

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 November 2015.

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For additional information, please speak to your usual contact.

Contact

Bruno Knadjian

Avocat à la Cour, Partner

Hogan Lovells (Paris) LLP
17, Avenue Matignon
CS 60021
75008 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

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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.
- **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) - Under examination in new reading by the National Assembly from November 24, to December 1, 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 relating to various provisions in connection with risk prevention for the transposition of EU Law into French Law**, n°2982, filed at the National Assembly on July 15, 2015 – Adopted in first reading by the National Assembly on September 16, 2015 - Amended in first reading by the Senate on October 26, 2015 – Joint Committee meeting (Agreement – Reading in public session at the Senate on November, 17 and at the National Assembly on November 24, 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 relating to the free reuse and modalities of the public sector information**, n°3037, filed at the National Assembly on July 31, 2015 – Adopted in first reading by the National Assembly on October 6, 2015 – Amended in first reading by the Senate on October 26, 2015 (Joint Committee meeting (Agreement)).
- **Draft finance law for 2016**, n°3096, filed at the National Assembly on September 30, 2015 – Adopted by the National Assembly on November 17, 2015.
- **Draft law on the financing of Social Security for 2016**, n°3106, filed on October 7, 2015 before the National Assembly – Adopted in first reading by the National Assembly on October 27, 2015 and by the Senate on November 17, 2015 - (Joint Committee meeting (Disagreement)) – Adopted in new reading by the National Assembly on November 23 and by the Senate on November 26, 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.

Enacted laws

- **Law n°2015-1556 of November 30, 2015 for the surveillance of international electronic communications, OJ of December 1, 2015.**
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1. Banking

France - Credit insurance

The Decree n°2015-1431 dated 5 November 2015 ([J.O n°0259 dated 7 November 2015](#)) on the transmission to the Banque de France of data relating to the credit insurance transactions, modifies the regulatory provisions of the French insurance code. It specifies the procedure under which the credit insurers provide to the Banque de France information relating to the outstanding loan they insured and the risks subscribed by them. The decree also provides that the Bank of France process to the statistic review and the consolidation of the information received.

The Decree n°2015-1431 dated 5 November 2015 will enter into force on 1st January 2016.

France - The French Financial Sector Advisory Committee (*Comité consultatif du secteur financier*)

The Decree n°2015-1432 dated 5 November 2015 (J.O n°0259 dated 7 November 2015) modifying the article D.614-1 of the French financial and monetary code relating to the French Financial Sector Advisory Committee supplements the tasks attributed to this committee. The Decree provides that the French Financial Sector Advisory Committee is in charge of the development and the management of a public online bank charges comparator.

The Decree n°2015-1431 dated 5 November 2015 entered into force on 8th November 2015.

France - Third-party financing companies (*Société de tiers-financement*)

The Decree n°2015-1524 dated 5 November 2015 (J.O n°0252 dated 26 November 2015) specifying the scope of services provided by the third-party financing companies (*société de tiers-financement*) mentioned in paragraph 8 of article L. 511-6 French monetary and financial code supplements the provisions of the French monetary and financial code relating to the third-party financing companies. The third-party financing companies are companies which provide an integrated offer of technical services of buildings rehabilitation (aiming at energy savings) and partial or total financing of these services. The decree specifies the conditions under which the Prudential and Resolution Control Authority (*Autorité de Contrôle Prudentiel et de Résolution*) authorise the third-party financing companies to carry out credit transactions.

This Decree is supplemented by a ministerial decree (*arrêté*) dated 25 November 2015 which specified the qualification required from the managers of the third-party financing companies and the standards of internal control of the third-party financing companies.

The Decree n°2015-1524 dated 25 November 2015 and the order dated 25 November 2015 entered into force on 1 December 2015.

