

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 February 2017.

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

### The Parliament's plenary works are put on hold until inauguration of the new legislature, in June.

- **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 final reading by the National Assembly on February 21, 2017 – Seisin of the Constitutional Council.
- **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 which ratifies ordinance n°2015-899 of July 23, 2015 relating to public procurement**, – filed before the Senate on October 21, 2015.
- **Draft law for the integration of the principle of substitution to the legal regime of chemical products**, n°3277, filed on November 25, 2015 – Adopted in first reading by the National Assembly on January 14, 2016.
- **Draft law 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 to stabilise 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 for the adaptation of the mining code to environmental law**, n°4251, filed on November 23, 2016 – Adopted in first reading at

the National Assembly on January 25, 2017.

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## Enacted laws

- **Law n°2017-242 of February 27, 2017 to reform limitations on criminal prosecution** – OJ of February 28, 2017.
- **Law n°2017-228 of February 24, 2017 to ratify ordinance n°2016-462 of April 14, 2016 for the creation of a national public health agency and which amends article 166 of law n°2016-41 of January 26, 2016 of modernisation of our health system** – OJ of February 25, 2017.
- **Law n°2017-227 of February 24, 2017 which ratifies ordinances n°2016-1019 of July 27, 2016 relating to Customer Self-Supply of electricity and n°2016-1059 dated 3 August 2016 relating to production of electricity from renewable energies and which aim at adapting provisions relating to electricity and gas networks and renewable energies** – OJ of February 25, 2017.
- **Law n°2017-220 of February 23, 2017 which ratifies ordinance n°2016-966 of July 15, 2016 for the simplification of procedures implemented by the *Agence nationale de sécurité du médicament et des produits de santé* (the French Agency for the Safety of Health Products) and which includes several provisions relating to health products** – OJ of February 24, 2017.
- **Law n°2017-203 of February 21, 2017 which ratifies ordinances n°2016-301 of March 14, 2016 relating to the legislative part of the Consumer code and n°2016-351 of March 25, 2016 on credit facilities to consumers relating to residential real estate and which simplify the implementation package as regards compliance and safety of products and services** – OJ of February 22, 2017.
- **Ordinance n°2017-192 of February 16, 2017 relating to the adaptation of legislative provisions relating to healthcare profession associations** – OJ of February 17, 2017.
- **Ordinance n°2017-157 of February 9, 2017 which extends and adapts provisions of Book IV of the Commercial Code relating to controls and sanctions as regards competition to French Polynesia** – OJ of February 10, 2017.
- **Ordinance n°2017-124 of February 2, 2017 which amends articles L. 171-7 and L. 171-8 of the Environment Code** – OJ of February 3, 2017.
- **Law n°2017-117 of February 1, 2017 which authorises the background, the Multilateral Competent Authority Agreement on the Exchange of CbC Reports** – OJ of February 2, 2017.
- **Law n°2017-116 of February 1, 2017 which authorises the agreement between the French Republic Government and the Italian Republic Government signed on February 24, 2015 for the undertaking of definitive works of the cross-border section of the new Lyon-Turin rail link** – OJ of February 2, 2017.
- **Law n°2017-115 of February 1, 2017 which authorises the ratification of the agreement on joint procurement of medical countermeasures** – OJ of February 2, 2017.

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## 1. Audiovisual

France - Modification of criteria relating to cinema production certification

Decree n°2017-150 of 8 February 2017 modifies the criteria taken into consideration by the Communication and Culture Minister for the granting of certification comprising display prohibition to minors under 18.

More precisely, this Decree modifies Article R. 211-11 of the Cinema and animated picture Code which now provides that, if the esthetic purpose or narrative proceeding of the work or document justifies it, when this work or document includes sex or great violence scenes which are likely, notably because of their accumulation, to disturb the sensibility of minors, to portray the violence in a favorable light or to trivialize it, the certification comprising display prohibition to minors under 18 is not automatically accompanied with a registration on the list of pornographic or incitement to violence films pursuant to Article L. 311-2 of Cinema Code, which may not benefit from financial support.

