

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 December 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 November 29, 2016 – Transmission of the text to the Senate on November 30, 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. – Under examination in second reading by the National Assembly on January 12, 2017.
- **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 relating to the general status of independent administrative authorities and public independent authorities**, n°225, filed at the Senate on December 7, 2015 – Adopted in final reading on January 10, 2017.
- **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.

- **Law proposal for a better definition of abuse of economic dependence**, n°3571, filed on March 15, 2016 – Adopted in first reading by the National Assembly on April 28, 2016.
- **Draft law on Equality and citizenship**, n°3679, filed on April 13, 2016 – Adopted in new reading at the National Assembly on November 23, 2016 – Under examination in new reading by the Senate from December 19, 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 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 to ratify ordinance n°2016-966 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 – Amended in first reading by the National Assembly on November 22, 2016. Joint committee is pending.
- **Draft law which ratifies ordinances n°2016-1019 and n°2016-1059 and which aim at adapting some provisions relating to electricity and gas networks and to renewable energies**, n°4122, filed on October 12, 2016 – Adopted in first reading by the National Assembly on December 21, 2016 – In discussion at the Senate on January 24, 2017.
- **Draft law for the adaptation of the mining code to environmental law**, n°4251, filed on November 23, 2016 – In debate at the National Assembly on January 25, 2017.

Enacted laws

- **Ordinance n°2016-1636 of December 1, 2016 relating to the European Investigation Order in criminal matters** – OJ of December 2, 2016.
- **Ordinance n°2016-1635 of December 1, 2016 which reinforces the French anti-money laundering and counter terrorist financing system** – OJ of December 2, 2016.
- **Organic law n°2016-1690 of December 9, 2016 relating to competence of the defender of rights for the whistleblowers protection** – OJ of December 10, 2016.
- **Law n°2016-1691 of December 9, 2016 relating to transparency, fight against corruption and modernisation of economic life** – OJ of December 10, 2016.
- **Ordinance n°2016-1725 of December 15, 2016 relating to closed distribution systems** – OJ of December 16, 2016.
- **Ordinance n°2016-1729 of December 15, 2016 relating to health institutions pharmacies** – OJ of December 10, 2016.

- **Law n°2016-1771 of December 20, 2016 relating to the suppression of commercial advertising in public television youth programmes** – OJ of December 21, 2016.
- **Ordinance n°2016-1808 of December 22, 2016 relating to the access of a payment account subject to basic services** – OJ of December 24, 2016.
- **Ordinance n°2016-1809 of December 22, 2016 relating to the recognition of professional qualifications of regulated professions** – OJ of December 24, 2016.
- **Ordinance n°2016-1812 of December 22, 2016 relating to the fight against tobacco addiction and its adaptation and extension to some Overseas Collectivities** – OJ of December 24, 2016.
- **Ordinance n°2016-1823 of December 22, 2016 which transposes directive 2014/26/UE of the European Parliament and the Council of February 26, 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market** – OJ of December 24, 2016.
- **Law n°2016-1828 of December 23, 2016 for the adaptation of graduate studies of the French Higher Education to the licence, master, doctorate system** – OJ of December 24, 2016.
- **Social Security Financing Act for 2017 n°2016-1827 of December 23, 2016** – OJ of December 24, 2016.
- **Law n°2016-1887 of December 28, 2016 relating to a rail link between Paris and the Paris Charles de Gaulle airport** – OJ of December 29, 2016.
- **Law n°2016-1888 of December 28, 2016 on the modernisation, development and protection of mountain areas** – OJ of December 29, 2016.
- **Finance law for 2017 n°2016-1917 of December 29, 2016** - OJ of December 30, 2016.
- **Amending draft finance law for 2016 n°2016-1918 of December 29, 2016** - OJ of December 30, 2016.
- **Law n°2016-1920 of December 29, 2016 relating to regulation, accountability and simplification to public transport of people** - OJ of December 30, 2016.
- **Ordinance n°2017-9 of January 5, 2017 relating to health security** – OJ of January 5, 2017.

1. Audiovisual

France - Exceptions to the right to seize the Superior Audiovisual Council by electronic means

Taken in application of [Article L. 112-10 of the Code of the Relations between the general public and the Administration](#), which allows to exempt some administrative processes from the scope of the rights of users to seize the administration electronically, [Decree n°2016-1829 of 22 December 2016](#) specifies which exceptions are applicable to the requests directed to the Superior Audiovisual Council (CSA): request for the qualification of a program (cinema or audiovisual works), response files for public tenders issued by the CSA, or request for dispute settlements are notably comprised in these exceptions.

The provisions of this Decree entered into force on 25 December 2016.

European Law

N/A

2. Banking

France - Money laundering/terrorism financing:

An order (*ordonnance*) n°2016-1635 dated 1st December 2016 ([J.O n°0280 dated 2 December 2016](#)) has reinforced the French anti-money laundering and anti-terrorism financing procedures. The order notably extends the scope of the persons involved in the fight against money laundering and terrorism as well as the prerogatives of financial intelligence unit "Tracfin" and consolidates the control regulations and penalties applying to the in-scope persons.

This order entered into force on 3 December 2016.

