

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 2015.

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 – In debate in public session at the Senate from January 20 to 26, 2016.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 – Adopted in first reading by the National Assembly on April 14, 2015 and by the Senate on October 6, 2015 – Joint committee meeting (disagreement) – Adopted by the Parliament in new reading on December 17, 2015 – Seisin of the Constitutional Council on December 21, 2015.
- **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.
- **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 – in discussion in first reading before the National Assembly from January 19 to 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.

Enacted laws

- **Amending finance law n°2015-1786 of December 29, 2015 for 2015.**
- **Finance law n°2015-1785 of December 29, 2015 for 2016.**
- **Law n°2015-1779 of December 28, 2015 relating to the free reuse and modalities of the public sector information.**
- **Law n°2015-1778 of December 28, 2015 which authorises the multilateral agreement between competent authorities for the automatic exchange of intelligence relating to financial accounts.**
- **Law n°2015-1713 of December 22, 2015 on the paperless version of the French Republic's Official Journal.**
- **Law n°2015-1702 of December 21, 2015 on the financing of Social Security for 2016.**
- **Law n°2015-1567 of December 2, 2015 relating to various provisions in connection with risk prevention for the transposition of EU Law into French Law.**

1. Banking

France - Right of direct access to bank accounts file granted to the tax administration

The 2016 Finance Act dated 29 December 2015 ([J.O n°0302 dated 30 December 2015](#)) grants a right of direct access to the bank accounts file (FICOBA) to some judicial police officers of the national police and national *gendarmerie* as well as to some customs agents or tax services authorised to conduct judicial inquiries in order to achieve their mission. They must be individually designated and duly authorised.

The provision entered into force on 31 December 2015.

France - From 1 January 2016, the auditor appointment of a banking institution will no longer be subject to the ACPR control

The ordinance (*ordonnance*) dated 17 December 2015 relating to auditors' appointment or reappointment of a banking institution ([J.O n°0293 dated 18 December 2015](#)) will no longer be subject to the control of the *Autorité de contrôle prudentiel et de résolution* (ACPR). However, this authority will maintain the power to appoint an additional auditor if the situation of the institution requires it.

The ordinance entered into force on 1 January 2016.

France - Interchange fees limits relating to a payment by universal credit card

The decree dated 7 December 2015 taken under Regulation (EU) n°2015/751 regarding interchange fees for payment transactions related to a card ([J.O n°0284 dated 8 December 2015](#)) sets, by way of derogation and for a transitional period, a unique and specific limit on interchange fees on domestic payment transactions using universal cards (national payment transactions that cannot be identified by the payment card system such as debit or credit card transactions) to 0.23% of interchange fees until 9 December 2016.

The decree entered into force on 9 December 2015.

France - Remuneration of the collection systems of *livret A* and *livret développement durable*

The decree dated 11 December 2015 relating to the remuneration of the collection systems of *Livret A* and *Livret développement durable* ([J.O n°0289 dated 13 December 2015](#)) sets the average earnings of collection systems of *Livret A* and *Livret développement durable* at 0.3%.

The decree entered into force on 1 January 2016.

France - Legal interest rate during first semester of 2016

The ministerial decree (*arrêté*) dated 23 December 2015 relating to the legal interest rate ([J.O n°0300 dated 27 December 2015](#)) sets the legal interest rates for the first semester 2016. The legal interest rate is set (i) for claims of individuals not acting for business purposes, at 4.54 % and (ii) for all other cases, at 1.01 %.

The ministerial decree (*arrêté*) entered into force on 1 January 2016.

2. Capital Markets

France - AMF - Publication of a guide "good practices": to invest when being an association, a foundation or an another institution

On 2 December 2015, the AMF published a guide to help associations, foundations, endowments (*fonds de dotations*) and other institutional non professional investors to define their investment policy.

The guide describes the key steps in the investment process: the making of the investment decision, the follow up of investments made, the choice of financial intermediaries, the type of investments (funds, shares, bonds), and the types of management available.

The guide also defines the notions of conflicts of interest, the principles of good management and the notion of institutional investors.

