

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 April 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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For additional information, please speak to your usual contact.

#### Contact

##### **Bruno Knadjian**

Avocat à la Cour, Partner

Hogan Lovells (Paris) LLP  
17, Avenue Matignon  
CS 60021  
75008 Paris  
Tél. : +33 1 53 67 47 47  
Fax : +33 1 53 67 47 48

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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 on class actions for discrimination and fight against inequalities**, n°1699, filed before the National Assembly on January 14, 2014 – Adopted in first reading by the National Assembly on June 10, 2015.
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014 – Adopted in first reading by the National Assembly on March 24, 2015 and by the Senate on January 26, 2016 – Adopted in second reading by the National Assembly on March 17, 2016 – In debate by the Senate from May 10, 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.
- **Draft law relating to the fight against discrimination at the rate of social precariousness**, n°378, filed at the Senate on March 31, 2015 – Adopted in first reading by the Senate on June 18, 2015.
- **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.
- **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 – In debate in second reading by the Senate from May 24, 2016.

- **Draft law relating to maritime related economy**, n°2964, filed on July 8, 2015 – Adopted in first reading by the National Assembly on February 3, 2016 – Amended in first reading by the Senate on March 24, 2016 – Common text adopted by the Joint committee.
- **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.
- **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 – in debate in first reading by the National Assembly from May 17, 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.
- **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.
- **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.
- **The Digital Republic bill**, n°3318, filed on December 9, 2015 – Adopted by the National Assembly in first reading on January 26, 2016 – In debate in first reading before the Senate from April 26, 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 – Under examination at the Senate on May 25 and 26, 2016.
- **Draft law to reinforce fight against organised crime, terrorism and their financing and to improve the efficiency and the guarantees of criminal procedure**, n°3473, filed on February 3, 2016 – Adopted in first reading by the National Assembly from March 8, 2016 – Amended by the Senate on April 5, 2016 – Joint Committee.
- **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.
- **Draft law to set up new freedoms and new protections for businesses and assets**, n°3600, filed on March 24, 2016 – In debate in first reading by the National Assembly from May 3 to 12, 2016.
- **Law proposal to reform the repression system of market abuse**, n°3601, filed on March 24, 2016 – Adopted in first reading by the National

Assembly on April 7, 2016 – In debate in first reading by the Senate on May 10, 2016.

- **Draft law relating to transparency, fight against corruption and modernisation of economic life**, n°3623, filed on March 30, 2016.
- **Draft law on Equality and citizenship**, n°3679, filed on April 13, 2016.

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#### Enacted laws

- **Ordinance n°2016-394 of March 31, 2016 relating to companies for common exercise of a number of liberal professions governed by legislative or regulatory statutes or whose title is protected** – OJ of April 1, 2016.
- **Ordinance n°2016-388 of March 31, 2016 relating to appointment of members of the labour courts** – OJ of April 1, 2016.
- **Ordinance n°2016-413 of April 7, 2016 relating to monitoring the application of labour law** – OJ of April 8, 2016.
- **Ordinance n°2016-411 of April 7, 2016 on various provisions in connection with the gas sector** – OJ of April 8, 2016.
- **Law n°2016-444 of April 13, 2016 which aims at reinforcing the fight against prostitution and accompanying prostitutes** – OJ of April 15, 2016.
- **Law n°2016-457 of April 14, 2016 relating to the information of the administration by the judicial authority and protection of minors** – OJ of April 15, 2016.
- **Ordinance n°2016-462 of April 14, 2016 for the creation of a national public health agency** – OJ of April 15, 2016.
- **Ordinance n°2016-461 of April 14, 2016 which specifies the competencies of the Regulatory Commission of Energy as to access to information, sanctioning powers and cooperation** – OJ of April 15, 2016.
- **Law n°2016-482 of April 20, 2016 which approves access of France to the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty** - OJ of April 21, 2016.
- **Law n°2016-483 of April 20, 2016 relating to ethics and civil servants' rights and duties** - OJ of April 21, 2016.
- **Ordinance n°2016-493 of April 21, 2016 relating to the launch of radio equipment** - OJ of April 22, 2016.
- **Ordinance n°2016-492 of April 21, 2016 on simplification of provisions of the Post and Electronic Communications Code relating to the implementation of electrical services** - OJ of April 22, 2016.
- **Ordinance n°2016-489 of April 21, 2016 relating to the Société du Canal Seine-Nord Europe (building of a high capacity canal in France that would link the Oise River and the Canal Dunkerque-Escaut)** - OJ of April 22, 2016.
- **Ordinance n°2016-488 of April 21, 2016 relating to consultation process for projects which are likely to have an impact on environment** - OJ of April 22, 2016.
- **Organic law n°2016-506 of April 25, 2016 on modernisation of rules applicable to presidential elections** - OJ of April 26, 2016.