A decree (*décret*) n°2016-1793 dated 21 December 2016 ([JORF n°0297 dated 22 December 2016](#)) specifies the terms of article L. 561-26 of the French *Code monétaire et financier* which sets out the right for the financial intelligence unit "Tracfin" to designate operations and persons that pose a significant risk of money laundering or terrorism financing.

This decree entered into force on 1st January 2017.

France - Declarations of money transfers

A decree (*décret*) n°2016-1663 dated 5 December 2016 ([J.O n°0283 dated 6 December 2016](#)) specifies the terms for declaring money transfers exceeding € 50,000 as set out in a statute dated 3 June 2016 relating to the fight against organised crime, terrorism and their financing. This decree provides in particular that all declarations relating to a money transfer exceeding € 50,000 from or into a EU member state must come together with other documents restrictively enumerated by the decree that allow to demonstrate the origin of the transfers.

This decree entered into force on 7 December 2016.

France - Prohibition of payment of receivables in cash or in electronic money: fixation of a new limit

A decree (*décret*) n°2016-1985 dated 30 December 2016 ([J.O n°0304 dated 31 December 2016](#)) establishes a distinction between the thresholds of amounts that can be paid in cash or in electronic money, pursuant to article L. 112-6 of the French *Code monétaire et financier*. The threshold for payments in cash is fixed to € 1,000. The threshold for payments in electronic money is fixed to € 3,000 EUR.

This decree entered into force on 1st January 2017.

France - Legal right to a bank account and banking mobility

A statute n°2016-1691 dated 9 December 2016 ([J.O n°0287 dated 10 December 2016](#)) authorised the government to govern by order (*ordonnance*) in order to transpose the directive n° 2014/92/UE of the European Parliament and of the Council dated 23 July 2014, on the compatibility of the fees linked to the payment bank accounts, on banking mobility and on the access to a payment bank account with basic services. Most of the provisions of the directive have already been transposed. The order (*ordonnance*) n°2016-1808 dated 22 December 2016 ([J.O n°0298 dated 23 December 2016](#)), complete this system and its provisions are set by the decree (*décret*) n°2016-1811 dated 21 December 2016 ([J.O n°0298 dated 23 December 2016](#)).

These provisions will enter into force on 23 June 2017.

European Law

N/A

3. Capital markets

France

N/A

European Law

N/A

4. Commercial Law

France

N/A

European Law

N/A

5. Competition

France - The Sapin II law: amending once again the framework for business relations

The Law n°2016-1691 of 9 December 2016 on transparency, the fight against corruption and modernization of the economy (the "Sapin II" law) has been published on December 10, 2016. It amends the framework for B2B negotiations once again:

The **single agreement** mandatory between suppliers and distributors (including wholesalers) can be entered into on a **multiannual** basis since January 1st, 2017, for two or three years. In that case, the contracting parties have to determine the price revision procedures, which can provide for price indexes.

As regards to payment terms, the law introduces a **waiver** in favor of the SMEs exporting outside the European Union. They now have the possibility to agree on a **90-day** payment term from the date of the invoice issuance for VAT-free sales of products to be delivered outside the European Union.

Furthermore, the law lifts the cap on fines for late payment, with a maximum fine of **€2 million** for companies and **€4 million in case of recidivism** within 2 years (L.441-6, VI of the French Commercial Code (FCC)). The publication of decisions on the DGCCRF's website is systematic (L.465-2, V FCC).

The Parliament extends the list of unfair commercial practices and reinforces the sanction mechanism:

- First, the law introduces **two new abusive practices**:

To subject or try to subject a business partner to penalties for late delivery in the event of *force majeure* (L.442-6, I, 13° FCC); and

To impose a price revision clause in multiannual single agreements or in contracts with a duration exceeding three-months for the sale of agricultural products, by reference to price indexes not directly linked to the products or services object of the contract (L.442-6, I, 7° FCC).

Secondly, the list of undue is extended to the participation, not justified by a common interest and without proportionate consideration, to (i) the funding of a sales event and (ii) the payment of services provided by an international purchasing organization (L.442-6, I, 1° FCC).

Third, the maximum amount of fines for **infringements to Article L.442-6 FCC** is raised to **€5 million** and the publication of decisions on the DGCCRF's website is systematic (L.442-6, III and L.465-2, V FCC).

- **In the agricultural sector, the Sapin II law provides a clearer framework for business relations between producers and distributors.** It states amongst other things that:

General Terms and Conditions in relation to food products composed of one or more non-transformed agricultural products must indicate the average provisional price proposed by food manufacturers to agricultural producers (L.441-6, I, para. 6 FCC);

Contracts with a duration of less than a year concluded between a supplier and a distributor, which relate to the design and production of retailer-branded food products, must indicate the price or the pricing terms and criteria for the purchase of non-transformed agricultural products used in their composition. However, this only applies to agricultural products subject to the mandatory procedure of Article L.631-24 of the French Rural Code for the conclusion of written contracts (L.441-10 FCC);

For agricultural perishable goods mentioned at Article L.441-2-1 FCC, as well as milk and dairy products, sales incentives offered by suppliers to consumers cannot exceed 30% of the value of unit prices, including management fees (L.441-7, I, para. 9 FCC);

As of April 1st, 2017, the formalism of Article L.631-24 of the French Rural Code will be reinforced.

These provisions are effective since December 11, 2016, unless stated otherwise above.

