

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 March 2016.

Please note that French legal concepts are translated into English for information only and not as legal advice. The concepts expressed in English may not exactly reflect or correspond to similar concepts existing under the laws of the jurisdictions of the readers.

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Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law on class actions for discrimination and fight against inequalities**, n°1699, filed before the National Assembly on January 14, 2014 – Adopted in first reading by the National Assembly on June 10, 2015.
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014 – Adopted in first reading by the National Assembly on March 24, 2015 and by the Senate on January 26, 2016 – Adopted in second reading by the National Assembly on March 17, 2016.
- **Draft law relating to duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in first reading by the National Assembly on March 30, 2015 – Adopted by the Senate on November 18, 2015. Adopted in second reading by the National Assembly on March 23, 2016.
- **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 – Amended in first reading by the Senate on March 1, 2016. Adopted in second reading by the National Assembly on March 22, 2016.
- **Draft law relating to maritime related economy**, n°2964, filed on July 8, 2015 – Adopted in first reading by the National Assembly on

February 3, 2016 – Adopted in first reading at the Senate on March 24, 2016 – Joint committee (agreement).

- **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 – Amended in first reading by the National Assembly on January 14, 2016.
- **Draft law which ratifies ordinance n°2015-378 dated April 2, 2015 that transposes directive 2009/138/CE on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)**, n°3005, filed at the National Assembly on July 22, 2015.
- **Draft law for the enforcement of measures relating to the 21st century justice**, n°661, filed at the Senate on July 31, 2015 – Adopted by the Senate on November 5, 2015.
- **Draft law which ratifies ordinance n°2015-899 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 on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016 - In debate in first reading before the National Assembly on April 28, 2016.
- **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 – In debate in first reading before the National Assembly on April 28, 2016.
- **The Digital Republic bill**, n°3318, filed on December 9, 2015 – Adopted by the National Assembly in first reading on January 26, 2016 – In debate in first reading before the National Assembly on April 26, 27 and 28 and on May 3, 2016.
- **Draft law to reinforce fight against organised crime, terrorism and their financing and to improve the efficiency and the guarantees of criminal procedure**, n°3473, filed on February 3, 2016 – Adopted in first reading by the National Assembly from March 8, 2016 and then by the Senate on April 5, 2016 – Joint Committee.
- **Draft law relating to transparency, fight against bribery and modernisation of economic life**, n°3623, filed on March 30, 2016.
- **Draft law to set up new freedoms and new protections for businesses and assets**, n°3600, filed on March 24, 2016 – In debate in first reading by the National Assembly from May 3 to 12, 2016.
- **Law proposal to reform the repression system of market abuse**, n°3601, filed on March 24, 2016 – In debate in first reading by the National Assembly on April 7, 2016.
- **Law proposal for a better definition of abuse of economic dependence**, n°3571, filed on March 15, 2016 – In debate in first reading by the National Assembly on April 28, 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.

Enacted laws

- **Law n°2016-274 of March 7, 2016 relating to foreigners' rights in France** – OJ of March 8, 2016.
 - **Law n°2016-297 of March 14, 2016 relating to child protection** – OJ of March 15, 2016.
 - **Ordinance n°2016-351 of March 25, 2016 on credit agreements for consumers relating to properties for residential purposes** – OJ of March 26, 2016.
 - **Ordinance n°2016-312 of March 17, 2016 which amends the legal framework of assets management** – OJ of March 18, 2016.
 - **Ordinance n°2016-301 of March 14, 2016 relating to the legislative part of the Consumer Code** – OJ of March 16, 2016.
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1. Banking

France - Real estate loans and mortgage loans

The order (*ordonnance*) dated 25 March 2016 ([J.O n°0073 dated 25 March 2016](#)) modifies the French consumer code and the French monetary and financial code in order to transpose the directive 2014/17/UE issued by the European Parliament and the Council dated 4 February 2014 on credit agreements for consumers relating to residential immovable property.

The order introduces, *inter alia*, provisions regarding the information of the consumer and the provision of advice. It also provides that the rules applicable to real estate loans are applicable to any credit secured by a mortgage, by any other comparable security over residential immovable property or by any rights related to such properties.

