

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for October 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 duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in second reading by the National Assembly on March 23, 2016 – Amended in second reading by the Senate on October 13, 2016 – Failure of the Joint Committee on November 2, 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 – Amended in first reading by the Senate on October 13, 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 21st century justice**, n°661, filed at the Senate on July 31, 2015 – Final adoption on October 12, 2016. Seisin of the Constitutional Council.
- **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.
- **Draft law to reinforce media freedom, independence and pluralism**, n°3465, filed on February 2, 2016 – Adopted in final reading by the National Assembly on October 6, 2016. Seisin of the Constitutional Council.
- **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 relating to transparency, fight against corruption and modernisation of economic life**, n°3623, filed on March 30, 2016 – Final adoption on November 8, 2016.
- **Draft law on Equality and citizenship**, n°3679, filed on April 13, 2016 – Adopted in first reading at the National Assembly on July 6, 2016 – Amended in first reading by the Senate in October 18, 2016 – Failure of the Joint Committee – Under examination in new reading from November 22, 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.
- **Draft organic law relating to competence of the defender of rights for the whistleblowers protection**, n°3770, filed on May 18, 2016 – Final adoption on November 8, 2016 - Seisin of the Constitutional Council.
- **Draft law which ratifies ordinance n°2016-131 of February 10, 2016 to reform contract law, the general regime and the proof of obligations**, n°3928, filed at the National Assembly on July 6, 2016.
- **Draft law to accelerate procedures and stabilises urban planning, construction and development**, n°770, filed on July 6, 2016 – Adopted in first reading by the Senate on November 2, 2016.
- **Draft law relating to a rail link between Paris and the Paris Charles de Gaulle airport**, n°3926, filed on July 6, 2016 – Adopted in first reading by the National Assembly on September 27, 2016 – Amended in first reading by the Senate on November 7, 2016.
- **Draft law on the modernisation, development and protection of mountain areas**, n°4034, filed on September 14, 2016 – Adopted in first reading by the National Assembly on October 18, 2016.
- **Draft law to adapt the mining code to environmental law**, n°4043, filed on September 14, 2016 – Adopted in first reading by the National Assembly on September 21, 2016.
- **Draft finance law for 2017**, n°4061, filed on September 28, 2016 – Text of the first part adopted by the National Assembly on October 25, 2016.
- **Draft law to ratify ordinance n°2016-966 of July 15, 2016 for the simplification of procedures implemented by the French Agency for the Safety of Health Products (Agence nationale de sécurité du médicament et des produits de santé) and which includes various provisions relating to health products**, n°12, filed on October 5, 2016 – Adopted in first reading by the Senate on October 27,

2016 – In debate in first reading by the National Assembly on November 22, 2016.

- **Draft Social Security Financing Act for 2017**, n°4072, filed on October 5, 2016 – Adopted in first reading by the National Assembly on November 2, 2016.
- **Draft law which ratifies ordinances n°2016-1019 of July 27, 2016 relating to autoconsumption of electricity and n°2016-1059 of August 3, 2016 relating to the production of electricity from renewable energies and which aim at adapting some provisions relating to electricity and gas networks and to renewable energies**, n°4122, filed at the National Assembly on October 12, 2016.