2. Competition

European Law - Antitrust – Public consultation on boosting enforcement powers of national competition authorities

The European Commission launched on 4 November 2015 a public consultation on the institutional and procedural harmonisation of the implementation of European Union ("EU") competition law by the national competition authorities ("NCAs"). While Regulation 1/2003 gave NCAs the competence to apply EU competition law, it did not tackle the means and instruments by which NCAs apply these rules. With this consultation, the European Commission thus invites interested third parties to provide feedback on possible improvements in order to (i) ensure that all NCAs have the right tools to detect and sanction violations of EU competition rules, (ii) ensure NCAs have effective leniency programmes that encourage companies to come forward, possibly in several jurisdictions, with evidence of illegal cartels, and (iii) safeguard the independence of NCAs when enforcing EU competition law, and ensure they have the resources and staff needed to do their work.

Interested third parties can submit their comments until 12 February 2016.

3. Corporate

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

Ordinance n°2014-948 of 20 August 2014 on governance and equity transactions on companies with public participation provides for a forced sale mechanism of interests acquired in breach of rights attached to a specific share. If, upon the end of a 3-month period following the date on which the holders of interests unduly acquired have been deprived from their voting rights, the holders have not proceeded to the sale of their interests, the Minister of Economy shall proceed with the forced sale of such interests.

Decree n°2015-1480 of 16 November 2015, published in the Official Journal on 17 November 2015, sets forth the terms and conditions of the forced sale. The forced sale shall be advertised, completed by an investment services provider appointed by the Minister of Economy by implementing a public procurement process, and may be last for a maximum period of two months, provided that the forced sale includes all the securities or rights attached to such securities wrongly acquired.

These provisions came into effect on 18 November 2015.

France - Terms and conditions of the opposition of the ministry in charge of the economy to decisions of assets transfers by companies with a public participation

Ordinance n°2014-948 of 20 August 2014 on governance and equity transactions on companies with public participation provides for a list of rights attaching to a specific share held by the French State, which inter alia includes the right for the Minister of Economy to veto decisions relating to the transfer of assets or of certain types of assets of the company or its subsidiaries or the creation of encumbrances affecting such assets as guarantee.

Decree n°2015-1482 of 16 November 2015, published in the Official Journal on 17 November 2015, sets forth the terms and conditions under which the Minister of Economy may veto such decisions. The company intending to complete such a transaction must apply for the prior authorisation of the Minister of Economy. Failing a response from the Minister of Economy within 2 months from the submission of a complete file, the transaction will be deemed authorised. Failure to comply with this obligation will entail the automatic cancellation of the transaction.

These provisions came into effect on 18 November 2015.

France - Latest revision of the AFEP-MEDEF Code

On 12 November 2015, AFEP and MEDEF published a new version of their corporate governance code for listed companies (Code de gouvernement d'entreprise des sociétés cotées). This revision includes the principle of a consultation of the shareholders' general meeting in the event of significant assets transfers, as well as the new provisions of the "Macron" Law relating to supplementary pensions.

4. Employment

France - Entitlement to jurisdiction through electronic communication

The Decree n°2015-1422 dated November 5 2015, published on Official Journal dated November 6 2015, specifies the provisions of Order n°2005-1516 dated December 8 2005, related to the submission by email to French Administration of queries, statements, documents or information.

The Decree dated November 5 2015 specifies on which the date, the employer will be able to conduct certain procedure through electronic way:

From November 7, 2016: foreign companies statement of employee secondment to France and file application form for representativeness recognition of employer organization

From November 7; 2017: indefinite term employment contract mutual termination agreement declaration, professional election statements transmission, company-wide agreement registration and employment tribunal judges application registration

France - Reduced *forfait social* for employee savings scheme invested into a PERCO

The Decree n°2015-1526 dated November 25 2015, pursues article 149 of Law n°2015-990 dated August 6 2015 for growth, activity and economic chances equality, or "Macron Act".

The *forfait social* rate is reduced to 16% for employee savings scheme displaced as collective pension savings plans (PERCO) which equity is at least invested at 7% into small and medium size businesses shares.

