

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for May 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 and by the Senate on May 12, 2016 – Disagreement in Joint Committee – Text under examination in new reading at the National Assembly on June 21, 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 – In debate in first reading at the National Assembly on June 14, 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.

- **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 on June 1, 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.
- **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.
- **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 - Convening of a 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 – Filed in first reading at the Senate 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 – Adopted in first reading by the National Assembly on May 12, 2016 – In debate in first reading at the Senate from June 13 to 24, 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 – Amended in first reading by the Senate on May 10, 2016 – Common text adopted by the Joint Committee. Final adoption by the Senate on June 8, 2016.
- **Draft law relating to transparency, fight against corruption and modernisation of economic life**, n°3623, filed on March 30, 2016 – In

debate in first reading by the National Assembly from June 6, 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 to 30, 2016.
- **Draft organic law relating to competence of the defender of rights for the whistleblowers protection**, n°3770, filed on May 18, 2016 – In debate in first reading by the National Assembly from June 6, 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°2016-731 of June 3, 2016 to reinforce fight against organised crime, terrorism and their financing and to improve the efficiency and the guarantees of criminal procedure** - OJ of June 4, 2016.
- **Law n°2016-702 of May 30, 2016 which authorises the approval of the agreement in the form of exchange of letters between the Government of France and the Government of United Kingdom of Great Britain and Northern Ireland (together a regulation which transfers the inter-governmental commission's economic regulatory competence of the railway sector to national supervising bodies and establishes the principles of cooperation between them and a tariff framework for the cross-Channel Fixed Link, and an annex** - OJ of May 31, 2016.
- **Law n°2016-701 of May 30, 2016 which authorises the ratification of the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health** - OJ of May 31, 2016.
- **Law n°2016-699 of May 30, 2016 which authorises the approval of the Manila amendments to the annex of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (the STCW Convention) and its associated Code (the STCW Code)** – OJ of May 31, 2016.
- **Law n°2016-655 of May 23, 2016 which authorises the ratification of the agreement that creates the Asian Infrastructure Investment Bank** – OJ of May 24, 2016.
- **Law n°2016-654 of May 23, 2016 which authorises the approval of the agreement between the Government of France and the Government of Iraq concerning the Encouragement and Reciprocal Protection of Investments** – OJ of May 24, 2016.
- **Law n°2016-653 of May 23, 2016 which authorises the approval of amendment n°6 between the Government of France and the Government of the Principality of Monaco to the convention of February 28, 1952 between France and the Principality of Monaco on social security** – OJ of May 24, 2016.
- **Ordinance n°2016-623 of May 19, 2016 which transposes directive 2014/40/EU concerning the manufacture, presentation and sale of tobacco and related products** – OJ of May 20, 2016.
- **Law n°2016-563 of May 10, 2016 which ratifies ordinance n°2015-1127 of September 10, 2015 on the reduction of the minimum mandatory number of shareholders in non-listed joint stock companies** – OJ of May 11, 2016.

## 1. Banking

### France - Debt instruments reform

The decree ([JORF n°0125 dated 31 May 2016](#)) and the ministerial decree ([JORF n°0125 dated 31 May 2016](#)) relating to the reform of the debt instruments aims to open the market up to a larger number of issuers from France and other countries.

The legal framework of the debt instruments has been simplified, in particular by merging negotiable debt paper with maturities of up to one year, introducing a new trade name, allowing to draft the French documentation in a language other than French and facilitating the access of international issuers thanks to a framework extended to local accounting standards of the European Economic Area countries and to accounting and auditing standards (for third-country issuers) recognized as equivalent to European standards.

Both texts came into force on the 1<sup>st</sup> June 216.

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## 2. Competition

### European Law - Commission clarifies notion of State aid

On May 19, 2016, the Commission issued a [notice on the notion of State aid](#) to ensure greater legal certainty.

The notice presents the legal criteria of State aid based on the Court of Justice's case law and the Commission's decision-making practice (economic activity, State resources, advantage, selectivity and effect on trade and competition). The notice also brings some important clarifications regarding financing of infrastructures and public investments with no cross-border effects.