This Decree also states that the Paris Administrative Court of Appeal has now jurisdiction in first and last instance to decide on the appeals formed against the decisions of grant or refusal of a cinema production certification.

This Decree came into force on 10 February 2017, apart from the provisions modifying the Code of Administrative Justice which are applicable to the requests registered since 1 March 2017.

### **France - Modification of television sponsorship regime**

Decree n°2017-193 of 15 February 2017 modifies the Decree of 27 March 1992 in pursuance of Articles 27 and 33 of the Law n°86-1067 of 30 September 1986 and implementing general principles defining obligations of services editors in terms of advertisement, sponsorship and tele-shopping.

This Decree softens the rules relating to television sponsorship pursuant to Article 10 of the Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

This Decree specifies notably that the identification of the sponsor may now be achieved by reference to its products or services and during the sponsored show (and not solely at the beginning or at the end). Finally, the prohibition for the sponsored television shows of inciting to purchase or to rent the products and services offered by the sponsor or by a third party now exclusively concerns direct incitements.

This Decree came into force on 18 February 2017.

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## **2. Commercial Law**

### **France - Ratification of two ordinances regarding consumer law**

A French Law issued on 21 February 2017 (Law n°2017-203) ratifies two texts: the 14 March 2016 government order relating to the legislative part of the French consumer code (order n°2016-301) and the 25 March 2015 government order relating to consumer credit contracts on real estate assets for residential purposes (order n°2016-351).

The definition of the non-professional person (a category between consumer and professional), provided by the introductory article of the French consumer code, is amended. The notion of non-professional person was previously defined as « *any legal person who is acting for purposes which do not come within the scope of its commercial, industrial, artisanal, liberal or agricultural activities* ». Now, the non-professional person is simply redefined as « *any legal person who is not acting for professional purposes* ». The application scope of provisions regarding misleading business practices are also extended to non-professional persons.

This Law also impacts the regime of some withdrawal periods. The classic 14-day term is now computed on a calendar day basis (article L222-7) and the specific period to exercise the right of withdrawal that applies to precious metals purchasing is doubled (article L224-99) to 48 hours.

Finally, provisions on the implementation of obligations regarding compliance and safety of the products and services are now grouped in a single article of the French consumer code (article L412-1).

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### 3. Competition

#### France - The Polynesian Competition Authority acquires investigative and sanction powers

The [Ordinance n°2017-157 of 9 February 2017](#), published on 10 February 2017, extends and adapts to the French Polynesia certain provisions of Book IV of the French Commercial Code on investigations and sanctions for the application of competition law.

The overseas collectivity adopted a Competition Law Code in 2015<sup>1</sup>, introducing thereby competition law in the French Pacific islands and modernizing rules on commercial practices. The ordinance of 9 February 2017 sets out rules on appeals, investigations and powers of sanctions:

- Jurisdiction for disputes relating to anticompetitive practices will be attributed either to the Court of First Instance or, if the dispute involves a trader or a craftsman, to the Mixed Commercial Court of Papeete.
- The Polynesian Competition Authority (PCA) acquires investigative powers, including the right to carry out dawn raids in the presence of a police officer, with the authorization and under the control of the Liberties and Detention Judge of the Court of First Instance of Papeete. Obstructing the PCA's investigations will be punishable by two years of prison and a fine of 35 million CFP francs.
- The decisions of the PCA will be subject to appeals.

The reform will enter into force on 30 June 2017 at the latest.

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### 4. Corporate

#### France - Public record of beneficial owners of companies registered with the Commercial Register

[Article 139 of "Sapin 2 Law" relating to transparency, fight against corruption and modernization of the economic life of 9 December 2016](#), created new provisions in the French Monetary and Financial Code regarding the declaration by certain companies of their beneficial owners. Furthermore, [Ordinance n°2016-1635 of 1<sup>st</sup> December 2016](#) transposed the [Directive \(EU\) anti-money laundering \(2015/849\) of 20 May 2015](#), containing similar dispositions regarding companies' beneficial owners.

