government to implement the Anti-Money Laundering Directive (EU) 2015/849 by means of an ordinance. Its main provisions concern, in particular:

- Strengthening reporting requirement to declare international funds transfer;
- Tracing operations and limitation of amounts stored on prepaid cards;
- Presumption of illicit origin of the funds and offence of money-laundering;
- Designation by TRACFIN towards its members, in particular banks, of the geographic areas, operations and persons who present a high risk of money-laundering or terrorist financing;
- Right of the French card scheme (*GIE Cartes Bancaires*) to disclose various information and documents to TRACFIN;
- Increased sanction of the counterfeiting offense perpetrated by an organised group (from now on, imprisonment of up to 7 years and a fine of up to 750 000 Euros); and
- Extension of the application of the provisions of Article 61-1 of the Criminal Procedure Code relating to free hearing to the hearings carried out by the HADOPI (the French High Authority of Diffusion on the Art Works and Protection).

### **France - Compulsory professional liability insurance for advisors and intermediaries in equity investments**

The [Decree n°2016-799 of 16 June 2016](#) (the "**Decree**") sets out the insurance obligations of professional liability insurance for advisors and intermediaries in equity investments.

The Decree specifies the modalities pursuant to which these professionals must justify at any time, that they hold an insurance contract covering any financial consequences arising from their professional liability in case of any breach of their professional duties.

The Decree entered into force on 1<sup>st</sup> July 2016.

### **France - Compulsory professional liability insurance for geothermal professionals**

The [Decree n°2016-835 of 24 June 2016](#) (the "**Decree**") specifies the insurance obligations of professional involved in the design and development of small-scale thermal works and carrying out engineering feasibility assessments relating to the geological context in the planting zone for mall-scale geothermal drilling.

The provisions relating to the applicable insurance obligations will enter into force on 1<sup>st</sup> January 2017.

### **France - Information provided to insureds – ability to choose the professional repairer**

The [Order of 17 June 2016](#) (the "**Order**"), renders applicable the provisions of article 63 of the Law n°2014-344 of 17 March 2014 which provides that all compulsory motor civil liability insurance contracts must specify the ability for the insured and in case of damages covered by the contract, to choose the professional repairer to which the insured wishes to have recourse.

The Order sets out the modalities under which insureds must be informed by the insurer of their faculty to choose the professional repairer, at the time of the filing of a claim.

The Order will enter into force the last day of the second month following the publication.

### **France - Statement of bodily injury carried by a third party – a template form fixation**

The [Order of 27 May 2016](#) (the "**Order**") provides for a template S3743 form "Statement of bodily injury carried by a third party" used by welfare bodies in the context of recourse against the liable third party of a motor vehicle accident and registered with the general secretary of public action under CERFA number 15263\*01. The template form is available on welfare bodies' websites.

### **European Law - Solvency II: Implementing Regulation on technical information for calculation of technical provisions and basic own funds**

On 3 June 2016, the [European Commission Implementing Regulation \(EU\) 2016/869](#) (the "**Implementing Regulation**") laying down technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with the Solvency II Directive (the "**Directive**") was published in the Official Journal ("**OJ**") of the European Union ("**EU**").

For each relevant currency, the technical information to calculate the best estimate, the volatility adjustment and the volatility in accordance with the

Directive will be the following:

- The relevant risk-free rate term structures set out in Annex I;
- The fundamental spreads for the calculation of the matching adjustment set out in Annex II;
- For each relevant national insurance market the volatility adjustments set out in Annex III.

The Implementing Regulation entered into force on the day following the day of its publication in the OJ.

#### **European Law - Joint statement on United States and the EU negotiations for bilateral agreement**

On 27 May 2016, the European Commission published a joint statement on United States and the EU negotiations for a bilateral agreement on insurance and reinsurance measures.

The statement indicates that both sides agreed to continue in good faith to pursue an agreement on matters relating to group supervision, exchange of confidential information between supervisory authorities on both sides, and reinsurance supervision, including collateral.

#### **European Law - Official translations of EIOPA preparatory guidelines on the Insurance Distribution Directive**

On 2 June 2016, the European Insurance and Occupational Pensions Authority ("EIOPA") announced that its preparatory guidelines on product oversight and governance arrangements for manufacturers and distributors of insurance products have been translated into all the official languages of EU.

The objective of these guidelines is to provide early guidance, to support national competent authorities and market participants with the preparation of the implementation of the Insurance Distribution Directive.

National competent authorities must now notify EIOPA within two months whether they comply or intend to comply with the guidelines. In the absence of a response by this deadline, national competent authorities will be considered non-compliant and reported as such.

