

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 January 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 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.
- **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.
- **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.
- **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.
- **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 then 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 21st century justice, n°661, filed at the Senate on July 31, 2015 – Adopted by the Senate on November 5, 2015.**
- **Draft law which ratifies ordinance n°2015-1033 of August 20, 2015 relating to out-of-court resolutions of consumer disputes – filed before the Senate on October 28, 2015.**
- **Draft law which ratifies ordinance n°2015-899 of July 23, 2015 relating to public procurement – filed before the Senate on October 21, 2015.**
- **The Digital Republic bill, n°3318, filed on December 9, 2015 – Adopted by the National Assembly in first reading on January 26, 2016.**
- **Draft law which ratifies ordinance n°2015-1127 of September 10, 2015 which reduces the minimum mandatory number of shareholders in non-listed joint stock companies – in discussion in first reading before the National Assembly on January 28, 2016.**
- **Draft law which ratifies ordinance n°2015-904 of July 23, 2015 to simplify associations and foundations' regimes – filed before the Senate on January 27, 2016.**
- **Draft law which ratifies ordinance n°2015-1024 of August 20, 2015 relating to various provisions in connection with financial matters for the transposition of EU Law into French Law, n°3393 – filed before the National Assembly on January 13, 2016.**

Enacted laws

- **Law n°2016-41 of January 26, 2016 for the modernisation of our health system – OJ of January 27, 2016.**
- **Ordinance n°2016-56 of January 29, 2016 concerning the pledges on inventories – OJ of January 30, 2016.**
- **Ordinance n°2016-65 of January 29, 2016 relating to concession contracts - OJ of January 30, 2016.**
- **Ordinance n°2016-79 of January 29, 2016 relating to bus stations and the re-codification of the Code of transport provisions relating to the *Autorité de régulation des activités ferroviaires et routières* (French National Authority for the Regulation of railway and road activities) - OJ of January 31, 2016.**

1. Banking

France - Usury thresholds for the first quarter of 2016

The opinion dated 29 December 2015 relating to usury thresholds (*J.O n°0301 dated 29 December 2015*) establishes usury thresholds for the first quarter of 2016. The thresholds are set with regard to the loans types.

The opinion entered into force on 1st January 2016.

France - Conditions to grant professional and personal microcredits performed by non-profit associations and recognized charitable foundations

The decree No. 2016-22 dated 14 January 2016 (J.O n°00013 dated 16 January 2016) modifies the conditions to grant professional and personal microcredits provided under articles R. 518-58 and following of the French *Code monétaire et financier*. The decree extends the duration and increases the maximum amount for each loan for creation, development and takeover of a business or to achieve integration project by individuals carried out by non-profit associations and recognized charitable foundations. The loans can be granted for seven years from the creation or takeover of a business and the maximum amount for each loan is:

- 12,000 euros per participant and per company for a creation project or a business development;
- 5,000 euros per borrower when the loan is granted to an individual for the realization of an integration project.

The decree entered into force on 17 January 2016.

France - Order (*ordonnance*) relating to pledge over inventory

The order (*ordonnance*) n°2016-56 dated 29 January 2016 (J.O n°0025 dated 30 January 2016) relating to pledge over inventory aims to bring closer the legal regime of the commercial pledge over inventory and the common law of the pledge (from the French *Code civil*). The main changes are:

- a simplified formalism based on the common law of pledge;
- possibility to grant a pledge over inventory with dispossession;
- possibility to enforce the pledge through a "*pacte comissoire*" (*i.e.* if the debtor does not execute its obligations, the beneficiary of the pledge will become owner of the pledged assets); and
- improvement of the "*clause d'arrosage*" mechanism (*i.e.* obligation for the pledgor to maintain the value of the pledged assets).

In addition, the parties can choose between the commercial pledge over inventory and the pledge issued from the French *Code civil*.

The provisions of this order (*ordonnance*) shall come into force on 30 April 2016 and will only apply to agreements executed from that date.