European Law

N/A

6. Consumer Law

France

N/A

European Law

N/A

7. Corporate

France - Strengthening of the penalties applicable in case of market abuse

Law n°2016-1691 of 9 December 2016 on transparency, fight against corruption and modernization of economic life (also called "Sapin II" Law) strengthens the penalties applicable in case of market abuse.

Therefore, legal persons may now be imposed a fine up to a maximum of 15% of their turnover (in complement to the existing maximum of EUR 100 million) in case of market abuse.

France - Modification of the rules applicable to auditors

Law n°2016-1691 of 9 December 2016 on transparency, fight against corruption and modernization of economic life (also called "Sapin II" Law) ratifies Ordinance of the 17 march 2016 relating to auditors and adapting the French legislation to European legislation and strengthens both the independence of auditors and the powers of the French High Council of statutory auditors.

Sapin II Law ratifies the main provisions of Ordinance of the 17 march 2016, in particular (i) the rotation system of audit firms every ten years (ii) the permission of related services to the certification of accounts, unless expressly prohibited (iii) the empowerment of the High Council of statutory auditors with direct control and sanction powers.

Sapin II Law also amends some provisions applicable to auditors.

In particular, regarding to the joint stock companies, the opinion of the auditors and the approval of the general assembly are no longer required for the related-party agreements that have been approved but not entered into.

Furthermore, the auditors can now carry out certain type of legal and periodic missions in the company, in particular regarding to contributions in kind and the stipulation of special benefits (at the incorporation of the company or during the existence of the company), the acquisition by the company of assets belonging to a shareholder within the two years of its registration, and the capital increase with a public offer within the two years of the company's incorporation (Articles L225-8, L225-101 and L225-147 of the commercial Code).

France - Control of the remuneration of the managers of listed joint stock companies: "Say on Pay"

- Ex-ante control of the remuneration of the managers

"Say on Pay", already recommended by the Afep-Medef governance code of listed companies, becomes mandatory for listed joint stock companies (Article L225-37-2 of the commercial Code).

Henceforth, a resolution shall be submitted to shareholders, at least each year, during the annual general meeting, in order to approve the principles and criteria of determination, distribution and awarding of fixed, variable and exceptional elements of the remuneration of the managers under their mandate (benefits of any kind included).

If the resolution on the remuneration of the managers is rejected, the principles and criteria previously approved by the shareholders shall be applied.

The modification of the approved elements of remuneration or the renewal of the mandate of a manager requires a new approval by the shareholders.

A decree shall precise the application conditions of these legal provisions.

These legal provisions shall apply from the general meeting approving the annual account of the first financial year ended after 9th December 2016.

- **Ex-post control of the remuneration of the managers**

New Article L225-100 paragraph 10 of the commercial Code organizes an afterwards control of the remuneration of the managers.

The shareholders shall decide, during the general meeting of the next financial year, on the elements composing the remuneration of the managers (fixed, variable and exceptional elements and benefits of any kind) paid and allocated, for the precedent financial year.

A separate resolution is required for each director.

The elements of the variable or exceptional remuneration allocated to the managers during the financial years are allowed to be paid, only after the approval of the general meeting (Article L225-100 paragraph 11 of the commercial Code).

These legal provisions shall apply from the end of the financial year following the first financial year ended after the 9th December 2016.

France - Impact of the "Sapin II" Law in corporate Law

Law n°2016-1691 of 9 December 2016 on transparency, fight against corruption and modernization of economic life (also called "Sapin II" Law), most legal provisions of which came into force on the 11th December 2016, amends several provisions in company Law.

- **Simplification of the disposal of building or shareholding and creation of pledges in joint stock companies with a management board**

In joint stock companies with a management board, the approval of the supervisory board is no longer requires for the disposal of building or shareholding and creation of pledges, except if there is a statutory clause requiring so (Article L225-68 of the commercial Code).

- **Transfer of the registered office by the board in a joint stock company: extension of the geographical field**

The board of directors or supervisory board can decide on the transfer of the registered office of the company on the entire French territory (Article L225-36 and L225-65 of the commercial Code).

Formerly, the board of directors or supervisory board could only decide to transfer the registered office in the same department or in a neighboring department.

- **Keeping of the double voting rights in case of merger or demerger**

Law Sapin II provides for an exception to the principle under which any share converted to bearer or transferred in property loses its right to double voting rights (Article L225-124 paragraph 1 of the commercial Code).

In case of merger or demerger, the double voting rights held by the merged or demerged company in a third company are kept by the beneficiary company of the merger or demerger, or, where applicable, by the new company resulting from the merger or demerger (Article L225-124 paragraph 2 of the commercial Code).

These provisions shall apply from 10 June 2017.

- **Simplification of the sale of a going concern**

Law Sapin II abolishes the requirement to acknowledge the accounting books of the last three financial years preceding the sale or contribution of a going concern (Article L141-2 paragraph 1 of the commercial Code).

- **Simplification of the sale or contribution of a going concern to a simplified joint stock company or limited liability company with a sole shareholder**

Sapin II Law abolishes the obligation to publish in a legal newspaper and in the BODACC (Official Bulletin of Civil and Commercial Notices) the sale or contribution of a going concern to a limited liability company with a sole shareholder or a simplified joint stock company with a

sole shareholder (Article L141-21 of the commercial Code).