- **Law n°2016-508 of April 25, 2016 on modernisation of various rules applicable to elections** - OJ of April 26, 2016.
  - **Organic law n°2016-507 of April 25, 2016 relating to the status of independent administrative authorities created by New Caledonia** - OJ of April 26, 2016.
  - **Ordinance n°2016-526 of April 28, 2016 which transposes directive 2014/61/UE of the European Parliament and the Council of May 15, 2014 on measures to reduce cost of deploying high-speed electronic communications networks** - OJ of April 29, 2016.
  - **Ordinance n°2016-520 of April 28, 2016 relating to coupons** - OJ of April 29, 2016.
  - **Ordinance n°2016-518 of April 28, 2016 which amends Book V of the energy code** - OJ of April 29, 2016.
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## 1. Banking

### France - End of the banking monopoly for intercompany loans

The decree relating to loans between companies dated 22 April 2016 ([OJ n°0073 dated 24 April 2016](#)) was adopted in relation to the law dated 6 August 2015 for *la croissance, l'activité et l'égalité des chances économiques*. It sets out the conditions and limits within which intercompany loans provided for in Article 167 of the text may be granted, in particular by authorizing loans directly between companies which do not have any equity links.

The decree entered into force on 25 April 2016.

### France - Simplification of the interest-bearing notes assignment and "minibonds" creation

The order dated 28 April 2016 relating to interest-bearing notes ([OJ n°0101 of 29 April 2016](#)) amends the legal system of interest-bearing notes, in particular by simplifying their assignment. The ownership of interest-bearing notes will no longer be anonymous in order to the fight against money laundering and terrorist financing.

The order also creates a new category of interest-bearing notes called "*minibonds*", that can be exchanged on crowdfunding platforms.

Most provisions of the order will come into force on the 1<sup>st</sup> October 2016.

### France - Control of housing savings operations by the management company mentioned in Article L. 312-1 of the French *code de la construction et de l'habitation*

The decree dated 26 April 2016 ([OJ n°0100 dated 28 April 2016](#)) relating to the control of housing savings operations by the management company mentioned in article L. 312-1 of the French *code de la construction et de l'habitation* indicates the types of information to be communicated, the requirements for information transmission by distributing bodies of housing savings products, the organization of controls and the applicable sanctions in case of breach of transmission information obligations and in case of non-compliance with housing savings regulations, in particular concerning the provisions of housing savings loans.

The decree will come into force on the 1<sup>st</sup> September 2016.

## **European Law - Publication of the Strasbourg Convention relating to money laundering**

The decree dated 22 April 2016 ([OJ n°0097 dated 22 April 2016](#)) publishes the Strasbourg Convention of the Council of Europe dated 16 May 2005, signed by France on 23 March 2011, relating to laundering, search, seizure and the confiscation of proceeds of crime and to terrorism financing, which aims to achieve close cooperation between members of the Council of Europe to pursue a common criminal policy, fight against crime at an international level and improve the system of international cooperation.

The decree came into force on the 25 April 2016.

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## **2. Capital Markets**

### **France - Decree dated 6 April 2016 amending books II, III and IV of the general regulation of the AMF**

The decree dated 6 April 2016 and published in the Official Journal dated 16 April 2016, modified books II, III and IV of the general regulation of the AMF.

The decree amends book IV so as to implement the directive n°2014/91/EU (UCIT V) under French law by aligning the applicable regime for the UCIT depositaries with the one applicable to the AIFM directive.

The provisions of book III are amended to further detail the terms of distribution of own funds to the portfolio management companies.

The applicable provisions to professional specialised funds, the OPCl, the professional equity funds to be licensed as European long-term investment funds (ELTIF) are amended to allow such funds to be open to retail investors.

The order introduces new applicable definitions to the UCITs and to the AIFs (i.e. monetary UCITs, AIFs and short term monetary funds). Such funds are not subject to the amendment of the rate's fee owed to the AMF by the portfolio management companies.

Finally, the article 221-1 of the AMF general regulation has been clarified. The scope of the regulated information for threshold crossings only concerns information related to the threshold crossing to be sent to the AMF.

The text can be consulted here:

<https://www.legifrance.gouv.fr/eli/arrete/2016/4/6/FCPT1609681A/jo>

### **France - AMF – Launch of a public consultation related to European regulation on the market abuse**

The AMF launched a public consultation on 20 April 2016 in order to prepare for the European regulation on market abuse, which is scheduled to come into force on 3 July 2016. Such consultation will end on 30 May 2016 and aims to amend the general regulation and the AMF doctrine relating to the applicable rules on permanent information and the management of insider information.

### **France - ESMA – launch of a consultation related to the share classes offered by UCITS**

ESMA opened a consultation from 6 April 2016 to 6 June 2016 in order to develop a harmonised framework within the European Union for share classes to be offered by UCITs subject to the UCITs IV directive.