France - Rate of regulated savings from 1st February 2016

A ministerial decree (*arrêté*) dated 25 January 2016 (J.O n°0023 dated 28 January 2016) is related to the rates mentioned in the Committee's resolution of banking regulations relating to the remuneration of funds received by credit institutions.

From 1st February 2016 to 31 July 2016, the mentioned rate shall be:

- *livret A and Livret développement durable*: 0.75%;
- regular savings accounts of mutual credit (after all taxes and social contributions): 0.75%;
- popular savings passbook accounts: 1.25%;

- business savings passbook accounts: 0.50%;
- housing savings accounts without government bonus: 0.50%.

The ministerial decree (*arrêté*) came into force on 1st February 2016.

France - Implementation conditions of the banking mobility assistance service

A decree dated 29 January 2016 ([J.O n°0026 dated 31 January 2016](#)) specifies the implementation conditions of the banking mobility assistance service. This service is intended for individuals not acting for business purposes in order to help them to transfer their original account to a bank account.

The first provisions entered into force on 1st February 2016.

France - Possibility for specific investment funds to lend directly to companies

Article 27 of the amended Finance Act for 2015 ([L. n°2015-1786 dated 29 December 2015](#)) amended the legal system applicable to professional specialized funds, professional funds and private equity securitization entities. These entities are now allowed to make loans to companies if:

- they received an authorization to use the name "ELTIF" under regulation (EU) No 2015/760 dated 29 April 2015; and
- under the conditions provided in the said regulation ELTI or set by a decree of the Council of State (*Conseil d'Etat*).

The approval process takes two months.

These provisions entered into force on 1st January 2016.

2. Capital Markets

France - AMF - Publication of a guide on the European long-term investment funds (ELTIFs)

Further to the implementation on 9 December 2015 of the regulation (EU) 2015/760 of the European Parliament and Council dated 29 April 2015 relating to European long-term investment funds (ELTIFs), on 21 January 2016, the AMF published a guide on these funds in order to guide management firms wishing to have their funds authorised under the new regulation.

In particular, the guide describes the type of funds which can be authorised as ELTIF, how to request the authorisation, the requirements which apply to managers of ELTIFs funds, the eligible assets and the process to obtain the passport to market the ELTIFs funds.

France - AMAFI - Publication of the AMAFI code in relation to good practice for arrangers

On 13 January 2016, the French association of French market professionals ("**AMAFI**") published an AMAFI code of good practices for arrangers of Euro PP transactions and a list of the arrangers who comply with it.

Taking into account that most of the Euro PP transactions are implemented with the role of an arranger, the AMAFI decided to standardise the professional good practices which apply to arrangers in relation to Euro PP transactions. The AMAFI code of good practices lists the tasks and the services and diligences which can be performed by the arranger at each stage of a Euro PP transaction.

France - Ordinance n°2015-1686 dated 17 December 2015 related to the settlement systems and delivery of financial instruments and central securities depositories

The ordinance n°2015-1686 dated 17 December 2015 related to the settlement systems and delivery of financial instruments and central securities depositories modified the current existing in order to update the French Financial and Monetary Code with the European regulation n°909/2014 dated 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU).

The ordinance:

- keeps the date of securities ownership transfer to T+2 (second opening day of the settlement and delivery system further the trading) but add three exceptions for certain type of transactions,
- introduces a definition of central depository,
- allows the *AMF* to appoint a provisional administrator with the central depository, on request of the officers of the central depository under certain conditions or on its own initiative. The appointment is made after an adversary proceedings except in the case of an emergency,
- extends the list of entities which can be participants to the settlement and delivery systems and the clearing houses by adding the international financial organisations or bodies, other public bodies, controlled enterprises operating under the guarantee of a state, appointed on an individual basis or by category further to an order of the minister of economy and finance, and the central banks.

France - Euronext - Amendment to the harmonised rules

The *AMF* amended the Euronext harmonised rules with two decisions dated 12 November 2015 and 24 November 2015.