Two sets of rules applicable to the public record of beneficial owners result from newly enacted regulations. The Ordinance dated 1<sup>st</sup> December 2016 imposes on non-listed companies registered with the Commercial Register to disclose to the Commercial Register the identity of their beneficial owners, whereas the Sapin 2 Law imposes such requirement to all the companies registered with the Commercial Register. Moreover, contrary to the Sapin 2 Law, the Ordinance dated 1<sup>st</sup> December 2016 does not expressly require companies to update theirs in case of change in their beneficial owners.

[Article 21](#), IV of the Ordinance dated 1<sup>st</sup> December 2016 creating articles [L.561-46](#) and [L.561-47](#) of the French Monetary and Financial Code provides that its provisions will come into force on a date determined by an order, and at the latest on 2<sup>nd</sup> August 2017. Article 139 of the Sapin 2 Law amending these provisions of the French Monetary and Financial Code will come into force on 1<sup>st</sup> April 2017.

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### 5. Data protection & IT

#### France – Extension of the "Secured Electronic Titles" to Metropolitan France

An [Order](#) of 9 February 2017, published in the OJ of 17 February 2017, defines the scope of application of the decree [n°2016-1460](#) of 28 October 2016 authorizing the creation of personal data processing related to passports and national identity cards. This order extends the use of the

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<sup>1</sup> By two laws of the country, n°2015-2 of 23 February 2015 and n°2015-4 of 14 April 2015.

"Secured Electronic Titles" in Metropolitan France and sets a timetable for its implementation in each French department from 21 February 2017 to 28 March 2017.

These departments will be enabled to collect and access personal data stored in the "Secured Electronic Titles" (such as name, date and place of birth, digitized image of the face and fingerprints of the applicant), in order to issue, deliver, renew or invalidate national identity cards and passports. Several authorities will have access to this processing operation such as the agents of the Ministry of Interior and of the Ministry of Foreign Affairs or the agents of the specialized intelligence services whose access will, however, not include the digitized images of the fingerprints.

As a reminder, in a deliberation of 29 September 2016, the French Data Protection Authority (the "CNIL") has expressed reservations about this processing operation. In an opinion of December 2016, the National Counsel for the Digital asked for the suspension of its implementation, notably because the "Secured Electronic Titles" comprises a number of vulnerabilities of variable gravity.

### **European Law – Adoption of an EU Parliament Resolution on robotics and artificial intelligence**

In the context of the increasing use of robots, androids and more generally, of intelligent algorithms in many sectors, the European Parliament (EU) has formulated, in the [Resolution 2015/2130 \(INL\)](#) of 16 February 2017, recommendations to the Commission on the principles to be taken into account in the future civil rules governing robotics. One of these principles is to ensure that these rules will be consistent with Regulation (EU) 2016/679 known as the General Data Protection Regulation (GDPR).

The European Parliament intends that a high level of security in robotics systems, including their internal data systems and data flows, be ensured, starting from their conception (Privacy by design). The Commission requires that compliance with the principles of data minimization and purpose limitations should be ensured, and wishes that adequate transparent control mechanisms and legal recourses for data subjects should be implemented. The resolution calls for a clarification of the rules and criteria governing the use of on-board video cameras and sensors in robots and stresses the responsibility of designers of robotics and artificial intelligence to develop secure products.

The resolution also proposes the creation of a European agency for robotics and artificial intelligence and for a European system for the registration of advanced robots. Finally, it stresses the importance of guaranteeing the possibility of exercising a manual control at all times on intelligent machines.

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## **6. Employment**

### **France – Extensions of agreements and amendments in the industrial and commercial branches**

Ministerial orders, published in the Official Journal between 30 January and 16 February 2017, impose collective bargaining agreements in all companies within their scope.