## **France - European Commission – Publication of a first report further to the adoption of the capital markets union action plan**

On 25 April 2016, the European Commission published a first report further to the adoption of the capital market union action plan dated 30 September 2015. This report describes the main initiatives to be taken for 2016 (including a report on crowdfunding) and measures for 2017 and 2018.

## **France - EMIR – Publication regulatory technical standards in relation to the mandatory clearing in relation to certain types of index credit derivatives (CDS)**

Further to the adoption of the delegated regulation n°EU 2016/592 on 1 March 2016 for the requirements of regulation n°648/2012 (EMIR), some regulatory technical standards have been published on the Official Journal of the European Union on 19 April 2016 and require the mandatory clearing for certain types of index credit derivatives.

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### **3. Commercial law**

#### **France - New obligations for comparator websites**

For the implementation of the Law of 17 March 2014 regarding consumer affairs, the [Decree n°2016-505 of 22 April 2016](#) regarding the information obligations of comparator websites (*JORF* n°0097 of 24 April 2016, text n°16) sets forth the implementing rules pursuant to Article L. 111-6 of the French Consumer Code. This provision imposes an obligation of loyal, clear and transparent information on websites which provide information in order to compare prices and specifications of goods and services.

The new articles D. 111-5 to D. 111-9 of the same Code create tangible obligations to provide information such as details of the method of comparison, whether the referencing was a paid service, the total price to be paid and the applicable commercial guarantees.

These provisions will enter into force starting 1<sup>st</sup> July 2016.

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### **4. Corporate**

#### **France - Publication of the template for information table relating to payment terms to be included in management reports**

Publication of information boards models on payment periods to be included in management reports

Pursuant to [Article L441-6-1 of the Commercial Code](#), companies whose financial statements are certified by an auditor shall communicate, in their management report on the fiscal years beginning from July 1, 2016, information relating to payment terms of their suppliers and their customers listed in [Article D441-4 of the Commercial Code](#).

[Decree of April 6, 2016 issued pursuant to Article D. 441-4 of the Commercial Code](#) provides for two table templates, containing and distributing the information to be provided on payment terms for their suppliers and customers.

These provisions apply to fiscal years beginning from July 1, 2016.

#### **France - Entry into force of loans between related companies**

[Law dated August 6, 2015](#), called "Macron law", provided for the possibility for corporations and LLCs whose accounts are certified by an auditor, to grant a loan to a company with which it is economically linked.

[Decree n°2016-501 of April 22, 2016](#) on loans between companies outlines the economic relations that companies shall maintain in order to qualify for the possibility of granting such loans between companies. Such economic relations are established if one of the following criteria is met:

Both companies are members of the same economic interest group or the same group to whom a public contract or a private contract was awarded;

One of the two companies has benefited, over the last two years, or benefits from a public subsidy as part of a project involving both companies and, where applicable, other entities. Such project shall meet one of the criteria listed in the decree;

The borrower company or one of its affiliate is a direct or indirect subcontractor of the lender company or one of its affiliate acting as prime contractor or subcontractor or client.

The companies of the same group can lend to each other in some cases listed in the decree.

These provisions came into force on April 25, 2016.

### **European Law - Publication of a template for the notification of financial transactions performed by listed companies' managers**

[Regulation 596/2014 on market abuse dated April 16, 2014](#) amended, as from July 3, 2016, the rules applicable to the notification to the made to AMF in relation to the financial transactions performed by listed companies' managers for an amount exceeding 5,000 euros per year.

[Regulation 2016/523 dated 10 March 2016](#) lays down the format and template for such notification of managers' financial transactions. This template, applicable throughout the European Union, presents the transactions separately and in aggregate, in accordance with the presentation principles defined in the Regulation. The electronic transmission of the notifications is maintained.

These provisions will come into force on July 3, 2016.

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## **5. Employment**

### **France - Clarification on the modalities of organizing of Employee Representatives' meetings**

[Decree n°2016-453 dated 12 April 2016](#), [JORF n°0088 dated 14 April 2016](#), clarifies the practical modalities for Employee Representatives' meetings notably regarding the use of videoconference, electronic vote, computer recording, timeframe to communicate the minutes of the meetings.

### **France - Increased powers for the Labor Inspection**

[Ordinance n°2016-413 dated 7 April 2016](#), [JORF n°0083 dated 8 April 2016](#), pursuant to the Macron Law dated 6 August 2015, aims at reinforcing the Labor Inspection powers. From 1 July 2016, the Labor Inspector will be allowed to ask for the copy of all documents needed whereas before the presentation of the documents was sufficient, they could also ask for analysis of any material capable of emitting physical, chemical or biological agents. The sanctions are being increased: the criminal fine is going up to a maximum of €37,500, the process of stopping temporarily works in progress is not restricted to the Building and Public Works branches anymore, and the process of closing temporarily a business in case of hazardous exposure to a CMR agent is simplified.