In addition, the requirement to mention the origin of the ownership of the going concern, the statement of the liens relating to the going concern, the turnover and the operating income is abolished in case of contribution to a simplified joint stock company or limited liability company with a sole shareholder

These provisions shall apply to the contributions completed after 11 December 2016.

- **Date of the end of the joint liability of the lessor in a lease management contract**

Sapin II law modifies the date of the end of the joint liability of the lessor in case of lease management contract of a going concern.

The joint liability of the lessor in relation to the debts rose while operating the business of the going concern now ends upon publication of the lease management contract (Article L144-7 of the commercial Code).

Formerly, the solidarity lasted six months after such publication

European Law

N/A

8. Data Protection & IT

France - Conditions of use of individuals cameras by the national police, the *gendarmerie*, the *SNCF* and the *RATP* agents

By three Decrees dated of December 23rd, 2016 (decrees n°2016-1860, n°2016-1861 and n°2016-1862), published in the OJ of December 27th, 2016, the French Government detailed the conditions of use of the mobiles cameras by the national police, the *gendarmerie*, the municipal police as well as the *SNCF* and *RATP* agents in the context of their interventions.

The purpose of the personal data processing carried out by via the cameras is to prevent incidents during interventions of agents, to collect evidence and to train agents.

The *CNIL* had issued an opinion on December 8th, 2016 on the draft decrees. In its opinion, the *CNIL* noted that if some of its previous recommendations have been followed by the Ministry of Interior, other recommendations notably those related to the right of access of the data subject filmed and the use by the national police and the *gendarmerie* of the cameras "*in all places*" (as provided by article L241-1 of the Code of National Security), have not been followed. Indeed, on this last point, the *CNIL* considers that specific rules should be implemented for private premises. However, the Ministry did not take into account the *CNIL*'s position on this subject and, through the Decree, allows the use of mobile cameras by security forces without specific restrictions with regard to private homes.

France - Functioning modalities of the "*National Health Data system*"

By Decree n°2016-1871 dated of December 26th, 2016, published in the OJ of December 28th, 2016, the French Government detailed the governance and operation modalities of the personal data processing referred to as "*Health Data National System*" (the "*HDNS*"), which includes the health data of mandatory health insurance, of healthcare institutions, the medical causes of death, data from the departmental handicapped houses and a sample of reimbursement data from supplementary health insurance.

The Decree lists the organizations, institutions and services having a permanent access to the data of the *HDNS* due to their public service missions, and specifies the conditions of this access. For example, the National Health Authority ("*Haute Autorité de Santé*") or the National Agency for drugs and health products safety ("*Agence nationale de la sécurité du médicament et des produits de santé*") benefit from such a constant access.

It also sets the information to be provided to the data subject, their access rectification and opposition rights to be exercised before the health insurance fund to which the data subject is enrolled in. The decree will come into force on April 1st, 2017.

France – Specific provisions related to the process of data for purposes of public statistics, scientific or historical research

Law n°2016-1321 of October 7th, 2016 for a digital Republic (the "Law"), simplifies the prior formalities (before the *CNIL*) related to the data processing for statistical or research purposes applying notably on the registration number in the national directory of identification of physical persons, subject to compliance with certain conditions such as the implementation of a cryptographic operation on this number.

The Decree n°2016-1930 dated of December 28th, 2016, taken pursuant to Article 34 of the Law details the cryptographic operation on the registration number in the national directory of identification of physical persons. The Decree also organizes the frequency at which the cryptographic operation aiming at anonymizing this number is renewed, the erasure of the data as well as its retention.

European Law

N/A

9. Employment

France - Sapin II law published in the Official Journal

Law n°2016-1691 on transparency, fight against corruption and the modernization of the economic life, known as "*Sapin II Act*" dated December 9, 2016, has been published in the Official Journal dated December 10, 2016. It defines the whistleblower's status, the alert procedures and the guarantees ensuring the efficient protection of whistleblower.

- **Whistleblower Status**

A whistleblower is defined as (i) a physical person (ii) acting in good faith and in a selflessness way, (iii) who has a personal knowledge of the reported facts.

The facts reported by the whistleblower shall represent (i) a crime or a misdemeanor, (ii) a serious and manifest breach of an international obligation, or (iii) a serious threat or damages to the public interest.

- **Alert procedure**

The alert procedure consists of three successive levels: (i) the whistleblower's direct supervisor; (ii) the judicial or administrative authority even professional order; and (iii) eventually the public.

Companies hiring at least 50 employees are now required to implement an alert procedure.

- **Protection of the whistleblower**

Whistleblowers benefit from a penal non-accountability and of a protection against professional retaliation, similar to the one existing in case of harassment and discrimination situations, when the reported facts (i) comply with the relevant alert procedures and (ii) if the disclosure is necessary and proportionate to the safeguard of the interests at stake.

French Constitutional Council validated the provisions on whistleblowers and specified that the scope of the system set up by the *Sapin II Act* is limited to whistleblowers alerting on facts concerning their employer or the company they provide services to. This status does not concern "outside" whistleblowers (e.g., journalists) (Decisions n°2016-740 and n°2016-741 DC, dated December 8, 2016).