In particular, are notably extended:

- [the AFB agreement dated 30 May 2016 on the security of bank outlets.](#)
- [the designation of the Agefos-PME accredited fund collecting and distributing agencies of the accountants and auditors.](#)
- [the agreement dated 18 July 2016 on the multi-employer collective pension savings plan and the addendum of 29 September 2016 to the agreement of 26 November 2014 on the funding of the professionalization for the chemical sector.](#)

### **France – The Anact publishes a guide to help companies setting up teleworking**

Demanded by the employees because it allows a better articulation of working hours, telework can not be improvised.

In order to help companies in the setting up of their teleworking project, the National Agency for the Improvement of Working Conditions announced

the publication of a [Q&A](#) on the subject:

- What is the legal framework?
- What is the ambition of teleworking?
- What are the opportunities and risks for the working conditions?
- How to develop teleworking?
- How to manage working time and workload of the employees, etc.?

For all these questions, the Anact provides answers with practical examples.

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## 7. Insurance

### France - Payment protection insurance – Annual termination right

[Law n°2017-203](#) dated 21 February 2017 (the "**Law**") modifies Articles L. 313-30 and L. 313-31 of the French Consumer Code alongside Article L. 113-12-2 of the French Insurance Code and Article L. 221-10 of the French Mutuality Code, in order to allow insureds who have underwritten an insurance policy covering the reimbursement of credit to terminate the contract on its annual anniversary date. This legislative framework entered into force on 23 February 2017.

### France - Payment protection insurance - Right to be forgotten

Two decrees have been published in implementation of Law n°2016-41 dated 26 January 2016, which consecrated the "right to be forgotten" from which persons who suffered from specific diseases (such as cancer) benefit from in relation to the underwriting of payment protection insurance. [Decree n°2017-173](#) dated 13 February 2017 defines the content of the information to be provided to payment protection insurance prospects incurring higher risks because of their health condition or disability and creates, to that end, a new information document. [Decree n°2017-147](#) dated 7 February 2017 specifies the sanctions applicable to insurance undertakings which may collect medical information on cancer pathologies in breach with the provisions of article L. 1141-5 of the Public Health Code. These decrees entered into force on 15 February 2017 and 10 February 2017 respectively.

### France - Prudential information – Prudential documents to be provided by insurance and reinsurance undertakings who are not subject to the "Solvency II" regime

Instructions n°s [2017-I-02](#), [2017-I-03](#) et [2017-I-04](#) published by the French insurance supervision authority (*Autorité de contrôle prudentiel et de résolution* – "**ACPR**") specify the annual prudential documents and quarterly financial statements to be provided to the ACPR by insurance and reinsurance undertakings that are not subject to the Solvency II regime, alongside the terms and deadlines for the communication of the above mentioned documents and statements. These three instructions, which entered into force on 21 February 2017, repealed the previous relevant instructions.

### European Law - Calculation of technical provisions and basic own funds - Implementing Regulation

[Commission Implementing Regulation \(EU\) 2017/309](#) of 23 February 2017 (the "**Regulation**") lays down technical information for the calculation of technical provisions and basic own funds of insurance and reinsurance undertakings for purposes of reporting to national supervision authorities with reference dates from 31 December 2016 until 30 March 2017, in accordance with the provisions of the Solvency II Directive. The Regulation is

retroactively applicable as from 31 December 2016.

### **European Law - Solvency II - EIOPA's decision reinforcing supervisory cooperation in cross-border activities**

The European Insurance and Occupational Pensions Authority ("**EIOPA**") published its decision on the Collaboration of the Insurance Supervisory Authorities of all the European Union Member States (the "**Decision**"). This Decision aims to strengthen the cooperation between national supervisory authorities in relation to insurance and reinsurance undertakings' authorisation, cross-border activities and supervision on a continuous basis, as well as the exchange of quantitative information regarding the above mentioned undertakings and the management of the insurance policyholder's complaints. The Decision will enter into force on 1 May 2017.