The decision dated 12 November 2015 introduced a cooperation requirement for issuers in their relationship with Euronext. This obligation became effective on 30 November 2015.

The decision dated 24 November 2015 extended the sponsored access to derivatives instruments markets and is effective from 30 November 2015. The sponsored access which allows a Euronext member to make benefit one of its clients of the direct access to Euronext markets, provided the agreement of Euronext was prior this date only available for securities markets.

3. Commercial law

France - Alternative dispute resolution for consumer issues

Members of the Commission for assessment and evaluation of consumer mediation have been appointed on 15 December 2015 by ministerial Order. The implementation of this Commission finalizes the process of transposing the European Directive 2013/11/UE on ADR for consumer disputes, which has been initiated by the Order n°2015-1033 of 20 August 2015. The Commission is mandated to assess mediators and to build a list according to their field of expertise. This list will be available in the weeks to come on the European Commission and the French Ministry of Economy websites.

France - Digital Republic bill and consumer law

Among the many fields involved, the Digital Republic Bill should also modify consumer law. An article 22 bis has been added when the Bill was submitted to the French National Assembly in order to complete the article L. 111-7 of the French Consumer Code. This amendment adds a definition to the concept of professional subject to the pre-contractual information duties (article L. 111-1 and following of the French Consumer Code). Such information must be provided prior to the conclusion of any sales or service contract.

4. Competition

France - Revamping the legislative framework applicable to coach stations and the ARAFER's new powers

On January 31st, 2016, the Ministerial order n°2016-79 issued on January 19th, 2016 (the "**Ministerial Order**") relating to coach stations and codifying legal provisions applicable to the Rails and Roads Regulation Authority (*ARAFER*) in the Transportation Code was published. The Order, issued pursuant to Article 12 of the Law n°2015-990 on August 6th, 2015, aims at ensuring private operators free and non-discriminatory access to coach stations or any other infrastructures within the framework of transportation public service. This new legislative framework provides the *ARAFER* with a set of powers and prerogatives designed to monitor access to these infrastructures and impose sanctions.

5. Corporate

France - Information of the employees on the sale of the company or the going concern: publication of the decrees implementing the Macron law

Law n°2014-856 dated 31 July 2014 on social and solidarity economy (so called Hamon law) provided for a prior information process in relation of employees of small and middle size companies in the event of a contemplated sale of their company. This information process is twofold: (i) a periodical information every three years on the conditions for the take-over of the company by the employees and (ii) a specific information of the employees in case of a contemplated transfer of the company.

Law n°2015-990 dated 6 August 2015 (so-called Macron law) modified this information process as follows:

Article 204 II of the Macron law (i) provides for the applicability of the information process solely in the event of a sale of the company (and not generally in case of transfer) and (ii) provides for a civil fine amounting up to 2% of the sale price in case of breach of such information obligation. Furthermore, it is provided that if employees have been informed of possible sale projects under the periodical information process, it is not necessary to inform them in case of contemplated sale.

Decree n°2015-1811 dated 28 December 2015 provides that in case of a contemplated sale, employees shall be informed at least two months before the date of the sale agreement (and not the date of closing of the sale).

Article 204 I of the Macron law also provides that the information of the employees on a three-year basis shall involve the general guidelines of the company in terms of allocation of its share capital, in particular on the context and conditions of the transfer of the company, and, where applicable, the context and conditions for a material change of the ownership structure.

Decree n°2016-2 dated 4 January 2016 details the content of such information.

These provisions of the Macron law came into effect on 6 January 2016.

France - Update of the implementation guide of the AFEP-MEDEF governance code

The implementation guide of the AFEP-MEDEF governance code (as amended on 12 November 2015) was updated on 18 December 2015. Such updated version provides further details on the provisions of the governance code, as regards in particular the non-executive chairman, the choice of governance modalities (separation of the functions of chairman and chief executive officer), the sale of significant assets, exceptional compensations and welcome bonuses (non-competition agreements concluded in advance).