Enacted laws

- **Law n°2016-1428 of October 24, 2016 to reinforce security in the use of drones by civilians** – OJ of October 25, 2016.
- **Ordinance n°2016-1408 of October 20, 2016 relating to the reorganisation of the collection of the employers' contribution to building and construction work** – OJ of October 21, 2016.
- **Ordinance n°2016-1406 of October 20, 2016 for the adaptation and simplification of legislation relating to the French blood agency and its activities linked to blood transfusion** – OJ of October 21, 2016.
- **Ordinance n°2016-1366 of October 13, 2016 relating to various statutory provisions for magistrates of the administrative courts and administrative courts of appeal** – OJ of October 14, 2016.
- **Ordinance n°2016-1365 of October 13, 2016 relating to various statutory provisions for the State Council** – OJ of October 14, 2016.
- **Ordinance n°2016-1365 of October 13, 2016 which modifies the legislative part of the financial jurisdictions' code** – OJ of October 14, 2016.
- **Law n°2016-1341 of October 11, 2016 which ratifies ordinance n°2016-129 of February 10, 2016 on the continuity in supply after the end of transitional market offers of electricity and gas** – OJ of October 12, 2016.
- **Law n°2016-1325 of October 7, 2016 which authorises the approval of the convention between the French Republic Government and the Colombian Republic Government in order to avoid double taxation and prevent tax evasion and fraud with respect to Taxes on Income and on Capital** – OJ of October 8, 2016.
- **Law n°2016-1324 of October 7, 2016 which authorises the approval of the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning centres of excellence implemented as part of the "One Complex Weapons" sector strategy** – OJ of October 8, 2016.
- **Law n°2016-1323 of October 7, 2016 which authorises the ratification of the convention on the suppression of unlawful acts against the safety of civil international aviation and the additional protocol to the convention for the suppression of unlawful seizure of aircraft** – OJ of October 8, 2016.
- **Law n°2016-1322 of October 7, 2016 which authorises the ratification of the framework agreement of partnership and cooperation between the European Union and its State Members, on one hand and Mongolia on the other hand** – OJ of October 8, 2016.

- **Law n°2016-1321 of October 7, 2016 for a Digital Republic** – OJ of October 8, 2016.
 - **Ordinance n°2016-1315 of October 6, 2016 which amends the law dated December 17, 1926 relating to repression in the maritime sector** – OJ of October 7, 2016.
 - **Ordinance n°2016-1314 of October 6, 2016 which adapts the maritime labour convention (2006) of the International Labour Organization and to the work in fishing convention n°188 (2007) for law applicable to seafarers in the Wallis and Futuna Islands and the French Southern and Antarctic Lands** – OJ of October 7, 2016.
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1. Audiovisual

France - Sustained exploitation of audiovisual works

Sustained exploitation of audiovisual works

Law n°2016-925 of 7 July 2016 regarding the freedom of creation, the architecture and the Heritage aimed at reinforcing the producers' obligation to seek the sustained exploitation of cinematographic and audiovisual works.

Regulatory Order of 7 October 2016, adopted pursuant to this Law, makes the professional agreement reached on 3 October 2016 between author representative bodies, film directors, producers and distributors of audiovisual works mandatory to producers of such works.

As a result, the producer must devote his/her best efforts to allow an audiovisual work to be exploited in France and/or abroad. He/she is therefore responsible, in particular, for:

- Keeping the elements that have served to the creating of the work in good condition;
- Making the work available, within reasonable delays in response to demands from potential transferees or representatives, in formats and on media that are adapted to the targeted means of exploitation, considering the market uses and technological evolutions;
- Looking for distributors and broadcasters; and
- Providing the author with, at least once a year, a statement of revenues stemming from the exploitation of the work according to each mode of exploitation.

The provisions of the professional agreement are mandatory since 20 October 2016 and for a three-year period, tacitly renewable by three-year periods.

European Law

N/A

2. Banking

France - Pledge over inventory

A decree (*décret*) dated 6 October 2016 (OJ n°0235 dated 8 October 2016) adapts the registration form of the pledge over inventory, particularly to take into account the deletion of some information that were previously compulsory in the agreement and to bring the aforementioned registration form closer to the one used for the common law pledge provided by the French Civil code.

This decree entered into force on 9 October 2016.

France - Crowd-funding

A decree (*décret*) dated 28 October 2016 (OJ n°0254 dated 30 October 2016) provides details on the legal regime of the crowd-funding in case of

operation done on the internet, and details on the legal regime of the "*minibons*", new form of interest-bearing notes.

This decree entered into force on 31 October 2016.

European Law - European account preservation order procedure

The Commission's Implementing Regulation (*règlement d'exécution*) n°2016/1823 dated 10 October 2016 ([JOUE, L283, dated 19 October 2016](#)) establishes the forms referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

This implementation regulation will enter into force on 18 January 2017.

3. Capital markets

France

N/A

European Law

N/A

4. Commercial Law

France

N/A

European Law

N/A

5. Competition

France - Appointment of Isabelle da Silva

Isabelle da Silva has been appointed President of the French Competition Authority (*Autorité de la concurrence*) by [decree of the President of the French Republic of 14 October 2016](#). Up until her appointment, Isabelle da Silva was the President of the sixth chamber of the French Administrative Supreme Court (since 2013) and a member of the French Competition Authority's College (since 2014). She replaces Bruno Lasserre who, after twelve years of presidency of the French Competition Authority, is now joining the French Administrative Supreme Court.