### **France - Luncheon vouchers must be allocated to employees working from their home**

The French Social security Agency (URSSAF) posted on April 2016 on its website, [urssaf.fr](http://urssaf.fr), a note confirming that employees working from their home must benefit from luncheon vouchers, just as any employee working on the Company's premises.

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## 6. Energy

### France - The starting point of the connection time frame for renewable energy electricity production installations

Decree n°2016-399 dated 1<sup>st</sup> April 2016, published in the Official Journal on 3 April 2016, defines the starting point of the period of connection for renewable energy electricity production installations.

It complements Article L.342-3 of the Energy Code as amended by Law n°2015-992 dated 17 August 2015 (called "*loi sur la transition énergétique pour la croissance verte*") by defining as a starting point of the period of 18 months for the connection of renewable energy electricity production installations with an installed capacity higher than 3 kilovolt-amperes (kVA), the date on which the connection contract signed by the applicant to the connection is received by the distribution system operator.

The 18 month period may be suspended or discontinued under certain conditions laid down by this decree.

These provisions entered into force on 4 April 2016.

### France - Considering energy performance in contracts and procurement contracts

Decree n°2016-412 dated 7 April 2016, published in the Official Journal on 8 April 2016, requires state services and its national public institutions (the "public buyers") which do not have an industrial and commercial vocation to only buy or rent products, services and buildings with high energy performance.

This Decree transposes into French law the directive 2012 /27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency. It obliges the public buyers to purchase those goods and services with a high energy performance, which also includes the obligation for these buyers to purchase or to lease buildings benefiting from high energy performance.

The concept of high energy performance is defined in this decree now codified in Articles R.234-1 and following of the Code of energy.

The provisions of this Decree entered into force on 15 April 2016.

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## 7. Insolvency proceedings

### France - Macron Law: new regulatory measures affecting the judicial administrators and creditor representatives

The decree n°2016-400 dated 1 April 2016 entered into force on 3 April 2016, relaxes the conditions to access the professions of judicial administrator (*administrateur judiciaire*) and creditors representative (*mandataire judiciaire*) and sets out the conditions for the mandatory appointment of a second judicial administrator or creditor representative for the most complex proceedings. These second judicial administrator or creditor representative must have the sufficient human and technical resources to fulfil his/her mission effectively.

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## 8. Insurance

### France - Insurance on behalf of tenants – increase of annual premium

[Decree n°2016-383 of 30 March 2016](#) setting the maximum amount of the increase of annual insurance premium on behalf of the tenant (the "**Decree**"), adopted in implementation of article 1 of the Law n°2014-366 of 24 March 2014 ("**Alur Act**"), entered into force on 1<sup>st</sup> April 2016.



The Decree complements article 7 of the Act n°89-462 of 6 July 1989 aiming at improving the tenancy relationships which allows the lessor, under certain conditions, to purchase an insurance covering the tenant's responsibility and to recover from him the amount of the insurance premium in addition to the rent. The lessor is allowed to increase by 10% the total amount of the annual insurance premium recoverable from the tenant.

#### **European Law - IDD: EIOPA preparatory guidelines on products oversight and governance**

On 13 April 2016, the European Insurance and Occupational Pensions Authority ("EIOPA") published [preparatory guidelines on product oversight and governance \(POG\)](#) to be followed by insurers and distributors. The guidelines provide early guidance in preparation for formal requirements provided for in the Insurance Distribution Directive ("IDD") ([see Legislative News of January 2016](#)).

The preparatory guidelines require (i) firms to include appropriate steps to identify the group of consumers for whom the manufacturer is designing the product, *i.e.*, the target market for each product, (ii) firms to test the product before selling it to customers and should take appropriate action to mitigate unforeseen risks that subsequently arise during the lifetime of the product (iii) distributors to receive from the manufacturer all the necessary information and (iv) that management of insurers and distributors bear ultimate responsibility for the establishment, implementation, subsequent reviews and continued internal compliance with the POG arrangements.

#### **European Law - PRIIPS: final RTS on key information documents**

On 7 April 2016, the Joint Committee of the European Supervisory Authorities ("ESAs") published [its final draft regulatory technical standards \("RTS"\) on key information documents \("KIDs"\) for packaged retail and insurance-based investment products \("PRIIPs"\)](#). The proposed KID (i) provides retail investors with simple and comparable information on investment products in the banking, insurance and securities sectors and (ii) increases the transparency and comparability of information about the risks, performance and costs of these products.

The draft RTS include (i) a common mandatory three-page template to use, (ii) a summary risk indicator of seven (7) classes for the risk and a methodology to assign each PRIIP to one of the seven (7) classes, (iii) details on performance scenarios and a format for their presentation, (iv) costs presentation, (v) specific layouts and contents for the KIDs for products offering multiple options, (vi) rules on revision and republication of the KIDs and (vi) rules on providing the KIDs sufficiently early for a retail investor to be able to take its contents into account when making an investment decision.