Most of the provisions of the order will enter into force on 1st July 2016.

France - Information provided to the *Observatoire de l'inclusion bancaire*

The ministerial decree (*arrêté*) dated 9 March 2016 ([J.O n°0063 dated 9 March 2016](#)) specifies the list, the content and the method of communication of information provided to the *Observatoire de l'inclusion bancaire*.

The *Observatoire de l'inclusion bancaire* is in charge of gathering information on access to banking services by individual acting for non-professional purposes, on the use made by these individuals of these banking services and on the initiative of the credit institutions in this area. The ministerial decree (*arrêté*) specifies the information necessary to the exercise of these functions.

The ministerial decree (*arrêté*) entered into force on 16 March 2016.

France - Usury rate

The notice (*avis*) dated 25 March 2016 relating to the implementation of articles L. 313-3 of the French consumer code and L.313-5-1 of the French monetary and financial code regarding usury rate ([J.O n°0072 dated 25 March 2016](#)) specifies the threshold of usury rate applicable as from 1st April 2016. The thresholds are determined according to type of loans.

2. Capital Markets

France - Publication of the ordinance 2016-312 dated 17 march 2016 amending the legal framework of the asset management (implementation of directive UCITS V)

The ordinance 2013-312 was published on 17 March 2016 in the Official Journal, and implements the directive 2014/91/EU (UCITS V). Directive UCITS V aims to harmonise rules in relation to the depositary (in particular, duties and liabilities), remuneration policies of the portfolio management companies and sanctions applicable to the existing rules under AIFM directive implemented under French law in 2013.

The text can be consulted here:

<https://www.legifrance.gouv.fr/eli/ordonnance/2016/3/17/FCPT1531173R/jo>

France - AMF - Publication of a guide "MIF 2 - Guide to portfolio management companies"

On 16 March 2016, the AMF published a "MIF 2" guide to management companies as providers (rather than investors). The guide lists new or amended provisions under the MIF 2 directive related to the investors' protection and which have an impact on the activity of the portfolio management companies towards their clients and within their relationships with distributors.

The guide includes 12 files focusing on the consequences of the MIF 2 directive on the current regime of management companies, such as the status of portfolio management companies, the governance of financial instruments and providing further detail on the "independent investment advice" definition.

Such guide is to be completed.

France - AMF - Publication of responses on the public consultation on the possibility of investment funds to grant loans

On 1 April 2016, the AMF published the results of the public consultation on the possibility for an investment fund to grant loans, which was open from 24 October until 4 December 2015. Such results include proposals by the AMF.

Such proposals have been forwarded to the government in order to be included in a decree which will be used as guidelines for the purpose of the drafting of the AMF doctrine on the requirements concerning the extension of the programme of operations of management companies to grant loans. Notably, such proposals relate to (i) rules framing the possibility for French investment funds to grant loans. The AMF wishes such rules to ensure the applicability of similar rules between different lenders in a secured and clarified legal framework and to take the economic business models of each party into account, (ii) the AMF wishes for management companies to be approved in accordance with the AIFMD directive by the AMF when management companies wish to grant loans and that their activity programs should be validated by the council of the AMF, (iii) any non-French management company which manages French funds and would like to grant loans will have to be authorised by its home regulator to grant loans, (iv) only specialised professional funds (*fonds professionnels spécialisés* – FPS), securitisation schemes (*organismes de titrisation* – OT) and professional private equity funds (*fonds professionnels de capital investissement* – FPCI) should be authorised to grant loans, (v) management companies will be subject to reporting on the loans granted, and (vi) they will be authorised to recover the loans granted directly.

France - ESAS - Publication of the final draft regulatory technical standards on margin requirements for non-centrally cleared derivatives

On 9 March 2016, the Joint Committee of the European Supervisory Authorities published the final draft regulatory technical standards on the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives. The draft defines criteria for the purposes of the intragroup exemptions and provides definitions of practical and legal impediments to the prompt transfer of funds between counterparties. The draft aims at increasing the safety of the OTC derivatives markets in the EU.