European Law

N/A

6. Consumer Law

France

N/A

European Law

N/A

7. Corporate

France - Publication of an updated doctrine by the AMF

The French stock exchange authority (Autorité des marchés financiers, AMF) published on its website two new guidelines on 26 October 2016.

The first guide is related to, permanent information and summarizes the requirements of the regulation (EU) n°596/2014 of 16 April 2014 on market abuse which entered into force on 16 July 2016. It deals with the obligation of permanent information communication which is due by the issuer (inside information, profit warning, etc.), manager's obligations, and providing information to third parties (insiders' list and data room).

The second guideline is related to, periodic information, underlines the positions and recommendations of the AMF and the ESMA (European Securities and Markets Authority) regarding periodic information.

The AMF has also published two instructions: One relating to means of information to the AMF regarding the differed publication of an inside information, and the other relating to means of transmission of manager's transactions declarations.

The AMF also publishes the results of the public consultation on the guideline related to the permanent information and the management of inside information.

France - Publication of an amendment of the French version of the European Market Abuse Regulation

An amendment of the regulation (EU) n°596/2014 of 16 April 2014 on market abuse (the "European Market Abuse Regulation") was published on 21 October, 2016 in the Official Journal of the European Union regarding certain provisions of the European Market Abuse Regulation, in particular, this rectification corrects the:

Definition of legal persons closely associated with the management and subject to the obligation to report transactions (Article 3, paragraph 1, point 26 d of the European Market Abuse Regulation).

Regarding the deadlines for notification and publication of managers' transactions, working days being replaced by business days (Article 19, paragraphs 1, 2 and 3 of the European Market Abuse Regulation).

Finally, regarding the obligation of notification of managers' transactions, the rectification establishes the principle of the lack of reporting obligation of a pledge of financial instruments and which is not intended to guarantee a credit line (Article 19, paragraph 7 of the European Market Abuse Regulation).

These amendments relate only to the French version of the European Market Abuse Regulation and entered into force on 22 October 2016.

European Law

N/A

8. Data Protection & IT

France - Entry into force of the Law for a Digital Republic

The Law for a Digital Republic n°2016-1321 dated 7 October 2016 (the "**Law**") has entered into force after its publication in the Official Journal dated 8 October 2016.

The Law notably provides for: the right of data recovery and portability for consumers, the information of data subjects of the retention period of their personal data, the right for minors to be forgotten, the digital death, and a reinforcement of the CNIL's powers of sanction as the CNIL will now be able to issue a fine of up to 3 million euros.

France - The class action against personal data breach has been adopted by the Assemblée Nationale

On October 12, 2016 the Assemblée nationale adopted the bill for the Modernization of 21st Century Justice (the "**Bill**"), which will provide for class action in the field of personal data protection.

This class action enables individuals who are in a similar situation and who have suffered a damage resulting from the non-compliance by the data controller or the data processor with the French Data Protection Law n°78-17 dated January 6, 1978 (the "**Data Protection Law**") to bring a class action. This action can be brought before the Civil or the Administrative Courts.

Individuals must be represented by an organization which falls within one of the categories prescribed by the Bill.

Prior to the action a formal notice must be sent to the data controller or to the data processor. If the Court finds there has been non-compliance with the Data Protection Law, then it will order the defendant to take the necessary measures to comply with the Data Protection Law. There is no right to claim for damages.

On October 17, 2016 the Bill, which has already been adopted by the Senate, has been referred to the French Supreme Court. It will then be enacted by the French President.

European Law

N/A

9. Employment

France - Upstream actions to be taken in the context of the revitalization of employment areas

Decree n°2016-1473 dated 28 October 2016 (OJ N°0256) dated 3 November 2016 taken pursuant to Article 97 of Law n°2016-1088 dated 8 August 2016 on employment, modernization of social dialogue and career security ("*Loi Travail*") describes the upstream actions to be taken in the context of the revitalization of employment areas.