The AFEP-MEDEF governance code applies to companies whose securities are admitted to trading on a regulated market and who have chosen to refer to it, on a "comply or explain" basis.

France - Introduction of a new case of exemption from filing a public offer

Order dated 14 December 2015 approving the amendments of the AMF General Regulations amends Article 234-9 of the AMF General Regulations and introduces a new case of exemption from filing a public offer project in case of "granting of double voting rights between 3 April 2014 and 31 December 2018 under the conditions provided for by Article 7 V of law n°2014-384 dated 29 March 2014, as amended by Article 194 of the law n°2015-990 dated 6 August 2015".

In such case, the AMF may grant an exemption from filing a public offer project after having examined (i) the circumstances under which the threshold(s) has (have) been exceeded, (ii) the capital and voting rights allocation and, if any, (iii) the conditions for the approval of the transaction by the shareholders' general meeting of the company, pursuant to Article 234-8 of the AMF General Regulations.

These provisions came into effect on 1 January 2016.

France - Reduction of the time period for releasing the sale price of the business by the third party escrow

Article 97 of the amending financial law 2015 (law n°2015-1786 dated 29 December 2015) amends Article L. 143-21 of the Commercial Code and reduces the time period for releasing and allocating the sale price of business by the third party escrow. This time period is therefore reduced from five months to one hundred and five days.

However, it is provided that in the case where the declaration set out under Articles 3 and 3 bis of Article 201 of the tax Code was not filed in due time, the period for releasing the sale price is increased by sixty days.

These provisions apply to sales of businesses as going concern published after 1 January 2016.

France - Time period of the joint and several liability of the seller and the purchaser towards the tax administration in the context of a sale at the business as a going concern, as regards the income tax

Article 97 of the amending financial law 2015 (law n°2015-1786 dated 29 December 2015) amends Article 1684 of the tax Code and reduces the period during which the purchaser of a business sold as a going concern may be jointly and severally liable with the seller for payment of the income tax in relation to the profits made by the seller during the financial year during which the sale occurred. Such period is reduced from three months to ninety days.

France - Update of the consolidated recommendation of the AMF on corporate governance and executive compensation

AMF updated its consolidated recommendation DOC-2012-02 on corporate governance and executive compensation for companies which refer to the AFEF-MEDEF code dated 22 December 2015.

6. Employment

France - Modalities of the three-year information in the event of a company takeover by employees

The Decree n°2016-2 dated 4 January 2016 specifies the modalities to comply with, as of 6 January 2016, of the three-year information regarding the legal conditions for a resumption of the company by employees, in the event of a transfer of business concerning companies with less than 250 employees.

The information should specify (i) the steps and legal elements of a takeover project, (ii) social measures, (iii) the main criteria for valuation of the company, of the structure, its capital, its foreseeable development and the possibilities and modalities of a capital transaction.

This information may be submitted in writing, orally at a meeting or on a dedicated website.

France - Specifications concerning secondment modalities

The Decree n°2016-27 dated 19 January 2016 specifies the obligations borne on the prime contractor when they employ seconded employees on French territory.

When the service provider did not address a copy of the prior declaration of secondment, the prime contractor must send a declaration of secondment to the Labor Administration.

The liability of the prime contractor regarding payment of seconded employees is strengthened except if the client denounces the services provision contract.

France - Aid to Small and Medium-sized Companies (SMC)

The Decree n°2016-40 dated 26 January 2016 provides for a state aid, subject to conditions, of a maximum of €4.000 over two years for companies with less than 250 employees for any hiring of an employee under a fixed-term contract or a professionalization contract of at least 6 months, paid up to 1.3 of the guaranteed monthly minimum wage and conducted between 18 January and 31 December 2016.