France - ESMA - Publication of the final report on Guidelines on sound remuneration policies under the UCITS Directive and AIFMD

On 31 March 2016, ESMA published its final report on sound remuneration policies under the UCITS Directive and AIFMD. The guidelines shall apply from 1 January 2017.

The text can be consulted here:

https://www.esma.europa.eu/sites/default/files/library/2016-411_final_report_on_guidelines_on_sound_remuneration_policies_under_the_ucits_directive_and_aifmd.pdf

3. Commercial Law

France - First step towards a full restructuring of French Consumer Code

Recodification of the French Consumer Code, as provided by the Law n°2014-344 of 17 March 2014 relating to consumer law, has been initiated with the Ordinance n°2016-301 of 14 March 2016 (OJ n°0064 du 16 mars 2016, text n°29). The Ordinance introduces recodification of the legislative section of the Code and clarifies or repeals certain inconsistent provisions. In a similar effort of harmonization, the Ordinance adds to the Code an introductory article providing definitions for "consumer", "professional" and "non-professional".

Subject to a ratification law by the French Parliament, this new version of the French Consumer Code will come into force on 1st July 2016. The regulatory section will be recodified by an implementing decree.

Legal guarantee of conformity period extended from 6 to 24 months

Article 15 of the Law n°2014-344 of 17 March 2014 relating to consumer law (OJ n°0065 of 18 March 2014 p. 5400, text n°1) provided for an extension of the legal guarantee of conformity period from 6 to 24 months. The effective date of this provision was set to two years after its publication of the Law, that is 18 March 2016.

In the event of a defect which becomes apparent within 24 months of delivery, the buyer will benefit from a presumption that the defect existed at the time of delivery.

Article L211-7 of the French Consumer Code is modified as such. Following the recodification of French consumer law, Article L211-7 will become Article L217-7, effective on 1st July 2016.

4. Competition

France - Taxis: publication of a decree to set up the *Le.taxi* electronic cruising platform

The Decree n°2016-335 of 21 March 2016, issued pursuant to the Law of 1 October 2014 relating to taxis and chauffeured vehicles, details operational rules relating to the national register on taxis' availability. This register allows taxi drivers to disclose, on a voluntary basis, their location and availability data via a geo-tracking's service. An electronic platform, *Le.taxi*, will be set up to put available taxis in contact with potential clients enabling search engines to provide clients real-time data up-loaded by taxi drivers onto the register. Following this publication, the French Competition Authority published an opinion in favour of the introduction of this State-operated register provided that *Le.taxi* guarantees impermeability between the cruising market, currently under taxis' monopoly, and the competitive prior-booking market.

France - Creation of the "regulated professions" unit within the French Competition Authority

In order to implement tasks entrusted to it by the Macron Law, the French Competition Authority has created a "regulated professions" unit within its investigating officers. This unit is responsible for issuing opinions required by the Macron Law on regulated professions' tariffs, preparing a map identifying areas where the establishment of public and ministerial officers' can be free and investigating litigations and opinions in the regulated professions sector.

5. Corporate

France - Simplification of the formalities concerning commercial law

In accordance with Article L.141-14 of the French Commercial Code as amended by the so-called Macron law dated 6 August 2015, a creditor may now object the payment of the purchase price of a going concern by registered letter with acknowledgement of receipt. The service by a bailiff is no longer required.

Decree n°2016-296 dated 11 March 2016 regarding the simplification of formalities concerning commercial law specifies that the date of the objection made by registered letter is the date of sending of the letter by the creditor.

Furthermore, decree n°2016-296 dated 11 March 2016 provides for the publication in electronic format of the Official Bulletin of Civil and Commercial Announcements (Article R.123-209 of the Commercial Code as amended).

These provisions came into force on 14 March 2016.

France - Modification of the minimum paid-up share capital for the issuance of negotiable debt securities

Decree n°2016-313 dated 16 March 2016 amending Article D. 213-8 of the Monetary and Financial Code modifies the minimum paid-up share capital for the issuance of negotiable debt securities, reducing it from €225,000 to €37,000.

The decree concerns issuers of negotiable debt securities referred to in paragraph 2 of Article L.213-3 of the Monetary and Financial Code.

These provisions came into force on 19 March 2016.