The new rules have been submitted to the European Commission for endorsement and will come into force on 31 December 2016.

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## **9. Intellectual Property**

### **France - Conditions of enforcement of the principles "silence amounts to acceptance" and "silence amounts to rejection" with respect to industrial property**

By a [Communication dated of 14 April 2016](#), the INPI outlined the enforcement conditions of the principles "silence amounts to acceptance" and "silence amounts to rejection" provided by Articles [L. 231-1](#) and [L. 231-4](#) of the Code of the relations of the administration with the public. According to these provisions, the administration's silence over a determined period of time, may in certain procedures, amounts to an implicit decision of acceptance or dismissal. These details uphold the [Council of State's \("Conseil d'Etat", the French highest administrative court\) decision rendered on 30 December 2015](#) which repealed certain provisions of Decree n°[2014-1280](#) and Decree n°[2014-1281](#) dated of 23 October 2014 (French Legal and Regulatory Newsletters – [May](#) and [November](#) 2015).

Moreover, the INPI outlined that the patent granting procedure and all the others procedures which are part of it are not subject to the "silence amounts to acceptance" and "silence amounts to rejection" period, except in case of application for modification of a claim further partial cancellation of a claim. Hence, the provisions of [Articles R. 612-70-1 and R. 612-70-2](#) of the Intellectual Property Code ("IPC") shall be deemed unwritten. Moreover, registration into national register (patents, trademarks, designs), of application of name change, the legal form, or address, the silence of

the Administration amounts to acceptance within two months instead of the period of six months provided by the Article [R. 512-18-1](#), [R. 613-58-1](#) and [R. 714-7-1](#) of the IPC.

## **European Law - European Parliament's approval of the Proposal for a Directive on the protection of trade secrets with some amendments**

The European Parliament approved at first reading with some amendments the Proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Pursuant to Article 1 of the [European Parliament's legislative resolution dated 14 April 2016](#), the trade secret is defined as information which is « *secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the type of information in question or which is not easily accessible to them* », « *has a commercial value because it is secret* » and « *has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret* ».

The Member States can provide for a more extensive protection of trade secrets against their acquisition, use and disclosure than provided by the Proposal for a Directive. This Proposal will be then discussed in the Council of the European Union.

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## **10. Life Sciences**

### **France - New rules for the certification of promotional activities of medicinal products**

The French Health Authority, in the course of its mission of implementing the Promotional Information [Charter](#) signed by the French Pharmaceutical Companies Association and the Economic Committee for Healthcare Products (CEPS), has published, on 23 March 2016, a new [referential for certification](#) aiming at ensuring that pharmaceutical companies comply with the good promotional practices rules set forth therein ([Decision n°2016.0063/DC](#), *JORF* n°0087 of 13 April 2016, text n°52).

Those certification rules apply to pharmaceutical companies which entered into a convention with the CEPS and which have a promotional activity for at least one medicinal product reimbursed by the French Social Security system.

This referential will enter into force 6 months after its publication. However, until the 9<sup>th</sup> month after publication, pharmaceutical companies may request to be certified on the basis of the 2009 referential currently applicable.

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## **11. New technologies**

### **France - Fight against organized crime, terrorism and their financing**

An amendment to the bill strengthening the fight against organized crime, terrorism and their financing was adopted on 3 March 2016. The amendment provides that companies refusing to provide encrypted data relevant for investigations expose themselves to 5 years imprisonment and a fine up to €350,000.

### **France - CNIL public warning against Numericable**

The CNIL issued a public warning against Numericable because of a malfunction in an application allowing to automatically process requests regarding identification of IP addresses. The malfunction had the effect of holding liable a subscriber for 1,531 counterfeiting acts and involving him in several criminal investigations.

## France - Data encryption

The CNIL issued on 8 April 2016 its position on "backdoors". The CNIL considers that the introduction in French national law of the legal concept of "backdoors" or "master key" would create a collective risk weakening the level of security for individuals as well for the technical solutions implemented nowadays.

## European Law - Adoption and publication of the General Data Protection Regulation

The European Parliament adopted on 14 April 2016 the General Data Protection Regulation ([see \*Legal and Regulatory Update - December 2015\*](#)) which was published on 4 May 2016 in the Official Journal of the European Union. The Regulation is the result of four year of work and negotiation. It strengthens the European citizens' rights and grants them more control upon their personal data. It also simplifies the formalities for companies and offers them a more unified legal framework. The Regulation will enter into force on 25 May 2018.

## European Law - Opinion of the Working Party 29 on the Privacy Shield

The WP29 (the Article 29 Working Party, established by Article 29 of the 1995 Data Protection Directive, composed of the 27 European Union data protection authorities) issued its opinion on the Privacy Shield ([see \*Legal and Regulatory Update – February 2016\*](#)). The WP29 highlights the fact that significant improvements has been brought to the Privacy Shield in comparison with the Safe Harbor. However, the WP29 is seriously concerned by the commercial section of the Privacy Shield and the access by public authorities to the data transferred as part of the agreement. It thus requested the Commission to modify the mechanism.