France - AMF – Socially responsible investments in the collective management (SRI) overview

On 26 November 2015, AMF published an overview of SRI in France. It subsequently updated the overview in its position-recommendations n°2011-24 - Guide to drafting CIS marketing materials and distributing CISs and n°2011-05 - Guide to the regulatory documents governing collective investment schemes in order to increase the consistency, accessibility, reliability and clarity of all the information made available to investors.

The regulation proposal has been forwarded to the European Parliament and the Council of European Union for discussion and adoption.

France - AMF - Finalisation of the implementation of the transparency directive under French law

The order dated 3 December 2015 which approved modifications of the general regulation of the AMF was published on the official journal on 4 December 2015.

The general regulation of the AMF was modified in order to implement Transparency directive and increases transparency on thresholds crossings, remove the pro forma financial information, allows a choice of the language used for regulated information.

European Law - European Commission - Proposal to overhaul prospectus rules

On 30 November 2015, the European Commission published a regulation proposal aimed at overhauling rules to improve access to finance for companies and simplify information for investors.

Notably, the proposal envisages that (i) companies with a market capitalization of 500,000 euros or below will not be required to issue a EU prospectus (increased from the previous threshold of 100,000 euros), (ii) a lighter prospectus for smaller companies with a market capitalisation of 200 million euros or below, (iii) shorter prospectuses and better investor information, (iv) simplifying secondary issuance for listed companies, (v) the use of an annual "universal registration document" which includes all the necessary information on the company for frequent issuers and (vi) a single access point for all EU prospectuses.

European Law - Entry into force of the securities financing transactions European regulation 2015/2365

Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse was published in the Official Journal of the European Union on 23 December 2015 and comes into force on 12 January 2016.

The management companies which use financing transactions relating to securities financing (such as repos and securities lending) or total return swaps must modify their prospectuses or pre-contractual documents from 12 January 2016 when launching new funds. Funds created prior such date are required to comply with the regulation from 13 July 2017.

In addition, UCITs or AIFs managed by authorised AIFM managers must include in their prospectuses or in their pre-contractual documents information and notably a general description of the securities financing transactions and total return swaps used by the collective investment undertaking, the reason for such use, data for each type of transaction and information on counterparties, collateral and risks.

3. Consumer law

European Law - E-commerce is emphasized as a priority in the Single Digital Market implementation

On December 9, 2015, the European Commission introduced its [Proposal for a Directive 2015/0288 \(COD\) of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods](#) meaning, any tangible personal property sold on the Internet, or by phone or mail orders.

The Proposal will address disparities in the area of consumer contracts, in order to (i) reduce business costs and (ii) build trust with consumers purchasing goods online from another state. To meet these goals, several proposed measures are meant to be mandatory. The Member States will not be able to waive those measures, including:

-conformity of the goods: content of the duty of conformity, conformity criteria for the goods;

-remedies for lack of conformity: if the defect appears within a time limit of two years, the consumer is entitled to repair or replacement of the goods by the seller or, failing that, to a proportional discount on the price or to termination of the contract.

The directive does not affect the legislation on unfair terms which remains unaltered.

4. Corporate

France - Terms and conditions of the forced sale of shares unduly acquired by companies with a public participation

[Decree n°2015-1553 of 27 November 2015](#), published in the Official Journal on 29 November 2015, modifies information on terms of payment to be mentioned in the management report of companies whose financial statements are certified by an auditor, pursuant to Article L. 441-6-1, al. 1 and 2 of the French Commercial code as amended by the so-called Macron Law (*article D. 441-4 amended of the French Commercial code*).

The Decree also specifies the conditions under which the auditor shall establish a certificate in respect of such information (*article D. 823-7-1 amended of the French Commercial code*).

These provisions will apply to the financial statements related to fiscal years beginning on or after 1st January 2016.

5. Employment

France - Tax regime of severance pay for Executives

Article 22 of the [Finance Law for 2016 n°2015-1785 dated 29 December 2015](#), halves the deductible portion of severance pay, like "golden parachutes" granted by public limited companies listed on a regulated market to their presidents, managing directors, or members of their managing board.