France - Parliamentary bill amending the repression of market abuse

The national assembly voted on 7 April 2015 in first reading a parliamentary bill amending the repression of the market abuse.

These provisions spread the financial cases between AMF and the National financial prosecutor so as to avoid a case being judged by a criminal jurisdiction and by the AMF Enforcement Committee.

France - Law of 29 March 2014 for real economy: entry into force of double voting rights

Law n°2014-384 aiming at reclaiming the real economy, known as "Florange Law", provided, in its article 7, in listed companies, double voting rights for all shares that are fully paid up and for which proof is provided of registration in the name of the same shareholder for at least two years, unless otherwise provided in the Articles of the Association.

The "Florange Law" provided that the calculation of this two years period started as of the date of its entry into force, i.e. the 2nd April 2014.

Thus, since the 2nd April 2016, in listed companies of which Articles of Association do not provide any contrary provision, fully paid-up shares registered in the name of the same shareholder for at least two years confer a double voting right.

European Law - Market abuse: publication of an implementing regulation defining technical standards as regards the date, format, and template of the notifications to be sent to the competent authorities in accordance with the Market Abuse Regulation dated 16 April 2014

Commission Implementing Regulation (EU) 2016/378 dated 11 March 2016 provides implementing technical standards concerning the date, format, and the format of the notifications to the appropriate authorities pursuant to regulation n°596/2014 of the European Parliament and of the Council.

This implementing regulation will come into force on 3 July 2016.

European Law - Market abuse: publication of a delegated regulation specifying some of the rules in accordance with the Market Abuse Regulation dated 16 April 2014

Commission delegated regulation (EU) 2016/522 of 17 December 2015 had been published in the Official Journal of EU.

This delegated regulation supplements Regulation (EU) n°596/2014 of the European Parliament and of the Council and clarifies in particular the rules on the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions.

This regulation will come into force on 3 July 2016.

6. Employment

France - Enhanced Information concerning "Top-hat pensions" of directors of listed companies

The Decree n°2016-182 dated February 23, 2016, pursuant the so-called "Macron" Law, specifies the publicity scheme of pension obligations (other than basic scheme or mandatory supplementary scheme) set up by listed companies and their subsidiaries for their Corporate officers on account of the termination of their functions.

France - Profit sharing: details of measures from the Law so-called "Macron"

An Interministerial Instruction n°DGT/RT3/DSS/DGTRESOR/2016/45 dated February 18, 2016, uploaded online on March 2, contains a Q&A related to the reform of profit sharing dispositions pursuant the Law dated August 6, 2015, so-called "Macron".

Besides the presentation of the legislative and regulatory changes related to profit sharing scheme, this document clarifies the Law concerning: the reduction of the "forfait social" (corporate social contribution), the default assignment of voluntary profit-sharing plan and harmonization of payment dates of mandatory and voluntary profit sharing plans.

France - Joint committee of staff representatives and works council (joint committee) "new version"

The Decree n°2016-345 dated March 23, 2016 sets the minimum number of representatives composing the Joint Committee, the times-off hours allocated for the exercise of their functions and its terms of use, the procedure for appointing the Secretary and the deputy Secretary and those relating to the use of shared expertise. It also provides the conditions for assessing the crossing of the 300 employees threshold. Are only concerned companies with a workforce of between 50 and 300 employees.

France - Common Unit grouping staff representatives bodies in companies with more than 300 employees

The Decree n°2016-346 dated March 23, 2016 specifies the threshold modalities in case of consolidation by agreement of the staff representatives bodies in a common Unit: the minimum number of representatives members composing the Common Unit, pursuant to Article L. 2391-1 of the French Labor Code, time-off hours and number of training days allocated to representatives for the exercise of their functions.

7. Energy

France - Civil liability in the nuclear field applicable to operators of installations with reduced risk

Decree n°2016-333 dated 21 March 2016, published in the Official Journal on 22 March 2016, defines the characteristics of the nuclear installations which are eligible for qualification as "reduced risk" installations.

The operators of such "reduced risk" installations may, subject to certain conditions, benefit from the reduced threshold of civil liability provided in Article L.597-28 of the Environmental Code (as amended by Law n°2015-992 dated 17 August 2015 on the energy transition) which is equal to €70 million for the same nuclear accident.