Moreover, the Decree expands the state aid system regarding the hiring of a first employee for longer than six months under a fixed-term contract (against 12 previously) and extends this aid to any hiring made until 31 December 2016 (instead of 8 June 2016).

France - Prohibition of the use of electronic cigarettes in places for collective purposes

The Law n°2016-41 dated 26 January 2016 prohibits the use of electronic cigarettes in enclosed and inside workplaces for collective purposes. Individual offices are not concerned yet.

7. Energy

France - Litigation regime concerning offshore energy production and transportation facilities from renewables

Decree n°2016-9 dated 8 January 2016, published in the Official Journal on 10 January 2016, provides the legal framework for the appeals filed against various decisions regarding the offshore energy production and transportation facilities from renewables.

The Decree provides in particular that the Nantes Administrative Court of Appeal is the only jurisdiction competent for deciding on the validity of various decisions listed in the new article R. 311-4 of the Code of Administrative Justice (such as the authorizations referred to in article L. 311-1 of the Energy Code).

These provisions shall apply to all applications registered after the first day of the first month following the publication of the Decree (i.e., 1st February 2016).

Besides, the Decree provides that the duration of the concession contracts relating to offshore energy production facilities, to their related structures and to offshore electric networks is limited to forty years (article R.2124-1 of general Code on public property).

France - Further details concerning the calculation of the installed capacity of the electricity production facilities using renewable energy

Decree n°2016-23 dated 18 January 2016, published in the Official Journal on 20 January 2016, provides (in a new article D. 311-1-1 of the Energy Code supplementing the provisions of article L. 311-6 of the same Code) further details concerning the calculation of the installed capacity of the electricity production facilities using renewable energy.

The Decree – which was adopted in application of article II of section 104 of the Law n°2015-992 dated 17 August 2015 on the energy transition for green growth – provides in substance that the installed capacity of the electricity production facilities using renewable energy is *"equal, by type of renewable energy used, to the sum of the maximum active capacities produced in the same establishment and:*

1° injected, directly or indirectly, into the electric public network;

2° used for the operation of the auxiliaries of the concerned facility;

3° If applicable, used for the own consumption of the concerned producer.

8. Insurance

France - Decree relating to the support of victims of terrorist attacks - health insurance companies

Decree n°2016-1 of the 2 January 2016 (the "**Decree**") relating to the support of victims of terrorist attacks by the health insurance companies entered into force on 4 January 2016. The Decree was adopted in implementation of Article 63 of the social security financing Law for 2016 and specifies, notably the definition of the scope of beneficiaries and the bodies' coordination arrangements.

France - Life insurance: repealment of the ministerial response Bacquet

On 12 January 2016, the Minister of Finance announced the repealment of [the Bacquet ministerial response](#). Previously, the cash value of non-settled life insurance policies, subscribed with mutual funds coming from the community of property regime, was integrated into the community of assets subject to inheritance rights upon the death of the beneficiary. Successors including children will now be subject to inheritance rights on the cash value of life insurance policies only at the death of the second spouse.

France - Solvency II: publication of instructions by the ACPR

On 18 January 2016, the French insurance supervision authority (*Autorité de contrôle prudentiel et de résolution - ACPR*) has published in its official register the following five (5) instructions concerning Solvency II regime: (i) [Instruction n°2016-I-01](#) relating to the thresholds for the submission of the quarterly reporting, (ii) [Instruction n°2016-I-02](#) relating to the conditions of exemption as set up in Article 3 of the Instruction n°2016-I-01, (iii) [Instruction n°2016-I-03](#) relating to the conditions of the reporting on external ratings exemption, (iv) [Instruction n°2016-I-04](#) relating to the reporting for purposes of financial stability and (v) [Instruction n°2016-I-05](#) relating to the transmission by insurance and reinsurance companies of prudential documents to the ACPR.