- **Labor Act: Referendum inside a company**

Decree n°016-1797, dated December 20 2016, has been published in the Official Journal dated December 22, 2016, sets up the modalities

of the referendum aimed at the approval by employees of a company-wide agreement signed by minority unions, pursuant the provisions of Law n°2016-1088 dated August 8, 2016 employment, social dialogue modernisation and careers paths securing, also known as the "*Labor Act*" or "*El-Khomri Act*".

Since January 1, 2017, the validity of an agreement regarding working hours, rest periods and holidays is subject to its signature by unions representing at least 50% of the votes casted in favor of representative organizations at the last professional elections – i.e. the agreement shall constitute a "majority agreement".

In the absence of majority – in other words if the agreement constituted is a "minority agreement" – the minority unions which received at least 30% of the votes casted in favor of a representative organizations in the first ballot of the last elections of the Works Council or the Staff Representative, may request in writing the organization of a referendum to approve the agreement by the employees. This written request shall be addressed to the employer and to the other representative unions within one month after the signature of the agreement.

After eight days following this request, the employer is required to organize the referendum, within a 2-month period, in accordance with the terms provided by a specific protocol agreed concluded between the employer and the signatory organizations.

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 - Law Sapin II and responsibility in case of asset shortfall

Law Sapin II on transparency, fight against corruption and modernization of the economy entered into force on 11 December 2016 amends the current legal regime of the manager's responsibility in case of asset shortfall.

The article 146 of the law amends the current article L. 651-2 of the French Commercial Code to provide that in case of mere negligence of the *de jure* or *de facto* director in the management of the company, his liability under an asset shortfall (*insuffisance d'actif*) may not be triggered.

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&categorieLien=id>

13. Insurance

France - *TRACFIN* – Designation of persons or transactions presenting an important risk of money laundering of terrorist financing

Decree n 2016-1793 of 21 December 2016 on the designation by *TRACFIN* of persons or transactions presenting an important risk of money laundering of terrorist financing specifies the modalities according to which *TRACFIN* communicates the persons and transactions presenting an important risk of money laundering of terrorist financing to entities subject to AML-CFT obligations.

France - Mandatory annual report – Unclaimed life insurance contracts

Instruction n 2016-I-26 of 13 December 2016 on the submission of the mandatory annual report on unclaimed life insurance contracts (the "**Instruction**") was published on the French insurance supervision authority's (*Autorité de contrôle prudentiel et de résolution* – "**ACPR**") official register. The Instruction indicates that this report must be submitted to the ACPR in the form of a table on the 15 April of each year at the latest. The Instruction also specifies the content of the report, as well as its form and the figures' calculation methods.

France - Branches of third country insurers – Transmission of information to the ACPR

The ACPR has published in its official register the Instruction n° 2016-I-25 of 13 December 2016 (the "**Instruction**") relating to the transmission of information to the ACPR by French branches of foreign entities from countries which are not party to the European Economic Area. The Instruction details the content, the figures' calculation methods and the format of the information that must be provided to the ACPR regarding, among others, the solvency and financial conditions report ("**SCFR**") as well as the own risk and solvency assessment report ("**ORSA**") that these branches must submit.

European Law - Combating money laundering – Tax authorities' access

Directive (EU) 2016/2258 (the "**Directive**") amending Directive 2011/16/EU as regards the access to anti-money-laundering information by tax authorities was adopted on 6 December 2016. The latter allows tax authorities to access mechanisms, procedures and documents collected by entities subject to the Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849 of 20 May 2015).

European Law - Prudential assessment of acquisitions and increases of qualifying holdings

The Joint Committee of the European Supervisory Authorities ("**ESAs**") (which includes the European Insurance and Occupational Pensions Authority and the European Securities "**EIOPA**") has published its joint revised guidelines on the prudential assessment of acquisitions and increases of qualifying holdings. These guidelines clarify some key concepts, such as "indirect holdings" and "persons acting in concert". They aim at insuring a consistent interpretation of time limits and clarify certain matters relevant to the assessment of an acquisition, such as the financial soundness of the proposed acquirer and the suspicion of money laundering or terrorist financing. These guidelines will apply from 1 October 2017.

European Law - Joint Committee of the ESAs' report on automation in financial advice

On 16 December 2016, the Joint Committee of the ESAs (including the EIOPA) published a report setting out the conclusions reached by the ESAs in relation to automation in financial advice (*i.e.*, the provision of advice to consumers without, or with very little, human intervention and where providers rely instead on computer-based algorithms and/or decision/trees). The report confirms the risks previously identified, raises the question of whether any additional regulatory requirements are needed and what monitoring role the ESAs should play, but also address the implications for "hybrid" forms of automation, and to the possible barriers to the development of automated advice.

European Law - EIOPA – Transitional measures for the calculation of technical provisions

On 21 December 2016, the EIOPA published an opinion relating to the application of Articles 308c et 308d of the Solvency II directive on transitional measures, notably on the risk-free interest rates. The EIOPA considers that the application of those articles has for consequence that the calculation of the technical provisions at year-end does not reflect the reduction of the adjustment related to the year. The EIOPA therefore considers that insurers' SFCR should contain the information necessary to reflect the estimated impact of the recourse to transitional measures in the technical provisions, MCR, SCR and Eligible Own Funds to cover capital requirements.