These provisions entered into force on 23 March 2016.

8. Environment

France - Articulation of town planning authorizations with various procedures under the Environmental Code

Ordinance n°2016-354 dated 25 March 2016, published in the Official Journal on 26 March 2016, harmonizes the town planning authorizations procedures with various procedures under the Environmental Code which are the declaration and authorization procedures attached to the water policy (IOTA) and the procedure of derogation from the prohibition to harm protected species.

That Ordinance modifies, moreover, certain provisions of Ordinance n°2014-619 of 12 June 2014 on the testing of a single authorization for installations under the water policy (IOTA).

It allows, in particular, the execution of the demolition permit before the issuance of the single authorization.

Pursuant to that Ordinance, Decree n°2016-355 dated 25 March 2016, published in the Official Journal on 26 March 2016, amends Articles R. * 431-5, R. 431-35 *, R * 441-1 R. * 441-9 and R. 451-1 of the Town planning Code.

This Decree states, in particular, that the application for town planning authorizations shall mention, if appropriate, that the works envisaged (i) are related to installations which are subject to the water policy (IOTA) or (ii) are subject to the procedure of derogation from the prohibition to harm protected species or (iii) are subject to a single authorization under the previous-mentioned Ordinance n°2014-619.

These provisions will apply to town planning authorizations filed after its date of publication.

9. Insurance

France - Substitution agreement: ACPR's instruction

On 11 March 2016, the French insurance supervision authority (*l'Autorité de Contrôle Prudentiel et de Résolution – ACPR*) has published in its official register the [instruction n°2016-I-06](#) (the "**Instruction**") relating to the content of the application for the conclusion or amendment of a substitution agreement the details of which being listed in an Appendix.

The instruction entered into force upon the date of its publication.

France - ACPR's position on euro-growth contracts

On 15 March 2016, the ACPR has published its [position on the euro-growth contracts](#) (*contrats euro-croissance*). The ACPR recalled that the marketing of these contracts must necessarily be accompanied by an information and advice tailored to their complexity, both when there is a new subscription and during the life of the contract. Also, the conversion of a contract invested in a euro fund into a euro-growth fund is subject to the information duty provided for under article L. 132-27-1 of the French Insurance Code.

France - Ficovie: Automated processing of personal data

[Order dated 29 February 2016](#) (the "**Order**") establishing by the Public Finance General Directorate an automated processing of personal data referred to as "**Ficovie**" was published. The Order lists the personal data processed by the file. Such data must be communicated by financial institutions marketing life insurance or capitalization contracts in accordance with their reporting obligations. The Order also specifies how long the data should be kept, the list of recipient as well as the entity with which the right to access, modify, rectify and delete data should be exercised.

European Law - Eligible infrastructure investments - Delegated Regulation

On 1 April 2016, the European Commission published the [Commission Delegated Regulation \(EU\) 2016/467](#) of 30 September 2015 amending the Solvency II Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings and eligible infrastructure investments. It creates a definition of infrastructure assets and of eligible infrastructure investment.

European Law - EIOPA's paper - low interest rate

On 23 March 2016, the European Insurance and Occupational Pensions Authority ("**EIOPA**") published a [paper](#) on a potential macro-prudential approach to the low interest rate context.

The paper considers the following three objectives to be targeted by supervisory authorities in the current low interest rate environment: (i) increasing the resilience of the insurance sector, (ii) limiting risky behavior of insurers (searching for yield) and (iii) avoiding procyclicality (fluctuation in line with the trend in the economic cycle).

For each of these objectives EIOPA defines instruments that are compatible with Solvency II. The paper also describes short and medium-term actions that EIOPA and national supervisors can undertake in order to address the low interest rate environment.

European Law - Official translations of the EIOPA guidelines on the supervision of branches of third-country insurance undertakings

On 30 March 2016, the EIOPA announced that its [guidelines on the supervision of branches of third-country insurance undertakings under Solvency](#)

It have been translated into all the official languages of the European Union ("EU"). The objective of these guidelines is (i) to ensure a consistent, efficient and effective consumer protection within the EU and (ii) policyholders' protection when dealing with a branch of a third-country insurance undertaking.