The maximum allowed as a deduction, from previously set at 6 times the annual social security ceiling amount is reduced to 3 times that amount.

This provision is retroactive, since it entered into force on 1 November 2015.

In addition, it should be noted that the [Order NOR: AFSS1530064A dated 17 December 2015](#) brings the annual social security ceiling (ASSC) to € 38,616.

France - Social regime of severance pay for executive officers

Article 8 of the [Social Security Financing Law for 2016 n°2015-1702 dated 21 December 2015](#) hardens the social regime of severance pay for executive officers. Now, if the amount of severance pay is above 5 times the ASSC amount (10 times previously), the amount of severance pay is entirely subject to social security contributions, CSG and CRDS.

France - New provision on the obligation to inform employees in case of a company sale

Pursuant to the Law of 6 August 2015, so called "law Macron", in companies with fewer than 250 employees, the employer has no more the obligation to inform the employees in case of transfer of the business, but only in case of sale of it (this excludes donations, contributions, etc.).

The [Decree n°2015-1811 dated 28 December 2015](#) applies this change by integrating it in the regulatory section of the Commercial Code determines the date of receipt of the information by the employee to that of the first presentation in case of use of the registered letter with acknowledgment of receipt. The Decree comes into force on 1st January 2016.

France - Implementation of the "Law Macron" on foreign reassignment offers

The [Decree n°2015-1638 dated 10 December 2015](#) specifies the conditions under which the employee is informed of the possibility to request reassignment of these foreign offers and according to which the employer is required to transmit them.

France - Minimum scope of application of the order of dismissal in case of Social Plan criteria subject to a unilateral Document

Pursuant to the Law of 6 August 2015, so called "Law Macron", for companies subject to the obligation to establish an Social Plan, the scope of application of the order of dismissals criteria cannot be determined unilaterally at a lower level than that of each "employment area" in which are located one or more business locations affected by the redundancies.

The [Decree n°2015-1637 dated 10 December 2015](#) specifies the notion of "Employment area" by reference to the employment areas defined jointly by DARES and INSEE.

The Decree came into force the day after its publication in the Official Journal, (i.e. 13 December 2015), and therefore applies to dismissal procedures initiated after that date.

France - Development and extension of social rescript procedure

The [Order n°2015-1628 dated 10 December 2015](#) develops the current system of social ruling, which is now extended.

The Order provides that the social ruling will no longer be open only to contributors and future contributors but also to duly authorized third party (lawyer, accountant).

The text also provides that the request of the company can cover all social security contributions: is suppressed by the Order the exhaustive list of contributions so far concerned by the ruling.

These changes are effective as of 1st January 2016

Decrees should specify the content and modalities of filing of the application, disclosing, treatment of incomplete applications, tacit acceptance, and response period.

France - Publication of the second Decree implementing of the "saving plan" section of the "law Macron"

Implementing the provisions concerning "saving plans" of the "law Macron" of 6 August 2015, the [Decree n°2015-1606 dated 7 December 2015](#) provides details on the expected implementation modalities. The text comes into force on 1st January 2016.

Voluntary profit-sharing plan: the Decree specifies the procedures for implementing renewal clauses stipulated in the voluntary profit-sharing plan established by referendum.

Mandatory profit-sharing plan: the Decree implements the new rules for assessing the workforce of 50 employee's threshold for the set-up of the mandatory profit-sharing plan. Also, the Decree amends several provisions to apply the new time limit for payment of the mandatory profit-sharing plan and amends various provisions on the rate of interest on arrears.

6. Energy

France - Decree dated 30 December 2015 concerning the codification of the regulatory section of the Energy Code

Decree n°2015-1823 dated 30 December 2015, published in the Official Journal of 31 December 2015 codifies the regulatory section of the Energy Code and repeals a series of texts (now codified), a list of which is provided for in article 6 of the above-mentioned decree.

The regulatory section of the Energy code is referred to in article R. 111-1 and following of the Energy Code. It can be consulted on Legifrance's website (<http://www.legifrance.gouv.fr/>).