## European Law - E-commerce

The European Commission issued on 18 March 2016 its first conclusions following a survey on e-commerce. The conclusion is that the geo-blocking system prevents consumers from purchasing goods and accessing to digital content online within the European Union. The Commission will present new legislative proposals on this subject matter in May.

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## 12. Procedures

### France - Commercial procedure

A Decree on judicial organization, alternative dispute resolution methods and the deontology of commercial judges

The [Decree n°2016-514 of 26 April 2016 on judicial organization, alternative dispute resolution methods and the deontology of commercial judges](#) (J.O n°0100 of 28 April 2016) creates new deontological tools for the commercial judges by commissioning the drafting of a handbook of deontological obligations to the National Council of commercial courts and by implementing a college of deontology and deontology referents. The Decree also specifies the conditions of certain methods of alternative dispute resolution (e.g.: the possibility to obtain the certification by a judge of the agreement ascertained by a judicial conciliator or a judicial mediator). The Decree also clarifies the status of judicial conciliators.

### Clarifications regarding complex insolvency proceedings

The [Decree n°2016-400 of 1<sup>st</sup> April 2016 regarding court-appointed administrators](#) (J.O n°0079 of 3<sup>rd</sup> April 2016) defines the conditions for the mandatory appointment of a second court-appointed administrator in the judgment commencing an insolvency proceeding, considering the numbers of secondary establishments located outside the jurisdiction of the tribunal where the debtor is registered, the turnover of the debtor or the turnover of one of the companies mentioned in Article L. 621-4-1 of the French Commercial Code. The Decree also defines the conditions which would guarantee the intervention of a professional with sufficient expertise and enough technical and human means to handle the most complex proceedings.

## France - Administrative procedure

A priority preliminary ruling on constitutionality adapted to the National Court for Right of Asylum

The [Decree n°2016-463 of 14 April 2016 regarding the application of Article 61-1 of the French Constitution to the National Court for Right of Asylum](#) (J.O n°0089 of 15 April 2016) creates in the Code of Entry and Residence of Foreigners and the Right of Asylum, a subsection dedicated to the priority preliminary ruling on constitutionality proceeding before the National Court for Right of Asylum.

## Final adoption of the Deontology law

The [Law n°2016-483 of 20 April 2016 regarding the deontology and the rights and obligations of civil servants](#) was published on 21 April 2016 (J.O n°0094 of 21 April 2016). The Law includes several procedural provisions, such as the possibility to assign first and last instance disputes to administrative courts of appeal or the implementation of a summary proceeding with a three judges' panel. Other reforms are expected since the Law authorizes the government to legislate by means of executive orders on important statutory measures regarding the members of administrative and financial jurisdictions.

## European Law - Civil procedure

The European Parliament votes the trade secrets Directive

A vast majority of the European Parliament adopted, on 14 April 2016, the [Proposal for a Directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information \(trade secrets\) against their unlawful acquisition, use and disclosure \(COM\(2013\)0813 – C7-0431/2013 – 2013/0402\(COD\)\)](#). The text aims to "*approximate the laws of the Member States*", as to ensure a sufficient and consistent level of civil redress in the internal market in the event of unlawful acquisition, use or disclosure of a trade secret by competitors. The Directive provides that the right to freedom of information will then take priority over the protection of trade secrets, when the disclosure of a trade secret "*serves the public interest*". The Council of the European Union will have to adopt the Directive too, while the State member will have three years to transpose it into national law.

## European Law - Reform of the General Court of the European Union

In a [Press release n°35/16 dated 4 April 2016](#), the CJEU announced the implementation of the early stages of the reform of the General Court of the European Union: the nomination of 19 new Judges (to which will be added 9 new Judges in 2019), the redesign of the structure of the institution, the dissolution of the European Civil Service Tribunal and the transfer of the European civil service disputes to the General Court of the European.

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## 13. Public Law

### France - Creation of a public entity dedicated to project finance support

Decree n°2016-522 dated 27 April 2016, published in the O.J dated 29 April 2016, modifies the former public entity dedicated to advising on public-private partnerships contracts ("MAPPP"), which has been created by Ordinance n°2004-559 relating to PFI contracts, into a new expert body on issues relating to the legal and financial structuring of infrastructure projects of general interest implying the recourse to private investments, in order to take into account the modifications introduced by Ordinance n°2015-899 of 23 July 2015 on public procurement. This new public entity shall have wider powers than the former one: besides the control of the prior assessment of the "marchés de partenariat" (PFI contracts), this new public entity shall, upon request of the General Commissioner for Investment, issue an opinion on any proposed investment relating to infrastructure of public interest, and shall also advise sponsors (including local authorities) on the legal and financial structuring of their investment projects as far as infrastructure of public interest are concerned.