Competent authorities to whom these guidelines apply must notify EIOPA whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication. In the absence of a response by this deadline, competent authorities will be considered as non-compliant.

10. Intellectual Property

France - Modalities of oversight for geographical indications protecting industrial and craft products

Decree n°2016-208 of 8 March 2016 relating to geographical indications protecting industrial and crafts products, enacted in application of Article 214 of Law n°2015-990 of 6 August 2015 for growth, activity and equality of economic opportunity (see Legislative and Regulatory Newsletter – August 2015), modifies Articles R. 721-9 and R. 721-10 of the Intellectual Property Code.

On the one hand, it defines the modalities of oversight of the compliance with the specifications of the geographical indications by the economic operators.

On the other hand, it specifies the respective roles of compliance-assessment bodies. Inspection bodies monitor economic operators. Certifying bodies decide on the granting, maintenance, extension, suppression or withdrawal of the certification. Finally, the defence and management body transfers all information relating to inspections and certifications to the French Industrial Property Office, who assesses the coherence between the inspection reports and the corrective measures requested from the economic operators.

This Decree entered into force on 11 March 2016. However, it applies to applications for approvals filed prior to its entry into force.

France - Clarification on the neutrality and standardization of cigarette and tobacco products packaging units

Enacted in application of new Article L. 3511-6-1 of the Public Health Code, itself created by Article 27 of Law n°2016-41 of 26 January 2016 (see Legislative and Regulatory Newsletter - January 2016), Decree n°2016-334 of 21 March 2016 relating to the plain packaging for cigarette and certain tobacco products sets out the conditions of neutrality and standardization of such packaging units.

In particular, this Decree creates Articles R. 3511-17 and R. 3511-26 of the same Code, pursuant to which the packaging units and external wrappings of cigarettes or rolling tobacco shall be of a single shade of color and shall only bear the following indications: the trademark, the producer's company name and contact details and the number of cigarettes or the load of rolling tobacco. In addition, a new Article R. 3511-10 of the same Code forbids any method of conferring specific sound, olfactory or visual characteristics to these conditioning units.

This Decree will enter into force on 20 May 2016. However, non-compliant tobacco products will be allowed for sale until 20 November 2016.

A ruling from the Health Minister is set to specify the technical characteristics of this standardization, in particular the packaging units' color as well as that of their external wrappings and internal faces, and the location and characteristics of the authorized indications.

11. Procedures

France - Civil procedure

Simplified procedure for small debts collection

Decree n°2016-285 of 9 March 2016 relating to the simplified procedure of small debts collection (*JO* n°0060 of 11 March 2016 text n°37) provides that starting 1st October 2016, Article L. 125-1 of the French Code of Enforcement Proceedings sets forth the simplified procedure for small debts collection (previously set in the French Civil Code). When the debt's principal amount with interests does not exceed 4,000 Euros, and with the creditor and the debtor's agreement, the bailiff may issue a writ of execution with no other formality required. This procedure may be handled electronically within an electronic communication system implemented by the French Chamber of Bailiffs. This Decree is effective starting 1st June 2016.

France - Criminal procedure

Implementation of remote monitoring and obligations follow-up of persons under electronic surveillance

Decree n°2016-261 of 3 March 2016 regarding automated processing of the monitoring of persons under electronic surveillance and under mobile electronic surveillance was published (*OJ* n°0055 of 5 March 2016, text n°11). Issued for the implementation of the Law of 19 December 1997 which sets up electronic surveillance as a way to enforce custodial sentences and the Law of 12 December 2005 on the relapse of criminal offences, the Decree sets forth the process for remote monitoring and obligations follow-up for persons under electronic surveillance and mobile electronic surveillance. In particular, it lists the categories of recorded data as well as the persons which can access the data or are recipients of the data; finally, it provides a limitation period for data storage. The decree came into effect on 6 March 2016.

European Law - Final adoption of the EU Directive on presumption of innocence

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings has been published (*EUOJ* L 65, 11.3.2016, p. 1–11). The Directive further defines the right to remain silent and establishes a set of rules to be observed in order to preserve the presumption of innocence. The right of suspects and prosecuted persons to attend their own trial is also confirmed.