7. Environment

France - Decree dated 9 December 2015 revising and simplifying the Classified Installation for the Protection of the Environment (ICPE) regime and concerning the prevention of risks

Decree n°2015-1614 dated 9 December 2015, published in the Official Journal of 11 December 2015 lists the necessary measures to simplify the ICPE regime. In particular, it includes the enactment through a ministerial order of several types of national template of declaration to be used, when filing certain declarations with the authorities pursuant to the Environmental Code. The same decree also refers to a ministerial order to specify the conditions under which the above-mentioned information is passed on to the authorities, electronically.

Decree n°2015-1614 dated 9 December 2015, also provides, as regards to the classified installations falling under the declaration regime, the immediate issuing by electronic notice (on the *Prefecture's* website), of a proof of the declaration's filing and an access to the general applicable requirements relevant to the installation which is concerned by the declaration.

France - Ministerial order dated 15 December 2015 concerning the electronic filing of ICPE declarations

The ministerial order dated 15 December 2015, published in the Official Journal of 24 December 2015 complements the above mentioned Decree n°2015-1614 dated 9 December 2015. This ministerial order which entry into force is January 1st, 2016, states that the information to be provided to the authorities under certain circumstances provided for in the Environmental code is to be done electronically on the following website:

<http://www.service-public.fr/>

The use of electronic transmission relates precisely to declarations to be filed (i) when a classified installation which falls under the declaration regime is created (Article R. 512-47 of the Environmental Code), (ii) when significant changes to the classified installation are contemplated (Article R. 512-54, II in the same Code), (iii) when a classified installation falling under the declaration regime is shutdown on a definitive basis (Article 512-66-1 in the same Code), (iv) in case of a change of operator (article R. 512-68 in the same Code) or (v) in case of notification to inform the authorities that some classified installations can be operated without a proper ICPE operating licence (article R. 513-1 in the same Code).

However, the ministerial order dated 15 December 2015 states that the above mentioned declarations can, for the period up to 31 December 2020, be filed as a hard copy instead of online. In such case, specific application forms established by the authorities (CERFA application form) must be used. The forms' references to be used according to the types of declaration to be filed are provided for in Article 2 of the ministerial order dated 15 December 2015 and may furthermore be consulted on the following website: <http://www.service-public.fr/>

8. Insurance

France - Life insurance: Decree on the delivery of financial securities

[Decree n°2015-1669 of the 14 December 2015](#) (the "**Decree**") relating to the conditions under which the beneficiary of a life insurance contract may opt for the settlement of securities, shares or units, entered into force on 17 December 2015. The Decree was adopted in implementation of Article L. 131-1 of the French Insurance Code as amended by [Law n°2015-990 of 6 August 2015](#) which allows the beneficiary of a life insurance contract to opt for the settlement of non-negotiated securities or shares on a regulated market or shares or units on certain alternative investment funds in the event of exercise of the beneficiary clause.

France - Solvency II: Decree on the administrative, prudential and accounting regime for mutual societies and unions

[Decree n°2015-1857 of the 30 December 2015](#) relating to the administrative, prudential and accounting regime of insurance and reinsurance companies (the "**Decree**") has been adopted in implementation of the [French Ordonnance n°2015-378 of 2 April 2015](#) implementing the Solvency II Directive and entered into force on 1 January 2016. It sets out the regulatory measures necessary for the implementation of said Directive into national law and measures for the adaptation of the rules governing insurance and reinsurance companies governed by the French Code on mutual societies and the French Social Security Code.

The Decree sets out the rules notably in relation to the definition of the minimum amount for the profit sharing of mutual companies and amends the content of reporting statements E1 to E5.

Simultaneously, an [Order dated 30 December 2015](#) came into force to implement the Decree.

France - Publication of instructions by the ACPR

On 21 December 2015, the French insurance supervision authority (*Autorité de contrôle prudentiel et de résolution* - **ACPR**) published in its official register the following four (4) instructions concerning the Solvency II regime: (i) [instruction n 2015-I-33](#) relating to the transmission to the ACPR of quarterly statements by insurance company not subject to Solvency II regime, (ii) [instruction n 2015-I-29](#) relating to the reporting of non-material modification of the internal model to the ACPR, (iii) [instruction n 2015-I-28](#) relating to the authorisation's procedure to simultaneously proceed, at the level of any subsidiary of the group to the internal risk and solvency assessment by the ACPR and (iv) [instruction n 215-I-27](#) relating to the authorisation procedures by the ACPR to publish a single report on the solvency and the financial situation at the group level.