## **France - Creation of the Canal Seine-Nord Europe Company**

Ordinance n°2016-489 dated 21 April 2016, published in the O.J. dated 22 April 2016 relating to the Canal Seine-Nord Europe Company, creates and organizes the governance of the new public entity with industrial and commercial purposes, which shall be responsible for carrying out the financing and the construction of the fluvial infrastructure linking the basins of the Seine and Oise to the European wide-gauge network between Compiègne and Aubencheul-au-Bac. An Order shall specify, before 31 December 2016, the conditions of application of this Ordinance.

## **France - Local consultations on projects likely to affect the environment**

Ordinance n°2016-488 dated 21 April 2016 and Decree n°2016-491 dated 21 April 2016, published in the O.J. dated 22 April 2016 relating to local consultations regarding projects likely to affect the environment, organize, by referring to several legislative provisions of the electoral code, the practical conditions and modalities of local consultations initiated by the Government towards voters of a given geographical area in order to gather their opinion on an infrastructure project or equipment which is likely to affect the environment, even if a prior declaration of public utility has been obtained. Decree n°2016-503 dated 23 April 2016, published in the O.J. dated 24 April 2016, makes an application of those new regulations and provides for the organization of a consultation on the project of transfer of the Nantes-Atlantique airport to the municipality of Notre-Dame-des-Landes.

## **France - New rules on the award of hydroelectric concessions**

Decree n°2016-530 dated 27 April 2016, published in the O.J. dated 30 April 2016, relating to the award of hydroelectric concession contracts and the approval of the main terms and conditions of the template contracts applicable to these concessions, modifies the regulatory framework for hydroelectric concessions to take into account the recent changes introduced by Ordinance 2016-65 relating to concessions contracts. The Decree also defines the conditions of creating hydroelectric joint venture companies and establishing monitoring committees for hydroelectric concessions. The Decree shall enter into force on 1 May 2016.

## **France - Control of conflicts of interest**

Law n°2016-483 dated 20 April 2016, published in the O.J. dated 21 April 2016, relating to the ethics, rights and obligations of officials, includes, in particular, specific provisions regarding the definition of conflicts of interest and provides for reporting obligations (relating to private interests, inheritance, etc.) for officials who may be at risk while performing their duties, the nature of those reporting obligations varying regarding the hierarchic functions such officials may occupy.

## **European Law - Framework agreements for the allocation of railway infrastructure capacity**

Implementing Regulation n°2016/545 dated 7 April 2016, published in the OJEU dated April 8, 2016, relating to the procedures and criteria concerning framework agreements for the allocation of railway infrastructure capacity, sets out the conditions and modalities of entering into framework agreements with railway infrastructure managers, in relation with the allocation of available railway infrastructure capacity. This Regulation shall come into force on 1 December 2016 onwards.

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## **14. Real Estate**

### **France - Providing access to energy meter data to owners and property managers**

Decree n°2016-447 dated 12 April 2016, published in the Official Journal on 14 April 2016, and taken in accordance with the provisions of Articles L.341-4 et L.453-7 of the Energy Code as amended by Law n°2015-992 dated 17 August 2015 (called "*loi sur la transition énergétique pour la croissance verte*") defines the terms under which the owners and property managers for residential or tertiary use can have access to energy meter data provided by gas and electricity distribution system operators. Such access can be granted subject to the following conditions:

- The number of subscriptions to electricity and gas is more than 10 within the building.

and

- The owner and the property manager justify of providing actions of controlling energy consumption in the building.

These provisions will enter into force on 1<sup>st</sup> October 2016.

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## 15. Tax

### France - Withholding tax exemption on dividends paid to non-resident loss-making companies under bankruptcy procedure

The French Tax Authorities (the "FTA") updated their official guidelines in relation to the withholding tax exemption provided by article 119 quinquies of the French Tax Code which applies to dividends paid by a French company to a foreign company established in another Member State of the European Union (*or in a State which has signed a convention on mutual administrative assistance in tax matters with France*) when such foreign company is (i) in a loss-making position, and (ii) under bankruptcy procedure ("*liquidation judiciaire*" – BOI-RPPM-RCM-30-30-20-20160406; BOI-RPPM-RCM-30-30-20-80-20160406).

This exemption applies to dividends paid as from 1 January 2016.

### France - Prorogation of the exceptional deduction for investment purposes

The FTA updated their official guidelines and provided for the application of the exceptional deduction for investment purposes until 14 April 2017 (*instead of 14 April 2016* – BOI-BIC-BASE-100-20160412).

As a reminder, this exceptional deduction enables companies subject to corporation tax (*impôt sur les sociétés*) or individual income tax (*impôt sur le revenu*) to deduct from their taxable income an amount equal to 40% of the value of certain acquired or manufactured equipment, in addition to the usual annual depreciation on such equipment.