12. Profession & ethics of the profession

France - Launch of legal advice online platform by the French National Council of the Bars

Following the Paris Court of Appeals' acquittal of website *Demanderjustice.fr* cofounders on 21 March 2016 (Paris Court of Appeal, *pôle 5 chambre* 12, 21 March 2016, *Jérémy O. / Conseil National des Barreaux*), the French National Council of the Bars has announced the launch of its own online platform for legal advice to the public by a Statement of 25 March 2015. The platform is to be operational in May 2016.

13. Public Law

France - Regulation of contracts in the French motorway sector

Decree n°2016-234 dated 1 March 2016, published in the *O.J* dated 2 March 2016, having regard to Law n°2015-990 of 6 August 2015 relating to the economic growth, activity and equal opportunities (also known as "Macron Law"), defines the consultation procedures of the Regulatory Authority for rail and road activities, particularly in the context of its regulatory tasks regarding the setting of toll rates. The Decree also sets out supervision

procedures of contracts awarded by motorway concessionaires as well as the specific rules for the award of contracts relating to the operation of rest areas and ancillary facilities of motorways.

France - Implementation of the new ordinance on public procurement

Decrees n°2016-360 and 2016-361 dated 25 March 2016, published in the O.J dated 27 March 2016, relating respectively to public contracts and public defense and security contracts, as well as the five notices published in O.J of the same date made, having regard to Ordinance n°2015-899 dated 23 July 2015 complete the transposition into national law of European directives.

The reform applies to contracts for which a procurement procedure is initiated or a notice of a competitive public tender has been sent for publication on 1 April 2016.

14. Real Estate

France - Schedule of conditions and wear and tear for Housing leases

Decree n°2016-382 dated 30 March 2016, published in the Official Journal on 31 March 2016 and taken in accordance with the provisions of Articles 3-2 and 7 of the Law n°89-462 dated 6 July 1989 modified by the Law n°2014-366 (Law "Alur") dated 24 March 2014 determines the rules governing the schedule of condition to be carried out at the tenant's entry and departure of the premises, regarding housing leases. The Decree also sets how wear and tear should be taken into account when the tenant returns the leased premises.

The provisions of this Decree will enter into force as at 1 June 2016.

France - Use of the registered letter with acknowledgment of receipt within a commercial lease

Decree n°2016-296 dated 11 March 2016, published in the Official Journal on 13 March 2016, creates a new Article R.145-38 in the French Commercial Code which determines the rules applicable, for commercial leases, to the delivery of a termination notice or a request for renewal sent by registered letter with acknowledgment of receipt.

The Decree's provisions have entered into force on 14 March 2016.

15. Tax

France - Sale of buildings: application of the VAT exemption in case of vacancy

The French Tax Authorities (the "FTA") confirmed in a ministerial reply dated 8 March 2016 that the VAT exemption provided by Article 257 bis of the French Tax Code (the "FTC") applies to the sale of vacant buildings provided that the seller is able to demonstrate that it was actively looking for a tenant before the sale (Rep. Gérard JO AN 8 March 2016 n°90962).

As a reminder, Article 257 bis of the FTC provides for the exemption from VAT of the transfers of assets and stock in the context of the transfer of an universality of goods (*i.e. including the sale of a building*) provided in particular that (i) the buyer and the seller are liable to VAT, and (ii) the buyer will continue to carry out this universality.

France - Sale of shares: updates on the application of tax rebates for holding period

The FTA updated their guidelines drawing the consequences of the decision of the French Administrative Supreme Court (*Conseil d'Etat*) dated 12 November 2015 (CE 12 November 2015 n°390265, 8e et 3e s.-s.) in relation to the application of the tax rebates for holding period. The FTA specified that capital losses incurred during the year (*or during past fiscal years*) are deducted from the taxable capital gains before the application of the tax rebates for holding period (BOI-RPPM-PVMBI-20-10-40-20160304, n°440).

