

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 2016.

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

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## Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law relating to duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in second reading by the National Assembly on November 29, 2016 – Transmission of the text to the Senate on November 30, 2016.
- **Law proposal to reform limitations on criminal prosecution**, n°2931, filed on July 1, 2015 – Adopted in first reading by the National Assembly on March 10, 2016 – Amended in first reading by the Senate on October 13, 2016.
- **Draft law which ratifies ordinance n°2015-378 dated April 2, 2015 that transposes directive 2009/138/CE on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)**, n°3005, filed at the National Assembly on July 22, 2015.
- **Draft law which ratifies ordinance n°2015-899 of July 23, 2015 relating to public procurement** – filed before the Senate on October 21, 2015.
- **Draft law for the integration of the principle of substitution to the legal regime of chemical products**, n°3277, filed on November 25, 2015 – Adopted in first reading by the National Assembly on January 14, 2016.
- **Draft organic law relating to independent administrative authorities and public independent authorities**, n°226, filed at the Senate on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016 - Amended in first reading before the National Assembly on April 28, 2016 – Amended in second reading by the Senate on June 2, 2016.
- **Law proposal for a better definition of abuse of economic dependence**, n°3571, filed on March 15, 2016 – Adopted in first reading by

the National Assembly on April 28, 2016.

- **Draft law relating to transparency, fight against corruption and modernisation of economic life**, n°3623, filed on March 30, 2016 – Final adoption on November 8, 2016 - Seisin of the Constitutional Council on November 15, 2016.
- **Draft law on Equality and citizenship**, n°3679, filed on April 13, 2016 – Adopted in new reading at the National Assembly on November 23, 2016 – Under examination in new reading by the Senate from December 19, 2016.
- **Draft law to supervise corporate compensations**, n°3680, filed on April 13, 2016 – Adopted in first reading by the National Assembly on May 26, 2016.
- **Draft organic law relating to competence of the defender of rights for the whistleblowers protection**, n°3770, filed on May 18, 2016 – Final adoption on November 8, 2016 - Seisin of the Constitutional Council.
- **Draft law which ratifies ordinance n°2016-131 of February 10, 2016 to reform contract law, the general regime and the proof of obligations**, n°3928, filed at the National Assembly on July 6, 2016.
- **Draft law to accelerate procedures and to stabilise urban planning, construction and development**, n°770, filed on July 6, 2016 – Adopted in first reading by the Senate on November 2, 2016.
- **Draft law relating to a rail link between Paris and the Paris Charles de Gaulle airport**, n°3926, filed on July 6, 2016 – Adopted in first reading by the National Assembly on September 27, 2016 – Amended in first reading by the Senate on November 7, 2016 – Approval of the Joint Committee.
- **Draft law on the modernisation, development and protection of mountain areas**, n°4034, filed on September 14, 2016 – Adopted in first reading by the National Assembly on October 18, 2016 – Under examination in first reading at the Senate from December 12, 2016.
- **Draft finance law for 2017**, n°4061, filed on September 28, 2016 – Adopted in first reading by the National Assembly on November 22, 2016 – Rejected in first reading by the Senate on November 30, 2016.
- **Draft law to ratify ordinance n°2016-966 and which includes various provisions relating to health products**, n°12, filed on October 5, 2016 – Adopted in first reading by the Senate on October 27, 2016 – Amended in first reading by the National Assembly on November 22, 2016.
- **Draft Social Security Financing Act for 2017**, n°4072, filed on October 5, 2016 – Adopted in final reading by the National Assembly on December 5, 2016.
- **Draft law which ratifies ordinances n°2016-1019 and n°2016-1059 and which aim at adapting some provisions relating to electricity and gas networks and to renewable energies**, n°4122, filed at the National Assembly on October 12, 2016 – Under examination in first reading at the National Assembly on December 15, 2016.
- **Amending draft finance law for 2016, n°4235, filed on November 18, 2016** – In debate in first reading by the National Assembly on December 5, 2016.