The ACPR also updated its [instruction n 2015-I-34](#) relating to the information to be provided to the ACPR in relation to the acquisition or extension of the shareholding in an insurance company, reinsurance company or in an insurance group company.

France - Solvency II: Publication of notices by the ACPR

On 18 December 2015, the ACPR published ten (10) notices relating to Solvency II:

- [a cover note](#) on guidelines set out by the European Insurance and Occupational Pensions Authority ("**EIOPA**");

- regulatory requirements relating to Pillar 1 concerning (i) [the SCR calculation in standard formula](#), (ii) [the calculation of the group solvency](#), (iii) [the definition of technical provisions](#), (iv) [the accounting and the valorisation of the assets and the liabilities other than the technical provisions](#) and (v) [the own funds](#);

- regulatory requirements relating to Pillar 2 concerning (i) [the internal model](#), (ii) [the internal risk and solvency assessment](#) and (iii) [the governance system](#);

- regulatory requirements relating to Pillar 3 of the Solvency II Directive concerning [the communication of information to the supervisory authority and to the public](#).

European Law - Solvency II: Publication of Commission Implementing Regulations

The European Commission published on 12 November 2015 the following seven (7) [Commission Implementing Regulations](#) setting out the implementing technical standards ("**ITS**") as required under the Solvency II Directive. Notably with regard to: (i) the procedures for decisions to set, calculate and remove capital add-ons, (ii) procedures and templates for the submission of information to the group supervisor and for the exchange of information between supervisory authorities and (iii) the procedures for assessing external credit assessments.

These regulations will enter into force on the twentieth day following that of their publication in the Official Journal.

European Law - Solvency II: adoption of three Implementing Regulations

On 2 December 2015, the European Commission adopted three (3) Implementing Regulations laying down implementing technical standards (ITS) required under Solvency II. The Implementing Regulations relate to (i) the [templates for the submission of information to the supervisory authorities](#), (ii) the [procedures, formats and templates for the solvency and financial condition report](#) and (iii) the [templates and structure for the disclosure of specific information by supervisory authorities](#).

European Law - IDD adopted by the Council of the European Union

On 14 December 2015, the Council of the European Union announced that it had adopted [the Insurance Distribution Directive](#) (the "ID Directive"). After being signed by the Presidents of the Parliament and the Council, the adopted text will be published in the Official Journal of the European Union. It will come into force on the twentieth day after the publication date. Member States will have two (2) years to transpose the ID Directive from the date of its entry into force.

European Law - EIOPA: report on mobile phone insurance

On 4 December 2015, the EIOPA published a [report on Consumer Protection Issues arising from the sale of Mobile Phone Insurance](#).

The EIOPA raised issues such as (i) consumers paying high premiums for products providing a reduced coverage, (ii) long duration contracts for products which are rapidly amortised or (iii) consumers facing unreasonably long and burdensome claims-handling processes.

Most of these recommendations have already been reflected in the forthcoming ID Directive. However, insurance undertakings predominantly sell mobile phone insurance products through indirect channels, such as mobile phone operators, which are commonly not subject to the regulatory requirements of the existing Insurance Mediation Directive.

European Law - EIOPA: consumer trends report

On 15 December 2015, the EIOPA published its [fourth consumer trends report](#), which, for the first time, analyses the occupational and personal pensions sectors as well as the insurance sector.

The EIOPA has identified new and emerging trends relating to (i) certain privacy concerns and segmentation strategies which need to be carefully monitored, (ii) a more efficient management of potential conflicts of interest which is needed as the complexity of some insurance products has increased and (iii) improvement of training and professional competence requirements for insurance intermediaries to protect consumers' interests.