In addition, the FTA extended the scope of such exceptional deduction for investment purposes to the acquisition or manufacturing of certain computer equipment and electronic communication networks.

### France - Additional tax on the sale of office premises and commercial spaces in the Ile-de-France region

The FTA updated their official guidelines with respect to the additional tax, in favor of the Ile-de-France region, applicable to the sale of office premises, commercial spaces and storage facilities build more than five years ago (*provided by Article 50 of the French Amended Finance Act for 2015 n°2015-1786*).

This new additional tax is assessed on the area of the taxable premises which is multiplied by a tariff per square meter which varies depending on the district in which such premises are located. The tariff of this new tax will be updated on an annual basis according to the forecast of the French consumer price index (BOI-ENR-DG-60-20160406; BOI-ENR-DG-60-10-20160406; BOI-ENR-DG-60-10-10-20160406; BOI-ENR-DG-60-10-20-20160406; BOI-ENR-DG-60-20-20160406).

## **International - France-Belgium tax treaty: new rules for frontier workers**

The FTA updated their official guidelines drawing the consequences of the [France-Belgium agreement dated 12 December 2008](#) which amended the France-Belgium tax treaty with respect to the regime of frontier workers ([BOI-INT-CVB-BEL-10-60-20160426](#)).

As a reminder, the frontier worker status grants the right to tax to the state of residence of the employee (*rather than the State of exercise of the salaried activity*). This status was withdrawn in 2008 but is maintained until 31 December 2033 for the benefit of certain French tax residents working in Belgium.

## **International - Panama is added to the list of Non-Cooperative States and Territories for French tax purposes**

The list of Non-Cooperative States and Territories for French tax purposes (the "NCST") has been updated and Panama has been added to such list as from 1<sup>st</sup> January 2016 ([Decree dated 8 April 2016](#)).

As a reminder, transactions realized with a NCST are subject to specific French tax provisions which intend to deter companies from realizing operations with such NCST. For example, some payments made in a NCST may be subject to a withholding tax in France at an increased rate of 75%.

On 1 January 2016, the list of NCST includes Botswana, Brunei, Guatemala, the Marshall Islands, Nauru, Niue and Panama.

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## **16. Telecoms**

### **France - National radio stations to broadcast brand advertising**

[Decree n°2016-405](#) of 5 April 2016 modifying the specifications of national radio company Radio France (*JORF* n°0081 of 6 April 2016, text n°35) has lifted the ban on brand advertising on France Inter, France Info and France Bleu – until now, only generic advertising and advertising of public interest were allowed on national frequencies. This excludes the other French national radios stations: France Musique, France Culture, Fip and Mouv.

Advertisements will however be limited to an average duration of 17 minutes per day over one trimester and of 30 minutes for one given day, with further restrictions between 7 a.m. and 9 a.m. – the time slots with the most listeners. The amount of profits made from a single advertiser shall not exceed 15% of the radio station's yearly advertising profits.

### **France - Withdrawal of Numéro 23 authorization to broadcast overruled**

The French Supreme Administrative Court (*Conseil d'Etat*)'s [Decision of 30 March 2016, société Diversité TV France, n°395702](#) overruled the French Audiovisual Communication Authority's decision which withdrew the channel's authorization to broadcast.

The alleged fraud was that the broadcasting authorization had been requested by the company for the sole purpose of making a profit when reselling its shares, which is illegal under French law. The Supreme Administrative Court notes that while the shareholders' agreement, dated October 2013, shows the majority shareholder's intent to sell their shares as soon as possible, this is not enough to establish intent on the day the authorization was requested – late 2011 – or when the authorization was effectively issued – July 2012.

### **France - Implementation of EU measures to reduce cost of deploying high-speed electronic communications networks**

The [Ordinance n°2016-526 of 28 April 2016](#) for the implementation of Directive 2014/61/EU of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (*JORF* n°0101 of 29 April 2016, text n°46), along with the [Report to the President of the](#)

[Republic regarding Ordinance n°2016-526 of 28 April 2016](#) (JORF n°0101 of 29 April 2016, text n°45) sets forth provisions for a more efficient use of existing infrastructures.

The Ordinance imposes on electronic network providers an obligation to host electronic communication network elements and creates a right for electronic communication network operators to access infrastructure information. Moreover, the French Telecommunications Regulatory Authority ("Arcep") will have jurisdiction to hear disputes arising from shared use of host infrastructure.

### **European Law - General decrease of roaming charges**

In the framework of the Digital Single Market Strategy, the [measures](#) adopted in 2015 by the European Parliament and the Council provided for a simultaneous decrease of roaming charge in all Member States on 30 April 2016. From this date, outgoing calls cost will go from 0.19 € to 0.05 €; text messages costs from 0.06 € à 0.02 €; and mobile internet costs of 0.20 € per mega octet will decrease to 0.05 €.

The next step is a total prohibition of roaming charge within the EU, effective in mid-June 2016.

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