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## Enacted laws

- **Ordinance n°2016-1636 of December 1, 2016 relating to the European Investigation Order in criminal matters** – OJ of December 2, 2016.
- **Ordinance n°2016-1635 of December 1, 2016 which reinforces the French anti-money laundering and counter terrorist financing system** – OJ of December 2, 2016.
- **Ordinance n°2016-1580 of November 24, 2016 relating to the salary protection in Mayotte, in respect of privileges and insurance** – OJ of November 25, 2016.
- **Ordinance n°2016-1579 of November 24, 2016 relating to the applying of the aid to part-time activity and generation contract in Mayotte** – OJ of November 25, 2016.
- **Ordinance n°2016-1575 of November 24, 2016 on the reform of the mechanism for the freezing of assets** – OJ of November 25, 2016.
- **Ordinance n°2016-1563 of November 21, 2016 on various electoral measures applicable in Corsica** – OJ of November 22, 2016.
- **Ordinance n°2016-1562 of November 21, 2016 on various institutional measures relating to the municipality of Corsica** – OJ of November 22, 2016.
- **Ordinance n°2016-1561 of November 21, 2016 to complete and specify the budgetary, financial, tax and accounting rules applicable to the collectivity of Corsica** – OJ of November 22, 2016.
- **Law n°2016-1547 of November 18, 2016 relating to the 21st century justice modernisation** – OJ of November 19, 2016.
- **Law n°2016-1528 of November 15, 2016 which ratifies ordinance n°2015-1682 of December 17, 2015 which simplifies some regimes of prior authorisation and declarations of businesses and professionals and which modifies the sport code** – OJ of November 16, 2016.
- **Law n°2016-1524 of November 14, 2016 which aims at reinforcing media freedom, independence and pluralism** - OJ of November 15, 2016.
- **Ordinance n°2016-1519 of November 10, 2016 for the creation of the public body in charge of professional training of adults within the public employment service** - OJ of November 11, 2016.
- **Law n°2016-1500 of November 8, 2016 to allow the maintenance of associated municipalities, under the form of delegated municipalities, when creating a new municipality** - OJ of November 9, 2016.

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## 1. Audiovisual

### France

N/A

### European Law

N/A

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## 2. Banking

### France - Electronical money

A decree n°2016-1523 (*décret*) dated 13 November 2016 ([OJ n°0264 dated 13 November 2016](#)) relating to the fight against terrorist financing restricts the conditions for the issuance of electronic money and more broadly, strengthens due diligence measures toward electronic money.

Furthermore, due diligence measures applicable to consumer credit are also strengthened. The threshold from which such credit must lead to a due diligence measure is thus lowered from 4.000 to 1.000 €.

This decree will enter into force on 1<sup>st</sup> January 2017.

### France - Freezing of assets

An order (*ordonnance*) n°2016-1575 dated 25 November 2016 ([OJ n°0274 dated 25 November 2016](#)) amended the mechanism for the freezing of assets set out in the French *Code monétaire et financier* for the purpose of combatting terrorism or implementing the international financial sanctions enforced by the United Nations Security Council or the European Council.

The order broadens in particular the scope of assets susceptible to be frozen, the definition of the persons liable to implement the freezing of assets and the prohibition of making funds available to persons targeted by these measures.

It introduces information duties for persons liable to asset freezing measures as well as those who proceed to execute a transfer on a bank account subject to such measure.

This order will enter into force on a date to be specified in a decree and not later than 1<sup>st</sup> July 2017.

### France - Investments funds – Credit granting

A decree (*décret*) n°2016-1587 dated 26 November 2016 ([OJ n°0275 dated 26 November 2016](#)) sets out the conditions under which some investments funds can grant loans to companies.

This decree in particular imposes companies managing those investments funds to have a high-quality origination process and limits the possibility of leverage as well as the possibility of repurchase shares.

This decree entered into force on 27 November 2016.

### France - Pledge over inventory

A statute (*loi*) n°2016-1547 dated 18 November 2016 ([OJ n°0269 dated 19 November 2016](#)) ratifies, with a few amendments, articles L. 527-1 and L. 527-4 of the French *Code de commerce* which were created by an order n°2016-56 dated 29 January 2016 relating to the pledge over inventory set out in the *Code de commerce*. In particular, the requirements for the enforceability of the pledge over inventory set out in the *Code de commerce* are clarified.

This statute entered into force on 20 November 2016.

## European Law

N/A

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### 3. Capital markets

#### France

N/A

#### European Law

N/A

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### 4. Commercial Law

#### France

N/A

#### European Law

N/A

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### 5. Competition

#### **France - Modernization of the justice system: the litigation regime involving the protection of business secrets before the French Competition Authority is now unified**

Law n°2016-1547 of 18 November 2016 modernizing the justice system of the 21st century ((published in the OJ of 19 November 2016) expressly gives the Paris Court of Appeal the power to review all appeals regarding decisions of the general rapporteur of the French Competition Authority (FCA) involving the protection of business secrets. This evolution is intended to end a dual litigation regime: previously, an appeal brought by an interested party against a decision of the general rapporteur refusing to protect business secrets or agreeing to waive such protection had to be filed before the *Conseil d'Etat*, while an appeal brought by another party against a decision of the general rapporteur protecting business secrets had to be filed before the Paris Court of Appeal, at the same time as the appeal against the decision on the merits. Litigation involving the protection of business secrets before the FCA is now unified and falls within the exclusive jurisdiction of the Paris Court of Appeal.