9. Intellectual Property

European Law

European Law - Final adoption and publication of the "Trademark Package"

After the Council of the European Union adopted the reform of the "Trademark Package" ([French Legal and Regulatory Newsletter – November 2015](#)), the European Parliament finally adopted it in plenary session on 15 December 2015.

For the record, this reform is particularly important since it will introduce profound changes to trademark law, in France as well as at the European level.

On the one hand, [Directive \(EU\) 2015/2436 of 16 December 2015 to approximate the laws of the Member States relating to trade marks \(recast\)](#) was published in the Official Journal of the European Union on 23 December 2015. It shall enter into force on the 20th day following that of its publication. Member States shall implement this Directive by 14 January 2019 (except the provisions relating to the administrative procedure for revocation and declaration of invalidity which shall be implemented by 14 January 2023).

On the other hand, [Regulation \(EU\) n°2015/2424 of 16 December 2015](#), which amends in particular Regulation (EC) n°207/2009 on the Community trade mark, was published in the Official Journal of the European Union on 24 December 2015. It shall enter into force on 23 March 2016.

10. Life Sciences

France - The healthcare bill challenged before the *Conseil constitutionnel*

On December 17, 2015, more than one year after it was first introduced, the final version of the [Government bill on modernization of the French health system](#) (the 'Public Health Law') was enacted by the *Assemblée nationale*.

The main provisions of the Public Health Law are:

- Generalization of the third-party payment system;
- Plain cigarettes packaging;
- Smoking ban on electronic cigarettes in several public places and prohibition of smoking in a car with a underage person;
- Testing of risk-reduction and support centers for drug users;
- Class action for patients suffering injuries caused by medical treatment;
- Withdrawal of the 7-day mandatory period between the decision to undergo abortion and the surgery.

Aside from these provisions subject to extensive media coverage, the Public Health Law provides for a restructuring of the public hospital service and the creation of territorial professional communities. The Public Health Law also introduces changes to the existing French anti-benefits and sunshine regulations.

Some provisions of the Public Health Law were challenged before the French Constitutional Court on December 21, 2015, notably the provisions concerning plain cigarettes packaging, the withdrawal of mandatory period for abortion, generalized third-party payment, restructuring of the public hospital service, class action for medical injuries, as well as the anti-benefits and sunshine regulations.

11. New Technologies

France - Law for the modernization of our health system

The National Assembly adopted on 17 December 2015 the bill regarding the modernization of the health system. The law includes provisions instituting a right to be forgotten for individuals who suffered from certain types of serious illness in the past. It also modernizes the system for accessing data while strengthening the protection of the personal data health services' users.

France - Internet Service Providers

The Ministry of Culture having stalled on passing a decree implementing the HADOPI Law that set up ISPs' compensation for participating in the implementation of the HADOPI Law, the *Conseil d'Etat* (the French highest administrative court) issued a [decision](#) on 23 December 2015 whereby it confirmed the French government's obligation to compensate ISPs. The injunctive order is subject to a penalty of 100 euros for each day's delay.

France - Digital Republic draft Law

The CNIL published on 17 December 2015 its opinion regarding the Digital Republic bill. The CNIL recalls that this draft law should be conforming to the European regulation on data protection. It recognized the reinforcement of citizens' rights, and, in particular, the recognition of a right to the free disposal of one's own data. The Commission also underlined the importance of the provisions relating to the personal data of deceased persons.

France - CNIL sanction

The CNIL issued a public warning to the marketing company PROFILS SENIORS, a marketing company, because of its violations of the French data protection law. The company had not collected the prior consent of the individuals, had not ensured the security and confidentiality of the personal data and had not filed any request for authorization with the CNIL regarding the transfer of data outside the European Union.

European Law - European Regulation on data protection

The draft regulation on data protection was approved by the European Parliament, the European Council and the European Commission on 15 December 2015. The Regulation redefines the legislation regulating the protection of personal data in Europe. In particular, it strengthens the individuals' rights and imposes penalties that may reach up to 4% of the turnover of the companies that do not comply with the new Regulation. The draft Regulation will be definitively adopted early in 2016 and will enter into force in all Members states in 2018.