The decree applies to companies that have been notified of the obligation to revitalize employment areas after its publication.

France - Clarifications regarding the 300 employees threshold crossing in terms of information – consultation and operation of the Works council

Decree N°2016-1437 dated 25 October 2016 (OJ n°0251 dated 27 October 2016) relating to the implementation of *Loi Travail* sets up the conditions for the assessment of the 300 employees' threshold crossing as regards to the employer's obligations relating to the information – consultation and

operation of the works council.

In this respect, the threshold of 300 employees has to be achieved for twelve months, consecutive or not, during the past three years.

France - Clarifications on social ruling ("rescrit social") process

Decree n°2016-1435 dated 25 October 2016 (OJ n°0251 dated 27 October 2016) relating to the implementation of Order n°2015-1628 dated 10 December 2015 on the guarantees that apply to the request for social ruling ("*rescrit social*") reviews the conditions for the social ruling request and describes the conditions of implementation of the new industrial sectors' social ruling ("*rescrit social de branche*").

The decree sets the content, the different steps and the timeframe of the social ruling request.

The new industrial sectors' social ruling allows professional organizations to submit a request regarding the specific situation of their industrial sector as regards to the provisions of the Social Security Code.

The decree also describes the applicable process regarding to the AGEFIPH social ruling which aims at securing the employers as regards to their obligation of employment of disabled workers.

France - Representativeness of companies - Application process for employer's union organizations

Ministerial ruling dated 26 October 2016 (OJ n°0251 dated 27 October 2016) amends another Ministerial ruling dated 13 July 2016 (OJ n°0163 dated 14 July 2016) relating to the application process for employers' union organizations as regards to their representativeness in 2017 and grants additional time to employers' union organizations wishing to show their representativeness at industrial sector level.

A ministerial ruling dated 13 July 2016 had set up the deadline on 28 October 2016 at 12am. The application deadline is pushed back to 10 November at 12 by the new ministerial ruling.

France - Display and communication of documents to the Administration

Decree n°2016-1417 dated 20 October 2016 (OJ n°0247 dated 22 October 2016) restrains the employer's obligation to display some documents and lengthens the list of documents that simply has to be kept available - and not to be handed over - to the Administration.

The employer now only has to communicate by any means (intranet, emails), a number of documents listed by the decree (including the annual paid leave dates, the applicable collective agreements, the internal rules and some provisions relating to equal pay for women and men).

The decrees lists the documents that have to be kept available to the Administration, notably the Works Council opinion on the implementation of part-time schedules and the receipt of the declaration to the *CNIL* in case of automated processing of personal data in certain electronic documents on working time.

France - Industrial sector restructuring ("*restructuration des branches professionnelles*")

Decree n°2016-1399 dated 19 October 2016 (OJ n°0245 dated 20 October 2016) relating to the industrial sector restructuring process, adopted in application of the *Loi Travail* determines the conditions of publication of the merger or enlargement of industrial sectors. It also clarifies the role of the Subcommittee for the Industrial Sector Restructuring.

This decree came into force on 21 October 2016. However, pursuant to Article 25-V of the *Loi Travail*, the National Collective Bargaining Commission will keep for three years from 8 August 2016 its veto on mergers, unless it is relating to the restructuration of territorial sector or to industrial sector has not concluded an agreement for more than 15 years.

France - Personal training account: new cases of use of the account and increase of the rights are set up

Decree n°2016-1367 dated October 12, 2016 (OJ n°0240 dated 14 October 2016) describes the conditions of implementation and the increase of the rights to be included in the personal training account ("*compte personnel de formation*" – "*CPF*") for unskilled workers. It also specifies the conditions for eligibility of training actions, skill assessments and training actions to be provided to people thinking to start up/take over a business. It also determines how to use the *CPF* in order to have new eligible actions.

This decree will enter into force on 1st January 2017.

European Law

N/A

10. Energy

France

N/A

European Law

N/A

11. Environment

France

N/A

European Law

N/A

12. Insolvency Proceedings

France

N/A

European Law

N/A

13. Insurance

France - Numerical republic: dematerialisation of insurance contractual relationships, and new status for the insurance comparison websites

The law n°2016-1321 of 7 October 2016 for a numerical republic grants to the government the right to issue by way of ordinance, legislative measures enabling notably the provision, or the communication of information or documents relating to an insurance contract, and the conclusion or modification of such insurance contract by way of dematerialised means in a manner that is durable and accessible to the client.