European Law - Publication of the Insurance Distribution Directive

The [insurance distribution directive](#) (the "IDD") adopted on 20 January 2016 (please refer to the [Legal and regulatory update - December 2015](#)) was published in the Official Journal on 2 February 2016. The IDD thoroughly overhauls the practice of distributing insurance products in particular with regard to transparency of remunerations or the management and prevention of conflicts of interests. The IDD is applicable to all insurance distributors, be they producers, intermediaries or sellers of insurance products. Member States will have until 23 February 2018 to implement it into national law.

European Law - Solvency II: EIOPA opinion on the application of combination of methods to the group solvency calculation

On 27 January 2016, the European Insurance and Occupational Pensions Authority ("EIOPA") published an [opinion](#) on the application of a combination of methods to the group solvency calculation under Solvency II. The group solvency calculation can be carried out on the basis of (i) a consolidation method, (ii) a deduction and aggregation method or (iii) a combination of both methods, subject to the group supervisor's approval.

The EIOPA's opinion is of relevance for insurance groups that use the combination of methods as it aims to clarify certain issues related to the application of the combination of methods, such as the determination of the basis for tier limits used in the assessment of the own funds' eligibility or certain aspects to be taken into account by the group supervisor when deciding on the use of combination of methods.

9. Intellectual Property

France - Approval of the plain packaging by the French Constitutional Council

In its [Decision n°2015-277 DC of 21st January 2016](#), the French Constitutional Council ("Conseil constitutionnel") ruled that [Article 27 of Law n°2016-14 of 26th January 2016](#) relating to the modernization of our health system conforms to the Constitution. Introducing a new Article L. 3511-6-1 in the Public Health Code, it provides for the neutrality and standardization of the packing, packaging and additional wrappers for cigarettes as well as rolling tobacco, cigarette paper and paper for rolling cigarettes. The initial rejection of this part of the Bill by the Senate had been published in our [Legislative and Regulatory Newsletter of September 2015](#).

The Council ruled, in particular, that the infringement of tobacco producers' property rights over their trademarks was not clearly disproportionate with regards to the objective of protecting public health, insofar as they can still affix their trademarks upon aforementioned items.

Article 27 of the Law will enter into force on 20th May 2016.

A decree in Council of State is set to specify the conditions of neutrality and standardization, and in particular the ways and means of inscription of the trademarks on the items at stake.

10. Life Sciences

France - The health system reform deemed to comply with the French Constitution

In its [Decision n°2015-727 DC of 21 January 2016](#), the French Constitutional Council has decided that most of the provisions of the [Law N°2016-41 on the modernization of our health system](#) (the "Public Health Law") comply with the French constitutional rules.

The Public Health Law was published in the Official Journal on 27 January 2016. Its main features are:

- the creation of a class action system for compensation of damage caused by health products;
- new transparency obligations for various stakeholders of the healthcare industry;
- the generalization of the third-party payment system;
- the setup of the Shared Medical Record of the patient ("*Dossier Médical Partagé*");
- the overhaul of the public hospital system.

France - New framework agreement regulating the pricing of pharmaceutical products

On 31 December 2015, the Economic Committee for Healthcare Products (CEPS) and the French Pharmaceutical Industry Association (LEEM) have signed the [new framework agreement](#) which defines the pharmaceutical products pricing rules for a period of three years.

The framework agreement features, amongst others, the following undertakings:

- the emphasis on the medico-economic analysis to assess the fair price of pharmaceutical products;
- the creation of fast market access schemes for new and/or innovating pharmaceutical products and biosimilars;
- the inclusion in the price fixing of the research, development or production investments made in the EU by the company marketing the pharmaceutical product.

International - Entry into force of the Medicrime Convention

The [Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health](#) (Medicrime Convention) is the first binding international instrument sanctioning the counterfeiting, the manufacturing and the distribution of pharmaceutical products and medical devices placed on the market without authorisation or in violation of safety standards.

The Convention entered into force on 1 January 2016. To date, it is signed by 20 states, including France, and ratified by 6 states: Armenia, Guinea, Hungary, Spain, Moldova and Ukraine.