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## 3. Corporate

### France - Reduction of the minimum number of shareholders in non-listed joint stock companies

[Order n°2015-1127 dated September 10, 2015](#) on reduction of the minimum number of shareholders in non-listed joint stock companies provided for the reduction of the minimum number of shareholders in non-listed joint stock companies from seven to two shareholders. The order amended [Article L225-1 of the Commercial Code](#) and came into force on September 12, 2015.

[Law n°2016-563 dated May 10, 2016](#) ratifies such order, confirming the reduction of the minimum number of shareholders in non-listed joint stock companies.

These provisions came into force on May 12, 2016.

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## 4. Employment

### France - Employment litigation procedure reform

The [Decree n°2016-660 dated May 20, 2016](#), published in the Official Journal dated May 25, 2016 establishes "*the necessary measures to the modernization of the Labor Court operations and to the rationalization of certain employment litigations processing*", pursuing Law n°2015-990 dated August 6 2015 or "Macron Act". The Decree provisions are applicable to disputes introduced after August 1<sup>st</sup>, 2016.

- Conciliation Board has new attributions

Renamed "Conciliation and Orientation Board" (BCO), BCO has, from now on, the ability to certify amicable settlement agreements and to condemn parties for lack of diligence in preparation for trial of the file, which becomes mandatory.

- Establishment of new Trial Board formations

Besides the usual Board formation, made up of four members, the Trial Board will now be able to rule in restricted formation (two members). In that case, the decision will have to be rendered within a three months delay. Moreover, dispute could be submitted directly to the Adjudication Board upon the parties' request and not only, as before, when Employment Tribunal's other formations have not succeeded in ruling.

- Representation becomes mandatory in appeal for employment matters

Representation is now mandatory in appeal procedures. Parties are now required to be represented by an attorney (or a union representative) before appeal courts.

- Creation of a new procedure in form summary proceedings

In urgent cases, this procedure will allow the dispute to be examined quickly and the Employment Tribunal to take final and not provisional measures.

- Condition to refer to the Supreme Court's legal opinion

The Decree specifies the conditions under which courts of justice may seek the Supreme Court's legal opinion for interpretation collective bargaining agreements provisions.

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## 5. Insolvency proceedings

### France - Macron Law: new regulatory measures affecting the tariffs of the judicial administrators, the creditors' representative, the liquidators

The [Decree n°2016-230](#) lists the services concerned by regulated legal professions tariffs and defines the method used to set these tariffs. On that basis, a decree setting out the tariffs of the judicial administrators, the creditors' representative, the liquidators was published on 29 May 2016 and entered into force on 31 May 2016.

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## 6. Insurance

### France - Wreck removal – the Nairobi Convention

[Decree n 2016-615 of 18 May 2016](#) (the "**Decree**") has published the Nairobi International Convention on the removal of wrecks adopted on 18 May 2007 (the "**Convention**"). The Convention establishes an international legal framework to ensure the prevention, mitigation and removal of wrecks that can present a danger for shipping and the environment.

Among its main objectives, the Convention provides for an obligation to underwrite an insurance or other financial security for owners of vessels of 300 Gross Register Ton (GRT) registered in a State party to the Convention. The Convention also provides in its annex an insurance certificate template on the liability wreck removal.

In France, the Convention entered into force on 4 May 2016.

### **European Law - EIOPA: insurance sector stress test**

On 24 May 2016, the European Insurance and Occupational Pensions Authority (the "**EIOPA**") announced the launch of the 2016 EU-wide stress test for the insurance sector (the "**Stress test 2016**"). It is designed to assess (i) the resilience of the European insurance sector to severe adverse market developments and (ii) the potential increase of systemic risks in situations of stress. The Stress test 2016 focuses on two major market risks:

the prolonged low yield environment; and

the so-called "double-hit", that is, a negative market shock to asset prices combined with a low risk free rate.

Finally, EIOPA also uses the test to collect information on the Solvency II equity and long term guarantees measures. The deadline for submission of results to the national competent authorities is 15 July 2016. The EU-wide results of the Stress test 2016 will be disclosed in December 2016 in an anonymised way.

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## **7. Intellectual Property**

### **France - Precisions on the use of car parts coming from the circular economy**

Article L.121-117 of the Consumer Code created by Law n°2015-992 of 17 August 2015 relating to the energy transition for the green growth obliges, under specific conditions, vehicle maintenance and repair professionals to allow consumers to choose some parts that come from the circular economy instead of new parts.