12. Procedures

European Law - Modification of the application form of the European Court of Human Rights

[On December the 1st 2015, a communiqué was released by the European Courts of Human Rights](#) about the amendment of Article 47 of the Rules of Court regarding the institution of proceedings before the Court. The amended Article will be applicable as of January 1st 2016.

The applicant, if it is a legal entity, will have to set out in the application form the identification of its representative and provide proof that such a representative has the capacity to initiate legal proceedings on its behalf.

Similarly, if the applicant is represented by an attorney, the section "power [of attorney]" of the application will have to be signed by both the applicant and its attorney, thus proving that the attorney acts on behalf of the applicant.

The applicant will also have to mention in its application form the article(s) of the Convention or of its Protocols which he believes have been violated, along with explanatory arguments.

13. Public law

France - Extended thresholds for the procedures for award of public contracts

Decree n°2015-1904 dated 30 December 2015, published in the O.J dated 31 December 2015, having regard to Commission Delegated Regulations n°2015/2340, 2015/2341 and 2015/2342 (see below) increases the triggering thresholds for the award of public works contracts, public supply contracts and public service contracts. The Decree also increases the threshold for the control of validity of public contracts awarded by regional and local authorities. It shall apply from 1 January 2016 onwards.

European Law - Extended thresholds for the procedures for award of public contracts

Commission Delegated Regulations n°2015/2340, 2015/2341 and 2015/2342 dated 15 December 2015, published in the O.J.E.U dated 16 December 2015, increase the triggering thresholds set out in Directives 2004/17/UE, 2004/18/UE and 2009/81/UE for the award of public works contracts, public supply contracts and public service contracts, in classic sectors as well as in the water, energy, transport and postal services sectors and in the fields of defence and security. Those Regulations shall apply from 1 January 2016 onwards.

14. Tax

France - Corporate taxation

Further to the French Constitutional Court's decision dated 29 December 2015, the [Finance Act n°2015-1785 for 2016](#) (*loi de finances pour 2016 – LF 2016*) and the [Amended Finance Act n°2015-1786 for 2015](#) (*loi de finances rectificative pour 2015 – LFR 2015*) were published in the Official Gazette on 30 December 2015. In this respect, you will find below the key measures relating to corporate taxation.

- Transfer pricing: country-by-country reporting

[Article 121 of the LF 2016](#) provides for a new and mandatory country-by-country reporting obligation which targets companies (i) drafting consolidated accounts, (ii) with an annual turnover exceeding EUR 750 million, and (iii) holding or controlling, directly or indirectly, one or several legal entities or branches established in a foreign country. French companies which are held by entities themselves subject to this reporting obligation fall outside the scope of such obligation.

French entities which would not comply with this mandatory reporting obligation would be subject to a tax penalty up to EUR 100,000.

- Suppression of the neutralization of the 5% taxable portion of dividends distributed within French consolidated tax groups

Further to the decision of the Court of Justice of the European Union ("CJEU") dated 2 September 2015 ([CJEU 2 September 2015, case C-386/14, Groupe Steria SCA](#)), [article 40 of the LFR 2015](#) removes the neutralization of the 5% taxable portion of dividends distributed within French consolidated tax groups, applicable as from the second tax consolidated fiscal year (*this neutralization led to a total corporate income tax exemption of dividends distributed within French tax consolidated groups*).

As from 1 January 2016, article 40 of the LFR 2015 provides that dividends distributed within French tax consolidated groups are subject to a minimum taxation based on a 1% taxable portion of the amount of dividends received (*even after the second tax consolidated fiscal year*).

From now on, dividends distributed (i) within French tax consolidated groups, or (ii) by a subsidiary established in a member State of the European Union (*or of the European Economic Area*) and which could be consolidated in France if it were established in France, to a French company member of a consolidated tax group, will be subject to a minimum taxation at a rate of 0.33% (*i.e., 1% x 33.1/3%*).