This law also creates the status of online platform operators the broad definition of which encompasses insurance comparison websites which are therefore caught by the obligation to deliver to the consumer a loyal, clear and transparent information, and to draft and issue good practices.

These provisions should be implemented and/or detailed by way of decree or ordinance.

France - Creation of a file recording insured vehicles

The law for modernisation of the justice of the XXIth century has been definitively adopted by the National Assembly on the 12 October 2016. Article 35, I, 3° of the law provides for the creation and the management by the AGIRA of a file recording insured vehicles, in order to fight against non-insurance (in respect of automobile insurance). This file should enable the relevant authorities to access information in the context of their missions. For the purpose of the creation of such file, the insurance undertakings shall provide the AGIRA with certain information. The insurance undertakings will have to keep the name and address of the owner, usual driver or holder of the vehicle for a duration of seven (7) years following the date of termination of the policy. In case of portfolio transfer, the new insurance undertaking will be in charge of such obligation. A decree shall be published before the 31 December 2018 and will supplement the law in relation to the modalities of application of this article and its entry in force.

France - FICOVIE - Automated processing of personal data

The Order dated 1st September 2016 creating an automated processing of personal data of the file for investment and life insurance contracts referred to as Ficovie (the "Order") repeals and replaces the previous order dated 29 February 2016, which had the same purpose. Ficovie enables the administration to fight against tax fraud, and the insurance undertakings to fight against unclaimed life insurance contracts. The Order lists the personal data processed by the file. Such data must be communicated by financial institutions marketing life insurance or capitalisation contracts in accordance with their reporting obligations. The Order also specifies for how long the data should be kept, the list of recipient as well as the entity with which the right to access, modify, rectify and delete data should be exercised.

France - AML-CFT – New instruction of the ACPR modifying the instruction relating to information to be provided in respect of Anti-Money Laundering and Combating Financing of Terrorism

The instruction n°2016-I-22 of 3 October 2016 of the ACPR (the "Instruction") amends the instruction n°2012-I-04 of 28 June 2012 relating to the information to be provided to the ACPR in respect of the AML. Among the modifications, the ACPR introduces a differentiation in respect of provision of information on the AML-CFT system between the organisms subject to Solvency I and those subject to Solvency II. The instruction also adds a specific regime for branches of insurance undertakings having their head office in another Member State of the European Union with regards to the provision to the ACPR of information tables.

France - ACPR and AMF: simplification and acceleration of the licensing procedures within the context of BREXIT

The ACPR and AMF (the French financial authority) declared in a press release dated 28 September 2016 that they were making the necessary arrangements within the context of BREXIT to welcome British undertakings willing to relocate in France. Regarding recovery of existing activities already carried under the supervision of the relevant authority in the home country, the licensing procedure shall be accelerated and simplified on the basis notably of documents already available in English language. In addition, the undertakings will have an English speaking referent person in charge of their application, who will manage the procedure and be able to provide ahead of the submission of the license application request all advices and information necessary to ensure an optimal treatment. Finally, the ACPR reminds that the undertakings concerned by the press release have at their disposal, since 9 August 2016, an email address dedicated to BREXIT.

European Law

N/A

14. Intellectual Property

France - Two new exceptions to author right

Law n°2016-1321 of 7 October 2016 for a Digital Republic creates two exceptions to author right and an exception to the right on a data base by modifying in particular the articles L. 122-5 et L. 342-3 of the French Intellectual Property Code.

First of all, the exception of "*freedom of panorama*" prevents the author of a work that has been disclosed from prohibiting the "*reproductions and representations of architectural works and sculptures, permanently placed on public road, made by individuals, excluding any commercial use*".

In addition, according to the exception of "*text and data mining*" the author of a disclosed work cannot prohibit "*digital copies or reproductions made from a lawful source, in view of mining texts and data included or associated to scientific writings for the needs of public research, excluding any commercial purpose*". A decree will lay down the conditions of conservation and communication of the so produced files. This exception also prevents the owner of rights on a data base that is made available for the public from prohibiting "*digital copies or reproductions of the base made by a person who has a lawful access to it, in view of mining texts and data included or associated to scientific writings in the context of research, excluding any commercial purpose*".