The Convention aims to lay the foundations for a national and international cooperation between sanitary, police and customs authorities, in order to prevent and fight threats to public health.

11. New technologies

France - "Digital Republic" bill

The *Assemblée nationale* enacted the "Digital Republic" bill on 26 January 2016. This bill introduces in particular a right to data recovery and portability, criminalization of "revenge-porn" and the continuance of the Internet connection in case of unpaid bills. It also gives the possibility to the French data protection authority (the CNIL) to impose penalties of up to 20 million euros or 4% of the total global annual turnover for companies violating French data protection legislation.

European Law - Privacy Shield

The European Union and the United States agreed on 2 February 2016 on the new regime to replace the "Safe Harbor", which was invalidated in October 2015 (see [Legal and Regulatory Update – October 2015](#)). The agreement provides in particular for written and detailed guarantees by the United States in order to ensure that access to European citizens' data by public authorities for national security purposes is limited and controlled.

European Law - WP29's Opinion on applicable law

Following the *Google Spain* and *Weltimmo* cases, the WP29 (the Article 29 Working Party, established by Article 29 of the 1995 Data Protection Directive, composed of the 28 European Union data protection authorities) has updated its Opinion on the criteria of applicability of national law with regards to personal data. In particular, it specifies the notion of "inextricable link" between activities of an establishment in the EU and the data processor, whether it is located in the EU or not.

12. Procedures

France - Civil procedure

Class actions in health-related matters adopted in France

The [law n°2016-41 of 26 January 2016 on modernisation of the French health system](#), introduced class-actions in health related matters. They shall come into force on 1st July 2016 or, if anterior, on the date provided for in the implementation decree.

Class actions will be divided into three phases:

- an optional mediation after the initiation of the proceedings (at the discretion of the court and with the consent of the parties),
- a judgment on the alleged liability, also ruling on admissibility and potentially on the types of compensable losses,
- a phase of compensation for the individual losses that will only be referred to the court, in principle, in case of disagreements.

13. Public law

France - Reform of concession contracts rules

Ordinance n°2016-65 dated 29 January 2016, published in the O.J dated 30 January 2016 and Decree n°2016-89 dated 1 February 2016, published in the O.J dated 2 February 2016, having regard to Directive 2014/23/UE on the award of concessions, deeply reorganize national laws and regulations relating to concession contracts. The Ordinance and the Decree set out the rules and principles relating to the award and performance of concessions and define procedural guarantees regarding the modifications which can occur during the term of concession contracts without a new concession award procedure. The Ordinance also clarifies the compensation rights of the concessionaire in case of termination of the contract decided by national courts, as a consequence of a recourse brought by a third party. Those regulations shall apply from 1 April 2016 onwards.

14. Real Estate

France - Period of validity of planning authorizations

Decree n° 2016-6 dated 5 January 2016, published in the Official Journal on 6 January 2016, generalizes the extension of the period of validity of the planning authorizations (article R.424-17 of the French Planning Code) from two to three years (such extension was authorized in the past by successive decrees, on an exceptional basis only).

The Decree also provides that the period of validity of the planning authorizations can be extended for one year twice, except for the renewable energy production facilities for which such period of validity can be extended upon request every year in the limit of 10 years as from the date of issuance of the authorisation (article R.424-21 of the French Planning Code).

The previous-mentioned measures are applicable to all authorizations which are valid on the date of publication of the Decree.

Concerning the authorizations which had already seen their period of validity extended before the publication of the Decree (in the conditions laid down in the planning Code at that time), their period of validity is increased by one year.

15. Tax

France - Tax credits for the production of movies and audiovisual works: increased rates and thresholds

The [decree n°2016-52 dated 27 January 2016](#) implemented as from 30 January 2016 the amendments provided by the [Amended Finance Act for 2014](#) to the tax credits for the production of movies and audiovisual works provided by articles [220 sexies](#) (*crédit d'impôt pour dépenses de production déléguée d'œuvres cinématographiques ou audiovisuelles*) and [220 quaterdecies](#) (*crédit d'impôt pour dépenses de production exécutive d'œuvres cinématographiques et audiovisuelles*) of the French Tax Code.