Decree n°2016-703 of 30 May 2016 was issued in application of such Law and specifies the concerned spare parts, namely moving body parts, interior parts, leather equipment parts, non-sealant glazing, optical parts, as well as electronic or mechanical parts excluding those that are included in running gear, steering parts, braking parts and assembled and non-demountable floor parts which are subject to mechanical wear.

This Decree provides exceptions to the above principle in particular where the parts coming from the circular economy are not available in a time period that is compatible with the vehicle downtime mentioned in the contractual document entered into the professional and its client for the repair or maintenance to be made, or where a high risk for environment, public health or road security is likely to be caused by the use of such parts.

As a reminder, under Article L. 511-2 *et seq.* of the French Intellectual Property Code – and contrary to the provisions of Regulation n°6/2002 on Community designs – vehicle manufacturers can prohibit third parties from manufacturing and distributing spare parts intended for the repair market, where such parts are protected by a French design such as body parts.

Thus, although not explicitly, the above mentioned Decree reduces the vehicle manufacturers' monopoly over certain car spare parts intended for the repair market.

This Decree enters into force on 1<sup>st</sup> January 2017.

### **France - The Parliament passes a law of ratification of the Council of Europe Convention on the counterfeiting of medical products**

Law n°2016-701 of 30 May 2016 allows the French State to ratify the Council of Europe convention on the counterfeiting of medical products and similar crimes involving threats to public health, initially signed in Moscow on 28 October 2011.

This Convention concerns drugs and medical devices, whether protected under intellectual property rights or not and whether they are generic or not, as well as the active substances, excipients, parts and materials designated to be used in the production of medical products.

In particular, this Convention provides that Member States shall establish as offences the intentional manufacturing and any adulteration of the aforementioned products and obliges the parties to provide for criminal or non-criminal monetary sanctions and to take measures to permit the seizure, confiscation, and destruction of counterfeit products when they are the subject of an offence.

Finally, this Convention obliges the States parties to establish national co-operation and information exchange in order to combat effectively the counterfeiting of medical products.

### **European Law - The European Union Council passes the Trade Secrets Directive**

On 27 May 2016, the European Union Council passed the directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure ([see Legal and Regulatory Newsletter – April 2016](#)).

The Directive will soon be published in the Official Journal of the European Union. Member States will have a maximum period of two years from its entry into force to implement the Directive in their national law.

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## **8. Life Sciences**

### **France - Adoption of a charter of ethics by the ANSM**

On 17 May 2016, the French National Agency for Medicines and Health Products Safety ("**ANSM**") announced the adoption of its [Charter of ethics](#). This text recalls the fundamental principles of the ANSM, such as independence, integrity and transparency. Additionally, the Charter lays down ethical obligations for ANSM's officers and its external experts, regarding, in particular, integrity, impartiality, confidentiality and the duty to exercise reserve.

### **France - Publication of specifications for the testing of telemedicine acts**

Pursuant to Article 36 of the Law n°2013-1203 for the financing of social security for the year 2014, experimentations of acts of telemedicine regarding patients taken care of by private practice physicians or within a medical and social structure may be carried out in several pilot regions, since 1<sup>st</sup> January 2014 and for a period of four years.

Implementation of the experimentation phase is now set forth in specifications established by the Ministers in charge of Public Accounts and Finances, and Health and Social Affairs. It was published in an [Order dated 28 April 2016](#) (OJ of 5 May 2016, text n°20).

### **France - Health data now accessible to for-profit organizations**

Article 4 of the [Order dated 19 July 2013](#) on the implementation of the national interplan health insurance information system ("**SNIIRAM**") provides, in particular, that no research organization, university, or other educational structure related to research and operating for profit may access information stored by the SNIIRAM. Those provisions aim to prevent, in particular, insurance companies or pharmaceutical companies from accessing this data in view of conducting studies of general interest.

In its [Decision n°385305 dated 20 May 2016](#), the French Supreme Administrative Court orders that said provisions of Article 4 be revoked, because of the absence of legislative basis habilitating the Minister of Health and Social Affairs to establish such a rule. Consequently, the Minister is under the obligation to repeal the disputed provisions of Article 4 of the Order, within a period of 4 months from the date of the French Supreme Administrative Court's Decision.