14. Intellectual Property

France - Censorship of an unlawfully adopted provision within the Law on transparency, protection against fraud and modernization of the economic life

In a Decision n°2016-741 DC of 8 December 2016, the Constitutional Council has censured, as adopted following a procedure that was contrary to the Constitution, Article 145 of Law n°2016-1691 of 9 December 2016 on transparency, protection against fraud and modernization of the economic life, which aimed at extending the missions of the French Trademark Office (INPI) regarding the training and support of companies, modifying the law applicable to utility certificates, the duration of which would have been extended to 10 years, and establishing a procedure of provisional patent application as well as the possibility to transform this provisional application into a utility certificate application, and to transform a utility certificate application into a patent application.

Such provision, introduced in first lecture before the Senate, did not bear any connection, even indirect, with the one that was included in the bill filed before the National Assembly.

France - Transposition of the European Directive on the collective management of author's right and related rights and multi-territorial licensing of rights on musical works

Passed on the basis of Article 94 of Law n°2016-925 of 7 July 2016 on freedom of creation, architecture, and cultural heritage, Order n°2016-1823 of 22 December 2016 aims at transposing Directive 2014/26/EU of 26 February 2014 on collective management of author's right and related rights and multi-territorial licensing of rights on musical works for online use in the internal market.

This Order modernizes the legal framework surrounding collective management organizations by reinforcing the transparency and governance of these organizations, making the grant of multi-territorial authorizations of online use of rights on musical works more fluid and diversifying the mechanisms of dispute settlement between collective management organizations, right owners and users in order to enable them to resort to rapid and efficient dispute resolution procedures.

The provisions of this Order entered into force on 23 December 2016.

France - Precisions on the procedure of extraction, acquisition, transmission and conservation of illegal elements in the context of customs investigations on infringing goods

Pursuant to Article 67 bis-1 of the Customs Code, duly authorized customs agents can notably acquire infringing goods on the Internet, with the authorization of the Public Prosecutor, in order to establish importation, exportation, or ownership of such infringing goods. In this framework, they can also carry out online investigations (participation to online exchanges under a pseudonym, extraction and conservation of evidence, etc.) and access illegal contents, without being liable of criminal charges.

Decree n°2016-1845 of 23 December 2016 sets out the conditions of extraction, acquisition, transmission, and conservation of these illegal contents discovered during the investigations.

The provisions of this Decree entered into force on 28 December 2016.

France - Precisions on the features of the unitary authentication device for wine and spirits containers

Taken in application of Article L. 643-3-2 of the Rural and Maritime Fishing Code in its version resulting from Article 23 of Law n°2014-1170 of 13 October 2014 for the future of agriculture, food, and forest, Decree n°2016-1913 of 27 December 2016 defines the required features for a unitary authentication device of wine and spirit containers when the use of such a system has been made compulsory following a request from the Defense and Management Organization of a wine or spirit benefiting from a designation of origin.

As a reminder, Article 23 of Law n°2014-1170 of 13 October 2014 authorizes the Minister in charge of agriculture to make compulsory the affixing on each container of a unitary device that allows the authentication of the commercialized product, upon request of the Defense and Management Organization of a wine or spirit benefiting from a designation of origin, after hearing the opinion of the relevant association of professionals when it exists.

The provisions of this Decree entered into force on 30 December 2016.

European Law - EPO stays proceedings in certain biotechnology cases

In two Press releases of 24 November 2016 and 12 December 2016, the European Patent Office (EPO) has announced that, considering the Opinion issued on 3 November 2016 by the European Commission regarding certain articles of Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions, it has decided to suspend all the opposition and examination proceedings in which the invention deals with a plant or an animal obtain through an essentially biological process.

In its Opinion, published on 8 November 2016, the European Commission has notably expressed the view that, according to the intention of the European legislator, plants and animals obtained through essentially biological processes should not be considered as patentable. This Opinion aims at facilitating the enforcement of the Directive and is without prejudice to the future standpoints that the Commission might adopt on this topic. Only the European Court of Justice is entitled to interpret the law of the European Union.

Usually, the EPO applies Directive 98/44/EC which does not contain any explicit provision related to plants or animals obtained through such processes. The EPO indicates that if the EPO Member States follow the interpretation proposed in the European Commission's Opinion, it will implement their decision.

The provisions of the Press release of 24 November 2016 entered into force on the same date.

15. Life Sciences

France - New French sunshine regulations about to kick in

The French sunshine regulations require industry to report certain agreements, fees and other benefits provided, directly or indirectly, to various stakeholders in the healthcare sector. Sunshine regulations were amended in January 2016 to increase transparency. Some specifics of these changes have been partly established by the implementing Decree n°2016-1939 dated 28 December 2016.

The Decree provides, amongst other things, that the companies have to disclose fees paid to stakeholders amounting to 10 euros or above.

The Decree also provides some practical relief for companies, since reporting information related to agreements entered into with stakeholders will no longer have to be within 2 weeks of their signature. In practice, companies will have to disclose the information at the latest:

- on 1 September for the agreements entered into, the fees paid and the other benefits granted within the first semester of the current year;
- on 1 March of the following year, for the agreements entered into, the fees paid and the other benefits granted within the second semester

of the previous year.

This Decree will enter into force through the publication of a ministerial order, at the latest on 1 July 2017.

France - New rules on online sale of medicines

Following the cancellation by the French administrative Supreme Court, in March 2015, of a Ministerial Order relating to the good online distribution practices of medicinal products, two Ministerial Orders were issued on 28 November 2016 in order to implement new rules on this matter.