As a reminder, the Amended Finance Act for 2014 provided for the increase of the rates and application thresholds of these two tax credits.

France - Tax on office premises: publication of the rates for 2016

The French tax authorities have published the rates applicable from 1 January 2016 to (i) the annual tax on offices, commercial premises and storage surfaces, and (ii) the annual tax on parking surfaces, for the benefit of the Ile-de-France region ([BOFIP-IF-AUT-50-20-20160106, n°200](#) ; [BOI-IF-AUT-140-20160106, n°100](#), and [BOI-ANNX-000463-20160106](#)). The rates applicable in 2016 decreased by 1.17% compared to the ones applied with respect to year 2015.

As a reminder, the rates of these two taxes are updated on an annual basis (*i.e., on 1 January of each given year*), according to the latest construction cost index published by the French National Institute for Statistics and Economic Studies (INSEE).

European Law - Franco-German double tax treaty: publication of the amendment

The [decree n°2016-35 dated 22 January 2016](#) published the amendment to the Franco-German double tax treaty dated 31 March 2015 which provisions are mostly effective from 1 January 2016 and notably provide:

- the taxation of capital gains deriving from the sale of shares of real estate companies in the country where the underlying real estate assets are located; and
 - the introduction of a specific "*exit tax*" clause in case of transfer of residence of a taxpayer from one state to another.
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16. Telecoms

France - Network roll-out report concludes on positive development of mobile connectivity in France

On December 3, 2015, the French telecommunications regulator (ARCEP) has issued its [first yearly report](#) on the efforts of mobile operators in the development of mobile connectivity.

It seems that 4G connectivity has rapidly developed since the four main mobile operators have abided by their obligations (25% of the population in October 2015) and actually met the deadline several months early.

Sparsely populated areas usually get bad connectivity signal although they make for 63% of the territory (but constitute 18% of the population). All mobile operators who purchased frequencies on MHz range were under the obligations to cover 40% of population located in those areas by January 2017.

[ARCEP publishes its first report on mobile operators' investment efforts](#)

France - Following its strategic review, the ARCEP rethinks its priorities

The ARCEP has introduced its plan of action for 2016 and 2017 in their [strategic review](#) – a study identifying new challenges and redefining priorities accordingly:

- To maintain an important level of investment in infrastructures to encourage very high speed broadband and mobile network growth;
- To encourage mass development of the optic fiber market for PME (small and medium-sized companies);
- To guarantee equality in digital infrastructure;
- To guarantee Internet neutrality.

Regulation of Internet giants will be debated although the Authority concedes that most of the work should be done at the European level. Supporting the rise of the Internet of things is another critical topic, and will be achieved by ensuring availability of frequencies and mobile numbering for connected devices.

France - Government requests ARCEP's opinion on the development of the IPv6

On January 11, 2016, the Secretary of State for Digital Affairs, Axelle Lemaire, has requested the ARCEP's opinion on development of the IPv6, arguing that France is falling behind. Internet Protocol allows terminals with an IP address to communicate on the Internet. However, the stock of addresses of the current protocol – IPv4 – has run out. Development of IPv6 is therefore critical to ensure growth of the digital economy. To that end, Article 20 bis A of the digital Republic Bill provides that from January 1st, 2018, all terminal equipment for sale or rent on French territory shall be compatible to IPv6.

Consequently, the ARCEP is in charge of delivering a status report on IPv6 deployment in France, and to identify the reasons for delays, as well as the consequences of this delay on the sector. This work will serve as a basis for a plan of action to prompt and support consumers and businesses in the transition to IPv6. Finally, an observatory to monitor IPv6 development will be set up.

The conclusions of this report are to be submitted to the Government by May 1st, 2016.

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