Lastly, this Law modifies article L. 533-4 of the French Research Code which now provides that "*when a scientific writing stemming from a research activity that is funded at least half by donations from the State, local authorities or public institutions, by subventions from national funding agencies or by funds of the European Union is published in a periodical publication issued at least once a year, its author has the right, even after granting exclusive rights to a publisher, to make available for free, in an open format, by digital means, provided the potential co-authors' consent, the final version of its manuscript accepted for publication, when the published himself makes such version available for free by digital means or, failing that, after the expiry of a period starting from the date of the first publication. This period is of maximum six months for a publication in the sciences, technical and medicine fields and twelve months in the human and social sciences field.*"

The above dispositions of this Law entered into force on 9 October 2016.

France - Taking of samples realized by customs officers

Law n°2016-713 of 3 June 2016 modified the French Customs Code to create article 67 quinquies B, which is unique and of general scope, providing that "*in case of examination of the goods as provided by the European customs regulation or pursuant to this Code, customs officers can conduct or allow to conduct taking of samples, in view of analysis or expertise, following the conditions laid down by decree in Conseil d'Etat.*"

Decree n°2016-1443 of 26 October 2016 adopted pursuant to this Law specifies the conditions of such takings.

This Decree entered into force on 29 October 2016.

European Law

N/A

15. Life Sciences

France

N/A

European Law

N/A

16. Procedures

France - Criminal procedure

- Handbook: the challenge of the houses and law firms searches

The National Council of Bars published the 26 October 2016 a handbook related to the challenge of houses and law firms searches. The handbook lays down the different steps leading to the challenge of the searches and indicates in the Annex the principles which are to be respected in these types of searches.

France - Administrative procedure

- Conditions of the electronic referral to the administration

Publication in the Official Journal of the decree n°2016-1411 providing the conditions of application of the right of referral to the administration by electronic means. The decree applies under the same conditions to the administrations of the State, of the regional and local authorities, of the administrative public institutions, of the public or private law bodies entrusted with a public service mission.

European Law

N/A

17. Product regulation

France

N/A

European Law

N/A

18. Profession and ethics of the profession

France

N/A

European Law

N/A

19. Public law

European Law - Exemption from the application of Directive 2014/25 for activities directly exposed to competition in the water, energy, transport and postal services sectors

The Commission Implementing Decision n°2016/1804, dated 10 October 2016, published in the OJEU dated 12 October 2016, on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal

services sectors details the content of the requests concerning the applicability of Article 34 which exonerates activities directly exposed to competition from the procurement procedures set out by Directive 2014/25. The Decision also details the content of the notices that the Commission shall publish where receiving such requests.

20. Real Estate

France

N/A

European Law

N/A

21. Tax

France - French participation-exemption tax regime: the French Tax Authorities ("FTA") published their final guidelines

The FTA published their final guidelines with respect to recent changes in relation to the French participation-exemption tax regime (*such guidelines were previously subject to public consultation from 7 June to 7 July 2016*).

As a reminder, the French participation-exemption tax regime provides for (i) a withholding tax exemption on dividends paid by a French subsidiary to certain foreign parent company, and (ii) a corporation tax exemption on dividends paid by a foreign subsidiary to a French parent company (*except for a portion equal to 5% of such dividends which must be added back to the French parent company's taxable income*).

The final guidelines published by the FTA primarily relate to:

- the anti-abuse rule provided by the French Amended Finance Act for 2015 (*i.e., Law n°2015-1786 dated 29 December 2015, Article 29*), which denies the benefit of the French participation-exemption tax regime to dividends distributed as part of schemes that are not genuine (*BOI-IS-BASE-10-10-10-10-20161005, n°180 to 260; BOI-RPPM-RCM-30-30-20-10-20161005, n°440 to 450*); and
- the applicability of the French participation-exemption tax regime to shares deprived from voting rights. Indeed, the FTA updated their guidelines in order to draw the consequences of the French constitutional court's decision dated 8 July 2016 (*i.e., Decision n°2016-553 QPC dated 8 July 2016*) which enabled the application of the French participation-exemption tax regime to shares deprived from voting rights (*i.e. Article 145, 6-c of the French Tax Code (the "FTC") – BOI-IS-BASE-10-10-10-20-20161005*).