The first Ministerial Order provides the technical rules applicable to websites selling medicinal products such as the rules related to the website address, the drafting of the website content in French language, as well as the access by the patient to a private account tracing his/her previous orders and correspondences with the pharmacist.

The second Ministerial Order provides the good distribution practices for medicinal products, including the online distribution. This Order sets out rules related to, notably, the online presentation of the medicinal product, such as its name, its precautions of use and the display of its price that must be without any artificial enhancement.

These Ministerial Orders also provides that pharmacists must comply with the French Data Protection Law dated 6 January 1978. The Ministerial Orders will enter into force on 1 February 2017.

European Law

N/A

16. Procedures

France

N/A

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

19. Public law

France - Harmonisation of public procurement and public domain rules

Law n°2016-1691 dated 9 December 2016, published in the O.J dated 10 December 2016, on transparency, fight against corruption and modernization of the economic life (also known as "loi Sapin II") contains various provisions relating to the harmonization of public procurement and public domain rules. The Law ratifies Ordinance n°2016-65 dated 29 January 2016 on concession contracts (art. 40) and Ordinance n°2015-899 dated 23 July 2015 on public procurement (art. 39) and modifies some provisions of the ordinance relating to public procurement, in particular those relating to the termination compensation which is due in case of a cancellation of a PPP contract as a result of a claim introduced by a third party, as well as the rules relating to the submission of variable bids according to the number of lots awarded.

The Law also authorizes the Government to adopt by ordinance (i) within 24 months from the enactment of the Law, the legislative part of the public procurement code to be consolidated (art.38) and (ii) within twelve months from the enactment of the Law, all necessary measures to simplify the rules governing public domain occupancy and transfers of public properties, with a view, in particular, to introduce publicity and competitive tendering prior to such transactions (art. 34).

The Law also modifies the provisions relating to the award of contracts by motorway concessionaires which were introduced by the "Macron Act" (Article 41).

France - CDG Express

Law n°2016-1887 dated 28 December 2016, published in the O.J dated 29 December 2016, relating to a rail link between Paris and Paris-Charles de Gaulle airport (CDG Express) ratifies Ordinance n°2016-157 dated 18 February 2016 on the construction of the CDG Express railway infrastructure and specifies some provisions relating to the implementation of the project, in particular as regards the participation of *SNCF Réseau* in the financing of the company responsible for the construction of the railway infrastructure and the principles governing the award of the contract relating to the operation of the line.

France - Perpignan - Figueras high speed railway

Decree n°2016-1694 dated 9 December 2016, published in the O.J dated 11 December 2016, relating to the publication of the Additional Protocol to the Agreement of 10 October 1995 between the Government of the French Republic and the Government of the Kingdom of Spain concerning the construction and operation of the international section of a high-speed railway line between France and Spain signed in Paris on 23 May 2016, provides for the transitional arrangements relating to the joint operation of the line between Perpignan and Figueras by the French (*SNCF Réseau*) and Spanish (ADIF) infrastructure managers following the winding up of the concessionaire.

European Law - 4th railway package

Directive n°2016/2370 amending Directive 2012/34 / EU as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure, as well as Regulation n°2016-2337 repealing Regulation n°1192/69 of the Council on common rules for the normalisation of the accounts of railway undertakings and Regulation n°2016-2338 amending Regulation n°1370/2007 concerning the opening of the market for domestic passenger transport services by rail, dated 14 December 2016, published in the OJEU dated 23 December 2016, constitute a new stage in the liberalization of rail transport services.

Beginning in 2020, railway undertakings shall have a right of access to the network to operate national passenger transport services. However, Member States shall have the possibility to limit these access rights if they can demonstrate that such access rights would jeopardize the economic balance of existing public service contracts on the same route or alternative routes (such possibility being, however, more limited as regards high speed railway services). Moreover, public service contracts relating to the operation of rail passenger services shall be awarded after publicity and competitive tendering have been organized as of 2024. The 4th railway package also includes provisions to strengthen the rules on financial and organizational independence between infrastructure managers and railway undertakings.

20. Real Estate

France

N/A

European Law

N/A

21. Tax

France

Further to the French Constitutional Court's decision dated 29 December 2016 (*n°2016-743 DC and n°2016-744 DC*), the Finance Act for 2017 (*loi de finances n°2016-1917 pour 2017 – "LF 2017"*) and the Amending Finance Act for 2016 (*loi de finances rectificative n°2016-1917 pour 2016 – "LFR 2016"*) were published in the Official Gazette on 30 December 2016. In this respect, you will find below an overview of the key measures relating to individual and corporate taxation.

Overview of the Finance Act for 2017

- Decrease of the corporate income tax rate

Article 11 of the LF 2017 provides for the progressive decrease of the French standard corporate income tax rate from 33.33% to 28% over the period 2017 to 2020.

In addition, as from 2019, the benefit of the French corporate income tax reduced rate of 15% (*applicable to the portion of taxable income between EUR 0 and EUR 38,120*) will be extended to companies with a turnover below EUR 50,000,000 (*while it currently only applies to companies having a turnover below EUR 7,630,000*).