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## **6. Intellectual Property**

### **France - Law on the fight against organised crime, terrorism and their financing**

Please refer to the Insurance section.

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## **7. Life Sciences**

### **France - Adoption of the French government order relating to study involving human persons pursuant to the Public Health Law dated 26 January 2016**

The Order n°2016-800 dated 16 June 2016 relating to studies involving human persons (J.O n°0140 of 17 June 2016, text n°19) was taken pursuant to Article 216 II of the French Public Health Law dated 26 January 2016, which gives authority to the government to adapt French law to European law or other legislative provisions through governmental orders.



This Order aims, in particular, at adapting French legislation on clinical trials to Regulation (EU) n°536/2014 dated 16 April 2014 on clinical trials on medicinal products for human use, and introducing additional regulations for coordination of ethics committees.

## **France - New security obligations to ensure protection of information systems of vital importance related to health products**

Operators of vital importance ("OVI") are public or private legal entities whose activities are deemed as essential or presenting serious danger for the nation. The list of OVI is confidential because of the national security issues at stake. This status implies specific obligations which have been partially defined by the Order dated 10 June 2016 laying down security rules and declaration process for information systems of vital importance and of security breach related to the sub-sector of activities of vital importance "Health products" (J.O n°0145 of 23 June 2016, text n°3).

This Order entered into force on 1<sup>st</sup> July 2016 and sets forth, in particular, the safety rules for information systems (appendix I), the deadlines for implementing those rules (appendix II), the declaration process of the list of information systems of vital importance to the French National Cybersecurity Agency (ANSSI) (appendix III), as well as the declaration process in the event of certain types of breach of security or operation of these systems (appendix IV). Only appendix I has been published, the other appendices will be notified on demand.

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## **8. Procedures**

### **France - Criminal procedure**

- New orientations in the criminal policy of the Ministry of Justice

On 2 June 2016, Jean-Jacques Urvoas released a Circular on the criminal policy (CRIM-2016-06/E1/02.06.2016) in which the main orientations of his policy are described. This policy is based on three principles: coherence, readability and individualization of the criminal response. The orientations aim to reinforce the public trust in the judicial system and shall be implemented on a local level, under the control and the coordination of the general attorneys ("*Procureurs généraux*"). The Minister requests from the prosecution and judicial authorities to put the day-to-day protection of the citizens at the center of their concerns: the fight against personal injuries must be an ongoing concern, with a focus on domestic violence, offences committed while driving under the influence of alcohol or drugs and the fight against anti-Semitism, racism and any other forms of discrimination. The fight against terrorism and the prevention of violent radicalization must be at the center of the action of the prosecution and judicial authorities. Finally, the Minister underlines the major achievement that is the prohibition for political authorities to give instructions in individual cases. In this same logic, he takes the initiative to re-launch the reform process of the Higher Council of the Judiciary ("*Conseil supérieur de la Magistrature*").

- Videoprotection enters detention cells

A Governmental Order of 9 June 2016 regarding of the processing of personal data related to the videoprotection of detention cells (J.O n°0136 of 12 June 2016) defines the conditions allowing to put under videoprotection, on exceptional occasions, detention cells in which individuals are placed in temporary detention and subject to a criminal detention warrant, whose escape or suicide could have a significant impact on public order, considering the particular circumstances of their incarceration and the impact thereof on public opinion. The Order also lists the persons who will be authorized to access the filmed personal data. These provisions are directly related to the surveillance of Salah Abdeslam, suspect in the investigation of the Paris attacks of 13 November 2015.

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## 9. Public Law

### France - Monitoring of airport fees

Decree n°2016-825 dated 23 June 2016, published in the O.J dated 24 June 2016 on airport fees, amends the civil aviation code and strengthens, in particular, the powers of the independent regulatory authority which is responsible for approving airport fees and issuing an opinion which shall be binding upon the Minister of civil aviation when signing multi-annual contracts in relation with the setting and evolution of airport fees for airports receiving more than five million passengers.

### France - Participation of French regions to the share capital of corporations

Decree n°2016-807 dated 16 June 2016, published in the O.J. dated 18 June 2016, specifies the conditions and limitations under which the French regions can take shares in the capital of commercial companies in order to implement their economic development strategy. The Decree sets maximum participation thresholds and thresholds beyond which the commission for participations and transfers shall issue an opinion prior to the regions taking shares in those companies.

### France - Social and tax certificates

Order dated 25 May 2016, published in the O.J. of June 1, 2016, sets out the list of taxes, fees and social contributions whose payment shall be justified by the candidates to the award of public procurement contracts and concession contracts, in relation with the implementation of the reform of French public procurement rules. The Order applies to public procurement and concession contracts for which a notice of public tendering or concession notice has been sent for publication as of its effective date.