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## 9. New Technologies

### France - The CNIL imposes sanctions on RICARD for a security breach of its clients' data

As part of a first investigation of the website [www.ricard.com](http://www.ricard.com), the CNIL noticed that it could freely access thousands of data located in the directories of the website. RICARD, informed of the breach, indicated that it had blocked access to the data through its hosting provider. A second investigation revealed that the data was still accessible. The CNIL issued a public warning against RICARD for failing to ensure the security and confidentiality of the data.

### France - The CNIL investigation program for 2016

The CNIL announced that it will conduct between 400 and 500 investigations in 2016. 20% of these investigations will be conducted as a result of a complaint, 35% upon the CNIL's initiative and 20% will be specifically dedicated to check video surveillance and CCTV devices. Investigations relating to the themes identified in the annual program (including "data brokers" activities) will represent 25% of the investigations.

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## 10. Procedures

### France - Civil procedure

The new employment court proceedings enter into force

Decree n°2016-660 of 20 May 2016 on the justice before employment courts and the judicial treatment of employment disputes (J.O n°0120 of 25 May 2016) implements the reform of employment courts initiated last summer by Law n°2015-990 of 6 August 2015 ("Macron law"). This Decree carries out measures that are needed to modernize the employment courts and to rationalize the treatment of certain employment disputes. The jurisdiction of the "*conseil de prud'hommes*" (the first-instance employment court) remains the same, both in its role as a conciliator of the parties and regarding the homologation of agreements resulting from alternative dispute resolution methods. The oral character of the proceedings is reaffirmed through a systematized use of procedural hearings, in order to speed the processing of the cases. The specific rules regarding the uniqueness and the expiration of the instance no longer exist. The appeal proceedings will require compulsory representation before the appellate jurisdictions, either by a lawyer or a union representative. The Decree also defines the conditions in which the civil jurisdictions could ask the French Supreme Court's interpretation of collective agreements. The text will enter into force on 1 August 2016.

### France - Criminal procedure

Minors suspected or accused in criminal proceedings: mandatory lawyer assistance

Directive n°2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJEU L 132/1 of 21 May 2016) implements new procedural safeguards for minors. It creates common minimum rules that should apply to individuals suspected or accused in criminal proceedings or concerned by a European arrest warrant, if they are under 18 years old or if they had not reached that age when they were involved in a criminal proceeding. The Directive also contains provisions regarding the right to information for suspected or accused minors.

More severe than Directive n°2013/48/EU of 22 October 2012, Directive 2016/800 provides that the children will have to be assisted by a lawyer without undue delay. The Directive also provides for derogations to the right to a lawyer, except in two cases: when the minors appear before a jurisdiction or a judge which rules on their potential detention and during their detention.



## France - Administrative procedure

End of the use of "*considérant*" ("*whereas*") by the *Conseil Constitutionnel* (Constitutional council)

The President of the "*Conseil Constitutionnel*" (French Constitutional Court, in charge of assessing the conformity of laws with the French constitution), Laurent Fabius, announced in a [Press Released on 10 May 2016](#) that the Court decided to adopt a new way of drafting its decision and notably stop using the traditional "*considérant que*" ("*whereas*") which introduced each of the arguments of a decision. The Judges implemented these new rules in two decisions handed down on 10 May 2016 (decisions n°2016-539 QPC and 2016-540 QPC), and stated that this more direct way of drafting decisions aimed at making the reading of their decisions easier and to strengthen their reasoning.

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## 11. Public Law

### France - Award of the contracts of motorway concessionaires

Decree n°2016-552 dated 3 May 2016, published in the OJ dated 5 May 2016, relating to the award of contracts by motorway concessionaires, defines the procurement procedures motorway concessionaires shall apply to award their contracts, in accordance with the new rules relating to public procurement introduced by Decree n°2016-360 dated 25 March 2016 on public procurement. The Decree also specifies the conditions under which the Regulatory Authority for rail and road activities (ARAFER) shall be informed prior to the award of motorway concessionaires' contracts which are subject to mandatory advertising and competitive tendering procedures.