The Decree specifies the 16% rate applies to a portion of the shares portfolio (between 30% and 100%) owned by the employee and which differs according to the retirement date deadline of each employee (as from 7 years).

France - Designation of the competent Labour administration (DIRECCTE) section for professional organisations certified accounts submission

The Decree n°2015-1525 dated November 24 2015, pursuant the provisions of Law n°2014-288 dated March 5 2014 dedicated to education, employment and social democracy, consequent to Law n°2008-789 which made compulsory, account certification for all professional organizations which wish to see established their representativeness, whatever their level resources may be.

The Decree dated November 24 2015, specifies that trade unions and employer organizations shall register their certified accounts to the DIRECCTE section competent for the organisation's registered office.

5. Intellectual Property

France - Clarification of the conditions of enforcement of the principle "silence amounts to acceptance" and its exceptions for administrative decisions relating to industrial property

Decree n°2015-1436 dated 6 November 2015 specifies the conditions of enforcement of the principle "silence amounts to acceptance" and its exceptions for requests relating to industrial property. This Decree clarifies uncertainties arising from Decree n°2014-1280 dated 23 October 2014 relating to the enforcement of exceptions of the principle "silence amounts to acceptance", based on II of Article 21 of Law n°2000-321 dated 12 April 2000 relating to the rights of citizens in their relations with administrative agencies, in particular as regards the Decree's compliance with provisions from the Intellectual Property Code (please refer to the French Legal and Regulatory Newsletter – April/May 2015).

This Decree sets the conditions under which an implicit decision of dismissal is formed, in the event of the administration's silence, as regards the following procedures: issuance and extension of a supplementary protection certificate, modification of patent claims, filing of semiconductor topography and certification of geographical indications for craft and industrial products.

Moreover, this Decree also specifies the conditions of formation of an implicit decision of approval, in the event of the administration's silence, for the following procedures: issuance of a patent, application for restoration of patent rights, renunciation statement and request that revocation be lifted with regard to trademarks or designs, recordal on the national patent, trademark, design and software registers and on the list of individuals qualified in industrial property and on the list of trademark and patent attorneys.

This Decree entered into force on 8 November 2015. It applies to prior applications for which no explicit decision has been taken yet.

European Law - Adoption of the reform of the "Trademark Package" by the Council of the European Union at first reading

On 10 November 2015, the Council adopted the reform of the European "Trademark Package" at first reading. This vote intervenes after an agreement was reached between the Council and the European Parliament (please refer to the French Legal and Regulatory Newsletter – June 2015).

This reform aims at modernizing [Directive n°2008/95/EC](#) dated 22 October 2008 on national trademarks and [Regulation EC n°207/2009](#) dated 26 February 2009 on the Community trademark. The reform fosters innovation and reinforces the protection against trademark counterfeits, in particular against the circulation of infringing goods throughout the European Union's territory. The new suggested legal framework is aimed at facilitating trademark registration proceedings within the European Union, allowing for more accessibility, effectiveness, lowering the costs of registration and the complexity of procedures, increasing speed, predictability and therefore legal certainty.

The European Parliament is expected to vote on this reform at second reading before the end of this year.

6. New Technologies

France - Surveillance Act

The so-called "[Surveillance Act](#)" of 30 November 2015, published in the *Journal Officiel* on 1 December 2015 provides that the surveillance of electronic communications sent or received between France and a foreign country can be authorised as part of the defense and promotion of the fundamental interests of the Nation.

France - Safe Harbor

The CNIL published on 19 November 2015 an [article](#) including a series of frequently asked questions following the CJEU decision invalidating the Safe Harbor ([see Legal and Regulatory Update - September 2015](#)). The CNIL recalled that standard contractual clauses and binding corporate rules (BCR) remained valid mechanisms until 31 January 2016, the date upon which a new legal framework should be put into place.