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## 10. Tax

### France - Corporate taxation

#### Clarifications on the parent-subsidiary regime

- The FTA published their general guidelines on the new anti-abuse provision

The French Tax Authorities (the "FTA") published their general guidelines with respect to the new anti-abuse provision introduced by the French Amended Finance Act for 2015 which denies the benefit of the parent-subsidiary regime to dividends paid as part of schemes that are not genuine (*i.e., that are not set up for valid commercial reasons reflecting the economic reality* - [BOI-IS-BASE-10-10-10-20160607](#) and [BOI-RPPM-RCM-30-30-20-10-20160607](#)).

As a reminder, under the parent-subsidiary regime, provided that certain conditions are met, dividends paid by a subsidiary are exempt from corporation tax at the level of the parent company (*except for a portion equal to 5% of such dividends which must be added back to the parent company's taxable income*).

The general guidelines published by the FTA are currently subject to public consultation until 7 July 2016.

- The FTA admit the applicability of the parent-subsidiary regime to shares without voting rights unreservedly... and reconsider their position

On 9 June 2016, the FTA updated their general guidelines and cancelled the previous ones, published two days before on 7 June 2016. The initial guidelines dated 7 June 2016 drew the consequences of the ruling from the French Constitutional Council dated 3 February 2016 (Decision n°2015-

520 QPC) and admitted the applicability of the parent-subsidary regime to shares with or without voting rights under the same conditions.

Therefore, the FTA currently consider that the parent-subsidary regime does not apply to shares without voting rights, unless the parent company holds shares that represent at least 5% of the capital and 5% of the voting rights of its subsidiary ([BOI-IS-BASE-10-10-10-20-20160609 n°60 and 70](#)).

### **Free shares: new guidelines regarding the favorable social and tax regime introduced by the Macron Law**

The FTA published their general guidelines with respect to the favorable social and tax regime provided by the [Law n°2015-990 dated 6 August 2015](#) (so-called "**Macron Law**") applicable to free shares granted as from 8 August 2015 by a decision of the shareholders' extraordinary general meeting ([BOI-IR-BASE-20-20-20160613](#), [BOI-RSA-BASE-30-30-20160613](#), [BOI-RSA-ES-20-20-20-20160613](#), [BOI-RPPM-PVBMI-20-30-20160613](#)).

As a reminder, the Macron Law provides for (i) the suppression of the employee's social contribution, (ii) a decrease of the rate of the employer's social contribution (*from 30% to 20%*), and (iii) the treatment of the gain on the disposal of free shares as capital gain for individual income tax purposes (*which allows the application of tax rebates for holding period*).

### **France - Real estate taxation**

#### **The real estate security contribution is refundable in case of cancellation/termination of a deed**

The FTA updated their guidelines and specified that the real estate security contribution (*contribution de sécurité immobilière*) is refundable if the deed of sale or the agreement is cancelled, terminated or rescinded ([BOI-ENR-DG-70-20-20160614](#)). As a reminder, the above contribution is levied by the French state (*at a rate of 0.1%*) as part of the registration with the FTA of deed of sales and/or agreements relating to French properties.

#### **French property tax: temporary exemption for housing deriving from the transformation of office premises**

The FTA updated their guidelines taking into account the temporary exemption from French property tax (*taxe foncière*) granted by the [French Finance Act for 2016](#). This exemption is applicable to housing (i) deriving from the transformation of office premises, and (ii) used as principal residence ([BOI-IF-TFB-10-200-20160627](#)).

### **France - International taxation**

French social contributions (CSG/CRDS) are considered as income taxes for tax treaties purposes

The FTA updated their general guidelines confirming that French social contributions (*i.e., CSG and CRDS*) constitute income taxes for tax treaties' purposes. Therefore, the provisions of a tax treaty regarding the elimination of double taxation are applicable to both the CSG and the CRDS, unless otherwise provided in such tax treaty ([BOI-INT-DG-20-20-100-20160603 n°100 to 130](#)).

However, the FTA indicated that foreign tax authorities are not bound by this qualification, might challenge such qualification and could consider that the CSG and the CRDS do not constitute income taxes for the purpose of the application of a tax treaty.

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## 11. Telecoms

### France - Launch of a public consultation on the market for telecommunications services for businesses

On 14 June 2016, the French Telecommunications Regulatory Authority (Arcep) has launched a public consultation on the market for telecommunications services for businesses and on access to high-speed optical fiber networks.

Opinions submitted to the consultation will feed the development of [draft guidelines](#) on fixed telecommunications services designed for business customers – as well as a [draft recommendation](#) on access to high-speed optical fiber networks.

The public consultation is open until 26 July 2016.

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