### France - Implementation of users' right to seize public authorities by electronic means

Decree n°2016-685 dated 27 May 2016, published in the OJ dated 29 May 2016, defines the framework within which the State and public-owned institutions can create and implement online services aimed at receiving user's requests through electronics means, while meeting the requirements of Law dated 6 January 1978 relating to civil liberties, electronic storage and retrieval of information. Those automated processes should enable users to perform at their initiative, any request, through dematerialized administrative procedures and get electronic responses from public authorities.

### France - "Silence is deemed to signal acceptance" and its exceptions

Decree n°2016-677 dated 25 May 2016, published in the O.J. dated 27 May 2016 and Decree n°2016-625 dated 19 May 2016, published in the OJ dated 20 May 2016, set out the procedures under which silence of local authorities and their public-owned institutions for more than two months from the date of a request is not deemed to signal acceptance, by exception to the principle provided in article L.231-1 of the code of relations between users and the administration. These exceptions are justified by reasons relating to the matter of the query and issues relating to good governance, including emergency or complexity of the decision procedure (e.g when a decision shall be taken after an expert or advisory committee established by applicable regulations has rendered its opinion).

### France - Conditions of conclusion and content of mandate agreements

Decree n°2016-544 dated 3 May 2016, published in the OJ dated 29 April 2016, having regard to Law 2014-1545 relating to the simplification of the life of companies, sets out the financial and accounting procedures in accordance to which public institutions and independent public authorities may entrust a third party through a mandate agreement to collect revenues and pay expenditures to public or private body.

## European Law - Fourth railway package

Directive n°2016/797 and Directive n°2016/798 dated 11 May 2016, published in the OJEU dated 26 May 2016, relating respectively to the interoperability of the rail system within the European Union and railway safety, complemented by Regulation n°2016/796, dated 11 May 2016,

published in the OJEU dated 26 May 2016, on the European Union Agency for railways, constitute the "technical pillar" of the 4th railway package. These regulations aim at simplifying procedures and reducing the costs relating to applications for safety certificates and authorizations for the placing on the market of vehicles, through strengthening the role of the European Union Agency for railways. Directives and Regulation shall apply from 15 June 2016 onwards.

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## 12. Tax

### France - Dividend distribution: reduction of the taxable portion of dividends distributed within French consolidated tax groups

The French Tax Authorities (the "FTA") updated their official guidelines drawing the consequences of the suppression by the French Amended Finance Act for 2015 of the neutralization of the taxable portion of dividends distributed within French consolidated tax groups as from 1 January 2016.

As part of the suppression of the tax neutralization of dividends distributed within French consolidated tax groups, the French legislator provided for a reduction of the rate of the taxable portion of such dividends distributed within French consolidated tax groups which is now **1%**.

This new rate applies to dividends distributed (i) within French tax consolidated groups, or (ii) by a subsidiary established in a member State of the European Union (*or of the European Economic Area*) and which could be consolidated in France if it were established in France, to a French company member of a consolidated tax group (BOI-IS-BASE-10-10-10-10-20160607, BOI-IS-BASE-10-10-20-20160607, BOI-IS-GPE-20-20-20-10-20160504).

### France - The register of trusts is publicly available as from 30 June 2016

Decree n°2016-567 dated 10 May 2016 specified the applicable procedure to consult the French "*register of trusts*" provided by Article 1649 AB of the French Tax Code (the "FTC"). Such Decree provides that the register will be accessible through Internet as from 30 June 2016. For each connection to this register (i) the username of the requester, (ii) his/her IP address, and (iii) the date and hour of the research will be retained for a year.

As a reminder, the public register of trusts contains (i) the name and the address of the trust, (ii) its date of constitution (*and possibly its date of termination*), and (iii) the identity of the settlor, the beneficiaries and the trustee.

### France - Treatment of the forced termination allowance paid to directors

The FTA updated their official guidelines drawing the consequences of the decrease of the threshold above which forced termination allowance paid to directors is taxable for French individual income tax purposes (Article 80 ter of the FTC).

As from 1 January 2015, the portion of forced termination allowance that can be exempt from French individual income tax is limited to three times the annual amount of the social security ceiling ("*plafond de la sécurité sociale*" – i.e., *EUR 115,848 in 2016*) instead of six times such ceiling as previously provided by law (BOI-RSA-CHAMP-20-40-20-20160526).