France - Governance privacy seal

On 10 November 2015, the CNIL announced in an [article](#) the awarding of the first label "Governance and Data Privacy" to the French Department of Alpes-Maritimes. This category of certification testifies the quality of good practices implemented by any type of organization with the French equivalent of a Data Protection Officer (CIL).

France - CNIL sanction against Optical Center

The CNIL imposed on 5 November 2015 a [fine](#) of €50,000 against the French company OPTICAL CENTER for failing to sufficiently ensure the security and confidentiality of its customer data. This sanction took place after a formal warning by the CNIL. The company had insufficiently complied with the terms of the warning.

7. Procedures

France - Adaptation of Civil Procedure Code norms to the European law concerning cross-border successions

[Decree n°2015-1395](#) from the 2nd of November 2015, published in the Official Journal on the 4th of November 2015, provides for procedural adaptations required for the implementation of the 4th of July 2012 EU Regulation n°650/2012, which is applicable from the 17th of August 2015. This text provides for the simplification of measures concerning the recognition of the declaration of enforceability of several acts and judicial decisions emphasised by the EU Regulation, including the creation of the European Certificate of Succession, which, in France, will be delivered by notaries in order to facilitate the proof of inheritor quality in all member States.

France - New improvement for the cyber-administration

Decree n°2015-1404 from the 5th of November 2015, published in the Official Journal on the 6th of November 2015, sets the rules for citizens' administrative online referrals, despite the fact that 14 other decrees published on the same day define the exceptions applicable to this right. The first Decree in particular provides the modalities of referral to the administration by users, as well as the administration's obligations regarding the acknowledgement of receipt. The exceptions to the right of online referral must be justified by "reasons regarding public order, national defence and security, and necessity for a user's personal appearance or proper administration".

8. Public Law

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

Commission Delegated Regulations n°2015/2170, 2015/2171 and 2015/2172 dated 24 November 2015, published in the O.J.E.U dated 25 November 2015, increase the triggering thresholds set out in Directives 2014/23/UE, 2014/24/UE and 2014/25/UE for the award of concession contracts and other public contracts. Those Regulations shall apply from 1 January 2016 onwards.

European Law - New standard forms for the publication of notices in the field of public procurement

Commission Implementing Regulation n°2015/1986 dated 11 November 2015, published in the O.J.E.U dated 12 November 2015, adapts standard forms for the publication of notices in the field of public procurement in order to comply with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. This Regulation shall enter into force on the twentieth day following that of its publication.

9. Tax

France - Corporation tax

Updating of the interest rate limiting the deductibility of financial expenses provided by Article 39, 1-3° of the French Tax Code ("FTC")

The French Tax Authorities updated their Guidelines by integrating the reference rate used for calculation of the limit of deductible interest for the twelve-month periods ended between 30 September 2015 and 30 December 2015 ([BOI-BIC-CHG-50-50-30-20151104, n°40](#)). This reference rate is raised to:

-2.25 % between 30 September 2015 and 30 October 2015 ;

-2.21% between 31 October 2015 and 30 November 2015 ; and

-2.18% between 30 November 2015 and 31 December 2015.

As a reminder, the maximum rate of deductible interest applies to interest paid to shareholders for sums provided to the company, in addition to their share in the capital ([Article 39, 1-3° of the FTC](#)).

Extension of the scope of the tax credit for the creation of video games

The French Tax Authorities updated their Guidelines ([BOI-IS-RICI-10-50-2015110](#)) in relation to the tax credit for the creation of video games, set forth by [Article 220 terdecies of the FTC](#), by integrating the modifications provided by the Amended Finance Act for 2013 ([Law n°2013-1279 dated 30 December 2013](#)), which introduced:

an extension of the period, during which the French Tax authorities may give their final authorization for a company to benefit from the tax credit for the creation of video games, from 36 to 72 months;

- an extension of eligible expenses;

- a decrease of the threshold to benefit from the tax credit for the creation of video games regarding development costs from EUR 150,000 to EUR 100,000; and

- the eligibility of the video games intended to an adult audience.