- Free shares: step backward on the Macron regime

The Law *n°2015-990* dated 6 August 2015 (so-called "**Macron Law**") provided for a favourable social and tax regime applicable to free shares granted as from 8 August 2015. Article 61 of the LF 2017 limits the advantages provided by the Macron Law for free shares granted as from 31 December 2016 and provides for:

- with respect to individual income tax:

the taxation of the acquisition gain (*equal to the fair market value of the shares at the acquisition date*) as a capital gain (*benefiting therefore from tax rebates for holding period*) up to an amount of EUR 300,000 of gain per year; and

the taxation of such acquisition gain as a salary for the amount exceeding the EUR 300,000 threshold (*less advantageous considering that no tax rebates for holding period applies*);

- with respect to social contributions:

the increase of the rate of the social contribution that is due by the employer on the acquisition date of the shares from 20% to 30%; and

a 10% social contribution due by the beneficiaries which applies on the portion of their annual acquisition gain exceeding EUR 300,000.

- Implementation of a withholding tax system on employment income as from 2018

Article 38 of the LF 2017 provides for the implementation of a withholding tax system for the payment of French individual income tax. This withholding tax will be (i) levied by the employer/retirement funds with respect to wages and pensions, and (ii) paid through monthly instalment payments for other types of income (*e.g., rental income, business income, etc.*).

So as to avoid double taxation in 2018 (*i.e. resulting from the payment of French individual income tax on 2017 income payable in 2018*)

and the implementation of the withholding tax system in 2018), the LF 2017 provides that 2017 will be a "tax free" year. Consequently, French taxpayers will be required to report to the French tax authorities any income earned in 2017 but will benefit from a tax credit which will be in principle equal to the French individual income tax due with respect to such income earned in 2017.

At last, we draw your attention to the fact that "exceptional income" (e.g. dividend, capital gains, interests...) do not fall within the scope of this withholding tax system (and the related "tax free" year).

- French wealth tax: new anti-abuse rule

Article 885 V bis of the French Tax Code provides for a tax ceiling mechanism whereby the total amount of French individual income tax and wealth tax due by a taxpayer for a given year can not exceed 75% of the total income earned by such taxpayer during the previous year.

So as to prohibit certain artificial schemes, Article 7 of the LF 2017 enables the French tax authorities, for the determination of the income earned by a taxpayer for the purposes of the tax ceiling mechanism, to take into account income received by a company controlled by the taxpayer, when the main purpose of such company is to avoid French taxes in contradiction with the purpose of the tax ceiling mechanism.

Overview of the Amending Finance Act for 2016

- Extension of the scope of the 3% contribution exemption

French companies are in principle subject to a 3% contribution assessed on the amount of dividends paid to their shareholders. However, companies paying dividends within a tax-consolidated group are exempt from this 3% contribution.

In this context, the French Constitutional Court ruled on 30 September 2016 (n°2016-571) that this exemption (*benefiting to French companies members of a French tax consolidated group only*) was unconstitutional considering that it creates an unjustified discrimination compared to companies that are not members of a consolidated tax group but meet all the requirements for the French consolidation tax regime.

In this respect, Article 95 of the LFR 2016 draws the consequences of the French Constitutional Court decision and extends the benefit of the French 3% contribution exemption to companies that meet the conditions to benefit from the tax consolidation regime (*even if they are not part of a French consolidated group*). Besides, the exemption is also extended to dividends paid by a French subsidiary to its non-resident parent company provided that the non-resident parent company owns at least 95% of the shares of the French subsidiary.

- Savings plan in shares ("PEA"): prohibition of self-purchase

In principle, contributions made to a PEA must be paid in cash only. In this respect, taxpayers can not transfer to their PEA shares that were previously owned outside a PEA.

In this respect, the French Administrative Supreme Court (*Conseil d'Etat*) ruled on 14 October 2015 (n°374211) that taxpayers can (i) make cash contribution to their PEA, and (ii) use the cash in the PEA to acquire the shares they previously owned outside the PEA.

In this context, Article 94 of the LFR 2016 challenges this decision from the French Administrative Supreme Court and prohibits the acquisition, through a PEA, of shares previously owned by the taxpayer, his or her spouse, civil partner, ascendant or descendant.

- Contribution of shares: adjustments to the tax deferral regime

The LFR 2016 provides for several amendments to the tax deferral regime provided by Article 150-0 B ter of the FTC, which applies to contribution of shares made by an individual to a company that he or she controls:

- With respect to successive contributions of shares:

Pursuant to Article 32 of the LFR 2016, successive contributions of shares may benefit from the tax deferral regime without any limitation with respect to the number of successive contributions. As a reminder, before the enactment of LFR 2016, this tax deferral regime could only apply to two successive contributions of shares.

- With respect to the reinvestment of the profit resulting from the sale of contributed shares:

In principle, the tax deferral regime ends when the shares contributed to a company are sold, unless the selling company

undertakes to reinvest 50% of the profit resulting from the sale within two years.

In this respect, Article 33 of the LFR 2016 provides further clarification on:

- the nature of eligible reinvestments;
- the obligation for the company to hold the goods or shares acquired through the reinvestment for at least two years; and
- the obligation for the company to reinvest within two years of its payment any additional price paid in connection with the sale.

European Law

N/A

22. Telecoms

France

N/A

European Law

N/A

23. Transport

France

N/A

European Law

N/A

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