### France - Contribution of a business to a company: tax deferral maintained in case of donation-partition

In principal, the tax deferral regime applicable to capital gains realized as part of the contribution of a business to a company is maintained in case of transmission of shares through the mechanism of donation-partition ("*donation-partage*").

However, the FTA specified that when the transfer of the bare ownership ("*nue-propriété*") of the shares is followed by the transfer of the usufruct of such shares, deferred capital gains become taxable in the hand of the transferor upon realization of the transfer of the usufruct (BOI-BIC-PVMV-40-

20-30-20-20160504 n°170).

### **France - Share Savings Plan applicable to "SMEs and mid-tier firms": extension of the scope of eligible securities**

The FTA updated their official guidelines (i) broadening the scope of eligible securities to the Share Savings Plan aiming to finance small and medium enterprises (so called "*PEA PME-ETI*"), and (ii) allowing certain debt instruments to be owned through such PEA PME-ETI (BOI-RPPM-RCM-40-50-20-20-20160530, BOI-RPPM-RCM-40-55-20160530, BOI-RPPM-RCM-40-50-40-20160530, BOI-RPPM-RCM-40-50-20-10-20160530).

The FTA also specified that the net gain realized upon closure of a PEA in case of death of his/her owner is subject to French social contributions ("*CSG/CRDS*") even if such gain is exempt from French individual income tax (BOI-RPPM-RCM-40-50-50-20160530, n°100).

### **International - Tax convention between France and Switzerland: amendments to the additional protocol**

Decree n°2016-534 dated 29 April 2016 published the agreement between France and Switzerland dated 25 June 2014 which amended the additional protocol to the tax convention between France and Switzerland dated 9 September 1966.

This agreement aims to strengthen the exchange of tax information between France and Switzerland and notably provides for (i) the possibility to formulate requests for administrative assistance targeting a group of taxpayers (*without having to provide their names and addresses*), and (ii) the modalities of implementation of the exchange of banking information.

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## **13. Telecoms**

### **France - Changes to come regarding network sharing agreements between operators**

Roaming and pooling agreements between, on the one hand, Free and Orange, and on the other hand, SFR and Bouygues Telecom, allow operators to share or rent networks and sometimes frequencies while building their own infrastructure. In order to put an end to the distortion in competition created by such agreements, the Arcep has ordered that the operators update their existing contracts. The Law of 7 August 2015 has given the Arcep the authority to request that mobile network operators update their network sharing agreements (roaming and pooling) when the authority deems that it is necessary for the implementation of regulation objectives.

Operators have until 15 June 2016 to submit their proposals of updated agreements. In the event of lack of proposal on their part, the Arcep shall submit its own proposal of updates, which will then be reviewed by the French Competition Authority.

### **France - Operator fined for non-compliance with financial contribution to universal service for electronic communications**

Operators whose yearly revenue exceeds five million Euros are under the obligation to financially contribute to the universal service fund. This service aims to provide all end users with access to services such as connection to a fixed public network and a high quality, affordable phone service.

Having failed to fulfill its financial obligations for the years 2011, 2012 and 2013, in spite of a formal notice to comply by 15 October 2015, the company Lycamobile was sentenced to a fine of an amount of 100,000 Euros by the Arcep in its Decision n°2016-0504-FR of 14 April 2016.

### **European Law - Release of new frequencies**

In compliance with the implementation of Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), the principle of technological neutrality became applicable in the EU on 25 May 2016.

Until now, each frequency range was dedicated to a single technology – fixed or mobile phone service, 2G, 3G, 4G etc. Operators now have the possibility to use all available frequencies. The purpose is to answer the constant growth of traffic data needs on mobile network.

### **European Law - Public consultation on draft guidelines regarding net neutrality**

Regulation (EU) 2015/2120 of 25 November 2015 laying down measures concerning open internet access provides that the Body of European Regulators for Electronic Communications (BEREC) shall draft guidelines for the implementation of net neutrality by the National Regulation Authorities. Net neutrality rules aim to safeguard equal and non-discriminatory treatment of traffic in the provision of Internet access service.

Therefore, the BEREC has launched a [public consultation](#) on 6 June 2016 on its [draft guidelines](#). The consultation is open to all stakeholders and citizens. It shall last until 18 July 2016.

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