France - Value Added Tax ("VAT")

Limitation of the VAT exemption for services provided by certain entities to their members

[Article 261 B of the FTC](#) specifies that certain entities set up by individuals and/or corporations carrying out VAT-exempt activities or which are not regarded as taxable persons for VAT purposes (*i.e.*, *French Groupement d'Intérêt Economique* - "**GIE**") are VAT exempt for the services such entities perform for the benefit of their members provided that the services performed are used in relation to VAT-exempt operations.

The French Tax Authorities updated their Guidelines in order to withdraw their former comments which extended the scope of such exemption ([BOI-TVA-CHAMP-30-10-40-20151104](#)). Indeed, the French Tax Authorities extended the VAT exemption provided by Article 261 B of the FTC to services provided to (i) certain public interest organisms, and (ii) between companies in relation to the restructuring of their group.

France - Taxation of investors and managers

Maintaining of the special tax regime applicable to "*impatriate*" foreign employees in case of a change of function

The [Law n°2015-990 dated 6 August 2015](#) (*so-called "Macron Law"*) provides that the special tax regime applicable to "*impatriate*" foreign employees sent in France ([Article 155 B of the FTC](#)) is maintained in case of (i) a change of function within their company, or (ii) a change of employer within the same group. These provisions are effective as from 7 August 2015 ([BOI-RSA-GEO-40-10-10-20151120](#) and [BOI-RSA-GEO-40-10-20-20151120](#)).

As a reminder, Article 155 B of the FTC provides a favorable tax regime applicable to "*impatriate*" foreign employees sent to France whereby, under certain conditions and for a limited period, some elements of their remuneration are tax-exempt in France.

European Law - Repealing of the Savings Directive

On 10 November 2015, the Council of the European Union adopted the [Directive 2015/2016](#) which repealed the [Directive 2003/48/EC](#) (*so-called "Savings Directive"*) with effect as from 1 January 2016 (*subject to transitional measures*).

The Savings Directive enabled the tax authorities of EU member states to get better access to information on private savers and provided for the automatic exchange of information between member states on private savings income. This enabled interest payments made in one member state to residents of other member states to be taxed in accordance with the laws of the state of tax residence.

In December 2014, the Council of the European Union adopted the [Directive 2014/107/EU](#) which provided some significant amendments with respect to the mandatory automatic exchange of information between tax administrations of EU member states (*extending notably the scope of such mandatory automatic exchange of information to passive income such as interest, dividends and other types of similar income*). It also implemented the single global standard developed by the OECD for the automatic exchange of Information.

Directive 2014/107/EU will be effective (*and therefore will replace the Savings Directive*) as from 1 January 2016.

10. Telecoms

France - Telecom operators financially encouraged to deploy optical fiber

Thursday 12 November 2015, new pricing conditions for the access to the copper local loop owned by Orange by other operators for the years 2016 and 2017 were fixed by the France's telecommunications regulator, ARCEP.

These rates are likely to encourage investment and deployment of high speed broadband networks and furthering the migration of ADSL subscribers to optical fiber. This is one of the priority projects of the French Government, which aims to cover the entire territory with broadband by 2022.

This is the first time that pricing conditions are set by the regulator itself. So far, it was Orange, owner of the network, which determined the prices once a year. The rate increase will be subject to a one-month public consultation, but it should not change the outcome, since different players have already been consulted.

The price cap constitutes a signal sent out to stakeholders for a successful transition to optical fiber. It can also be construed as a message for greater price stability. Furthermore, in AMII areas (areas where there has been a call for investment from private telecommunications companies, for deployment of superfast broadband networks) where the optical fiber is deployed more slowly than elsewhere, the Government has set up standard agreements to encourage operators to sign with local communities by 2016; otherwise the State alone will invest.

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