France - French tax consolidation: the FTA definitively drew the consequences of the Steria decision

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 (*i.e., BOI-IS-GPE-20-20-20-10-20161005*).

As a reminder, 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) inside a consolidated tax group, or (ii) by a company established in another Member State of the European Union (*or of the European Economic Space*) which meet the conditions to be consolidated at the tax level.

France - French 3% tax exemption: clarifications on the documents which have to be provided to the FTA

French and foreign entities owning properties or real estate rights located in France are subject to an annual 3% tax assessed on the market value of such properties or rights on 1 January of each year. Certain entities might be exempt from such French 3% tax provided that they comply with certain tax reporting obligations (*i.e., BOI-PAT-TPC-20-20-20161005*).

In this respect, the FTA updated their official guidelines indicating the nature of the documents which have to be provided in order to support the information to be reported to the FTA (*i.e.*, *shareholders identity and address, number of shares and shareholdings*) and to be exempt from the French 3% tax (*provided by Article 990 E, 3°-d and e of the FTC*).

European Law

N/A

International - Automatic exchange of information: amendments to the agreement between the EU and Andorra

The initial agreement between the EU and Andorra ("the Agreement") provided for the automatic exchange of information in relation to financial accounts but narrowed the application of such automatic exchange of information in the event of tax fraud.

The amending protocol (*published on 1 October 2016 in the Official Journal of the European Union*) aims to (i) align the Agreement with the current OECD standards on transparency and exchange of information in tax matters, and (ii) improve compliance with tax reporting obligations at the international level.

International - Ratification of the tax treaty between France and Colombia

On 7 October 2016, France ratified the tax treaty with Colombia (Law n°2016-1325 dated 7 October 2016). This agreement is based on the OECD model and aims to avoid double taxation and prevent tax avoidance/evasion.

The provision of this convention should apply as from 1 January 2017.

International - Country by country reporting ("CBCR"): publication of the implementing decree

The Decree n°2016-1288 dated 29 September 2016 sets forth the conditions of application of the CBCR (*provided by article 223 quinquies C of the FTC*).

As a reminder, this tax reporting obligation targets multinational companies with annual consolidated turnover exceeding EUR 750 million which shall report to the FTA certain financial and tax related information regarding the countries in which they are established (*e.g.*, *turnover, profit or loss, income taxes, number of employees, etc.*).

The decree is effective since 1 October 2016.

22. Telecoms

France - Wireless communications monitoring measures are unconstitutional

By its QPC decision n°2016-590 of October 21, 2016 the French Supreme Court annulled the provisions of article L. 811-5 of the Internal Security Code ("**ISC**"), authorizing public authorities to monitor wireless communications for the purpose of national interests' defense.

These provisions enable public authorities to take monitoring measures not subject to (i) the provisions of the ISC relating to security intelligence and (ii) to the provisions of the Criminal Procedure Code governing interception of correspondences issued by way of electronic communications.

The Supreme Court considered that the provisions of article L. 811-5 of the ISC infringe the right for privacy and the secrecy of correspondences since they enable to intercept communications or to collect isolated data.

The Court also stressed that the text does not exclude that interceptions could be used for broader purposes than the defense of national interests. Moreover, article L. 811-5 of the ISC does not define the nature of monitoring and controlling measures that public authorities are authorised to take, do not submit the use of these measures to any substantive or procedural condition and do not provide any oversight mechanism.

However, the repeal of the provisions of article L. 811-5 of the ISC is postponed to December 31, 2017. Until the entry into force of a new law or until December 30, 2017, these provisions cannot be used as a basis for various specific measures of correspondences interception, collection of log data or capture of computer data provided for by the ISC. In addition, the use of article L. 811-5 of the ISC for the implementation of monitoring measures not prohibited by the Supreme Court will require the information of the National Commission for the Control of Intelligence Techniques.

European Law

N/A

23. Transport

France

N/A

European Law

N/A

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