### **European Law - Solvency II - EIOPA's new risk dashboard**

On 28 February 2017, the EIOPA published its first Risk Dashboard since the implementation of the "Solvency II" regime. This dashboard, which will be updated on a quarterly basis by EIOPA, aims to present the main risks and vulnerabilities EIOPA identified in relation to the insurance industry in Europe.

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## **8. Intellectual Property**

### **France - Introduction of the logotype of the geographical indications protecting industrial products and handicrafts**

Order n°2017-150 of 7 February 2017 defines the logo of the geographical indications protecting industrial products and handicrafts pursuant to Article R. 721-8 of the Intellectual Property Code.

This Order notably provides that the logo may appear on any material which promotes a product or a geographical indication and that its size must be sufficient to guarantee its visibility (a simplified form shall be used only in case affixing the complete form is materially impossible).

This Order identifies the people authorized to use this logo, namely the organization of defense and management mentioned by Article L. 721-6 of the Intellectual Property Code and its members. The State, the INPI (French National Industrial Property Office) and the associations which purpose is to ensure the promotion and the defense of the geographical indications may also use it to promote geographical indications.

This Order came into force on 16 February 2017.

### **France - Precisions regarding the exception rules to author's right, neighboring rights and rights of database producers in favor of handicapped persons**

Article 33 of Law n°2016-925 of 7 July 2016 on creative freedom, architecture and national wealth creates a new exception to author's right for reproduction and performance of works by legal entities and establishments open to the public for the purpose of strictly personal consultation by handicapped persons.

Decree n°2017-253 of 27 February 2017 specifies in particular the conditions of eligibility of such legal entities and establishments, the requisites for the grant and withdrawal of such accreditation as well as the composition and missions of the commission in charge of the handicap exception.

The terms whereby the French National Library (*Bibliothèque nationale de France*) organizes its activity of depository body of adapted documents in digital format by accredited legal entities and establishments are also specified.

This Decree came into force on 29 February 2017.

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## 9. Public Law

### France - Transport infrastructures within the Greater Paris region and global public contracts

Law n°2017-257 dated 28 February 2017, published in the O.J dated 1 March 2017, relating to the special status of the city of Paris and to metropolitan development, deeply modifies the status of the French capital. The Law includes several measures which are aimed at accelerating urban development and the construction of transport infrastructures within the "Greater Paris" area, notably through public procurement. In particular, the Law modifies article 35 of Ordinance n°2015-899 dated 23 July 2015 relating to public procurement and authorizes procuring authorities to entrust to private operators global public contracts relating to the "*construction and development of public transport infrastructures within the "Greater Paris" area or public transport infrastructures whose project management has been entrusted to the Société du Grand Paris*" (i.e. a public agency overseen by the Ministry for Housing and Regional Equality, the Ministry for Ecology, Sustainable Development and Energy and the Ministry for Finance and Public Accounts).

### France - Transnational railway agreements

Law n°2017-116 dated 1 February 2017, published in the O.J dated 2 February 2017, approves the agreement entered into between the French and Italian Governments relating to the commencement of the final works of the new cross-border railway between Lyon and Turin.

Laws n°2017-224 and n°2017-225 dated 24 February 2017, published in the O.J dated 25 February 2017, approve two agreements entered into between the French Government and the Swiss Federal Council relating respectively to (i) construction works and financing of the reopening of transport services on the Belfort-Delle railway and (ii) to the modernization and operation of the Annemasse-Genève railway.

### France - Clarifications about energy concessions contracts

An Order dated 13 February 2017, published in the O.J dated 15 February 2017, specifies the detailed rules for the application of the energy code provisions relating in particular to hydraulic energy concession contracts. These provisions relate in particular to the content of application files, conditions for changes and stocktaking procedures.