- Parent-subsidiary tax regime: new anti-abuse rule

[Article 29 of the LFR 2015](#) implements the anti-abuse rule provided by the [Directive n°2015/121/UE](#) dated 27 January 2015 modifying the Parent-Subsidiary Directive ([Directive 2011/96/UE](#)) excluding from the benefit of the parent-subsidiary tax regime dividends distributed pursuant to legal schemes whose main purpose is to obtain a tax benefit going against the Directive's purposes.

As a reminder, the parent-subsidiary tax regime provides (*provided that some conditions are met*):

- a tax exemption at the level of the mother company with respect to dividends received from a foreign subsidiary; and
- a withholding tax exemption at the level of the subsidiary with respect to dividends distributed to its mother company.

- Parent-subsidiary tax regime: various measures

As from 1 January 2015, [article 29 of the LFR 2015](#) notably modifies the parent-subsidiary tax regime on the two following points:

- bare ownership of shares (*nue-propriété*) may now benefit from the parent-subsidiary tax regime; and
- a safeguard clause is also provided with respect to dividends distributed by a subsidiary established in a non-cooperative State or territory.

- Withholding tax : various adjustments

LFR 2015 provides for the following adjustments:

- as from fiscal years ending on 31 December 2015, companies whose headquarter is located in Iceland, Liechtenstein and Norway may benefit from the withholding tax exemption provided by [article 115 quinquies of the French Tax Code](#) with respect to the income they generate in France; and
- as from 1 January 2016, non-resident companies (i) generating tax losses, and (ii) under a winding-up process, may benefit from a withholding tax exemption on dividends received from French subsidiaries.

- Additional tax on the sale of offices in the Ile-de-France region

[Article 50 of the LFR 2015](#) provides for an additional tax at a rate of 0.60% applicable to the sale of business premises (*used as offices or storage*) in the Ile-de-France region.

European Law - Exchange of information for tax purposes

[Directive n°2015/2376](#) dated 8 December 2015 extended the scope of the [Directive n°2011/16/UE](#) (*relating to the exchange of information in the field of taxation*) to information concerning tax authorities' decisions in a cross-border context (*including advance pricing agreements*).

As a reminder, [Directive n°2015/2376](#) is the main legislative instrument allowing European Union tax authorities to cooperate more closely in order to apply the correct amount of tax to taxpayers and to fight against fraud and tax evasion by establishing all the necessary procedures in relation to such cooperation (*i.e., exchange of information whether on request, spontaneous, or automatic and participation in administrative proceedings*).

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

[Law n°2015-1716](#) dated 22 December 2015, allows the approval of the amendment to the Franco-German double tax treaty dated 31 March 2015 which notably provides taxation of capital gains deriving from the sale of shares of real estate companies in the country where the underlying real estate asset is located.

15. Telecoms

France – French Competition authority issues largest fine in history

The Competition authority (*Autorité de la concurrence*) has come to the conclusion that Orange's practices during this last decade amounted to unfair competition on the markets of fixed and mobile telecommunication intended for business customers, and has issued a 350-million Euro fine with its [Decision 15-D-20 of December 17, 2015, regarding practices implemented in the field of telecommunications](#).

The operator was blamed for the following practices:

-discrimination in the access to information regarding management of the local loop; because of its status as a former State-owned monopoly, the Orange owns the 'copper local loop', meaning the 'last mile' in the network to the subscribers. This provides the operator with a faster and more detailed access to network information compared to other competing operators; this is a critical advantage for the marketing of retail services to businesses;

-the implementation of customer loyalty rebates and exclusive discounts such as the 'change of mobile' program, which amounts to abusive loyalty marketing for mobile services; the rising exit costs through the implementation of loyalty rebates; the implementation of exclusive discounts on services to virtual private networks.

This monetary penalty comes with several injunction orders:

-First, the obligation for Orange to implement, within 18 months, a system that ensures the provision of local loop information to operators in the same manner as Orange's commercial services;

-Second, Orange must take all necessary and effective steps to put an end to loyalty discounts practices in the 'change of mobile' program;

-Finally, the order to cease the exclusive discount for virtual private networks.

As a safety measure, the authority has clearly stated that the mobile operator must refrain from implementing any practice having the same purpose or equivalent effects.

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