France - The use of convertible bonds as part of a "*contribution-sale*" scheme may be considered as abusive for French tax law purposes

The FTA updated their guidelines specifying in which circumstances the use of convertible bonds as part of a "*contribution-sale*" scheme (*schémas d'apport-cession*) could be considered as abusive for French tax purposes (BOI-RPPM-PVMBI-30-10-60-20160304 n°90).

Thus, when the absence of control of the beneficiary company by the contributor results from the issuance of convertible bonds (*instead of shares*), such contribution might be considered by the FTA as falling within the scope of the tax deferral regime provided by Article 150-0 B *ter* of the FTC pursuant to the abuse of tax law doctrine.

As a reminder, Article 150-0 B *ter* of the FTC provides for the tax deferral of any capital gains realized by individuals as part of the contribution of their shares to a company when the contributor controls the beneficiary company after the contribution and provided that certain conditions are met.

France - Updates on the calculation of the expatriation premium

The FTA updated their guidelines drawing the consequences of the decision of the French Administrative Supreme Court (*Conseil d'Etat*) dated 10 April 2015 (CE 10 April 2015 n°365851 plén.) in relation to the calculation of the 40% threshold assessed on the annual remuneration of an employee, under which the expatriation premium paid to such employee is exempt from French individual income tax. The FTA specified that this 40% threshold is assessed on the global annual remuneration received by the employee without having to exclude the portion of the remuneration paid in relation to the days spent abroad (BOI-RSA-GEO-10-30-10-20160311, n°190).

France - "*Horizontal*" tax consolidation: various updates

The FTA updated their guidelines in relation to French "*horizontal*" tax consolidated groups with respect to:

the conditions of application of the "*horizontal*" consolidation tax regime (BOI-IS-GPE-10-30-50-20160302);

the modalities to elect for such "*horizontal*" consolidation tax regime (BOI-IS-GPE-10-40-20160302);

the tax treatment of intra-group distributions (BOI-IS-GPE-10-40-20160302); and

the situations triggering the cessation of the tax consolidation as well as the impact of restructuring operations on consolidated tax groups (BOI-IS-GPE-40-10-20160302 and BOI-IS-GPE-50-10-10-20160302).

As a reminder the Amended Finance law n°2014-1655 dated 29 December 2014 provided for the possibility for French subsidiaries of the same parent company established in a member State of the European Union (*or in Norway, Iceland or Liechtenstein*) to set up a "*horizontal*" tax consolidated group.

International - Publication of the fourth amendment to the France-Luxembourg tax treaty

The Decree n°2016-321 dated 17 March 2016 published the fourth amendment to the tax treaty signed between France and the Grand Duchy of Luxembourg on 1 April 1958 (the "**Amendment**"). This Amendment notably provides for taxation of capital gains arising from the sale of shares of

real estate companies in the state of location of the underlying real estate assets. The new provisions set forth by the Amendment shall apply as from 1 January 2017.

16. Telecoms

France - Government order regulates use of the word "fiber" to designate high-speed broadband

In order to provide consumers with better information on high-speed internet access subscriptions, the [Order of 1st March 2016](#) amending the order of 3rd December 2013 relating to prior information of the consumer on technical specifications of internet access subscription offers in fixed wireline service was published (OJ n°0072 of 25 March 2016, text n°33).

Electronic communication operators shall, in their advertisements and commercial documents, detail the exact nature of the cable to the last amplifier – optic fiber or coaxial cable – moreover, whenever the download speed is specified, the upload speed shall be provided as well.

These provisions will come into force on 1st June 2016 for advertisements and on 1st March 2016 for commercial documents.

France - New identification requirements for value added numbers

Article 145 of the [Law n°2014-344](#) of 17 March 2014 relating to consumer law (OJ n°0065 of 18 March 2014 p. 5400, text No 1) introduced new obligations for electronic communication operators. The effective date for some of these provisions was set to two years after the publication of the Law, that is to say, 18 March 2016.

[Articles L121-42 et seq.](#) of the French Consumer Code therefore sets forth that operators running a value-added number, giving rise to additional costs on the consumer's bill, are now under the obligation to provide an online tool for identification via the phone number or text message, a summary description of the product or service provided, the provider's name, its internet site as well as its contact information. Costs of implementation of this online tool shall be shared by the operators.

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