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## 10. Tax

### France - Sharing economy platforms: the FTA specify the information to be provided to the users

The French Finance Act for 2016 ([Act n°2015-1785](#)) imposed on sharing economy platforms the obligation to inform their users with respect to their duties towards the French tax and social authorities ([Article 220 bis of the French Tax Code](#) – the "**FTC**").

The [Decree n°2017-126 dated 2 February 2017](#) specifies the content of this new obligation and refers to the French tax authorities (the "**FTA**") to publish in their official guidelines a list of hypertext links which has to be made available online on the sharing economy platforms' websites ([BOI-BIC-DECLA-30-70-20170203](#) and [BOI-BIC-DECLA-30-70-40-20170203](#)).

Moreover, this Decree clarifies the content of the document summarising the transactions realized by the users which has to be sent annually by the sharing economy platforms.

### France - Financial expenses: the FTA updated the maximum rate of deductible interest from a tax standpoint

The FTA updated their guidelines by modifying the reference rate for the twelve month periods ending from 31 December 2016 to 30 March 2017 used to calculate the limit of deductible interest in accordance with the provisions of [Article 39, 1-3° of French Tax Code](#).



As a reminder, Article 39, 1-3° of the FTC applies to interest payments made by a company to its shareholders in consideration for the sums they make available to such company.

The rates for this period are respectively 2,03%, 2,00% and 1,97% for fiscal years ended between 31 December 2016 and 30 January 2017, between 31 January 2017 and 27 February 2017 and between 28 February 2017 and 30 March 2017 ([BOI-BIC-CHG-50-50-30-20170201](#), n°40).

#### **France - Tax credit on foreign source dividends: the FTA finally published their official guidelines**

In principle, a company receiving foreign source dividends may benefit from a tax credit equal to the taxes paid abroad which can be used against French corporation tax ([article 220 of the FTC](#)). This tax credit cannot be carried forward and is not refundable.

In this context, French companies that were not in a position to use a foreign source tax credit (partially or totally) used to set up schemes whereby they temporarily sold the shares giving right to a dividend to another company of the same group in order to allow such company to benefit from a foreign source tax credit.

So as to fight such tax optimisation strategies, the French Finance Act for 2011 ([Act n°2010-1657](#)) has limited, in situation where the seller has undertaken to repurchase the shares, the amount of foreign source tax credit which can be used against French corporation tax. In such instances, the amount of foreign source tax credit available for French corporation tax purposes is assessed on the amount of foreign source dividend decreased by any expenses incurred for the acquisition of such foreign source dividend.

The FTA have finally published their guidelines with respect to this limitation mechanism in order to specify (i) the expenses that are viewed as incurred for the acquisition of a dividend, and (ii) the schemes targeted by such mechanism ([BOI-IS-RICI-30-10-20-20-20170201](#)).

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## **11. Telecoms**

### **France - Regulation of digital advertising**

The decree dated February 9, 2017 relating to digital advertising services ([Decree n°2017-159](#)) imposes an obligation of transparency to advertising companies operating on internet connected devices (computers, digital tablets, mobiles, TV sets and digital panels).

This Decree is adopted pursuant to [article 131 2°](#) of the "Macron" Law dated August 6, 2015 ([Law n°2015-990](#)) amending the "Sapin" Law dated January 29, 1993 relating to the prevention of corruption and on transparency in economic matters and government procedures ([Law n°93-122](#)). Principles applicable to traditional media, provided for by the "Sapin" Law, are now extended to Internet advertising.

Consequently, seller of advertising space will henceforth have to communicate various information to advertisers, in particular the date and the broadcast spaces of the advertisements, the global price of the advertising campaign along with the unit price of the charged advertising spaces. A reinforced information obligation will apply to advertising campaigns based on purchasing methods of real time services on non-guaranteed spaces, in particular by auction mechanisms, for which the decisive purchasing criteria are the profile of the web user and the optimization of the message performance.

The new provisions will enter into force on January 1, 2018.

### **France - A new Decree relating to TV sponsorship has been published**

[See the Audiovisual section.](#)

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