#### European Law

N/A

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### 6. Consumer Law

#### France

N/A

## European Law

N/A

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### 7. Corporate

#### France - Reinstatement of the requirement to publish the sale or contribution of a going concern in a journal of legal notices

The requirement to publish the sale or contribution of a going concern in a journal of legal notices (*journal d'annonces légales*) prior to the publication in the BODACC (Official Bulletin of Civil and Commercial Notices), which was repealed by Law n°2015-990 of 6 August 2015 (referred to as the Macron Law), was reinstated by Law n°2016-1524 of 14 November 2016 aiming at strengthening the freedom, independence and pluralism of the media.

Therefore, in case of sale or contribution of a going concern, the forty-five-day period for filing the administrative declaration of transfer or termination of activity provided for in Article 201 I of the French General Tax Code shall start the day on which the transfer was published in a journal of legal notices.

These provisions shall apply to the transactions completed as from 16 November 2016.

#### France - New version of the AFEP – MEDEF code

On 24 November 2016, AFEP and MEDEF issued an amended version of the corporate governance code for listed companies.

The new version of the code introduces further progress on remunerations and governance, in particular by strengthening the role of the Board of Directors regarding the strategy, and by including provisions regarding the independence of directors and Social Responsibility of Companies (CSR).

As regards remunerations, the new version of the code strengthens the principles and the rules for determining the remuneration of executive directors, by reaffirming the role of the Board of Directors in this respect.

The code was simplified to provide for broader standards, and redundancies and transcriptions of legislative or regulatory standards rules were removed.

## European Law

N/A

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### 8. Data Protection & IT

#### France - An IP address is a personal data according to the French Supreme Court

In a decision dated November 3, 2016 the French Supreme Court ruled that IP address is a personal data.

In this case, several companies noticed accesses to their internal network through external computers using administrators' website access codes. To identify the authors of these accesses, these companies obtained a court order enjoining several internet access providers to disclose the IP address holders' identities related to the external computers.

A competing company referred to the President of the Commercial Court to obtain the withdrawal of the court order, arguing that the storage of these IP addresses, as an electronic file, should have been declared to the National Data Protection Authority (the "CNIL").

The Court of Appeal rejected this request considering that an IP address constitutes a series of numbers and as such refers to a computer and not to a person. This decision was overturned by the French Supreme Court which held that since IP addresses enable to indirectly identify individuals, they constitute personal data whose collect is a processing which has to be declared to the CNIL.

#### **France - Publication of a decree authorizing the creation of a data processing relating to passports and national identity cards**

By a decree published in the OJ of October 30, 2016, the French government authorised the creation of a data processing called "*Secured Electronic Titles*", aiming at establishing, delivering, renewing and invalidating national identity cards and passports. This processing should also enable to prevent their falsification and counterfeiting.

Several personal data relating to the applicant will be stored in this processing such as the name, the place and date of birth, or the digitized image of the face and of the fingerprints. The processing will not contain a research feature enabling identification based on the digitized image of the face or of the fingerprints.

Several authorities will have access to this processing such as the agents of the Ministry of Interior and of the Ministry of Foreign Affairs or the agents of the specialized intelligence services whose access will, however, not include the digitized images of the fingerprints.

This processing raised some concerns. In its deliberation dated September 29, 2016 the French Data Protection Authority (the "CNIL") has expressed reserves about this processing. For its part, the National Counsel for the Digital asked for the suspension of its implementation.

#### **European Law**

N/A

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### **9. Employment**

#### **France - Class action**

The Law "Justice of the Twenty-first Century" of 18 November 2016, OJ 19 November published after partial validation of the Constitutional Council on 17 November 2016, relates to the creation of a specific class action in the event of discrimination at work carried out by a trade union representative, or by an association regularly declared for at least five years, intervening in the fight against discrimination and disability.

This class action seeks to put an end to collective discrimination and, if necessary, to redress the harm suffered. Before the action can be commenced, the union or association must solicit the cessation of any action with the employer. The class action may then be lodged at the end of a period of six months from the date of the application or from the notification by the employer of rejection of the application.

#### **France - The indicative framework of the compensation due in the event of unjustified dismissal**

Decrees n°2016-1581 of 23 November 2016 and n°2016-1582 of 23 November 2016, OJ 25 November, provide for an indicative guide to the determination of the compensation of the employee before the judicial office and before the conciliation office. The application of this standard is optional, unless the employer and the employee jointly request it.

The reference system before the conciliation board provides for compensation of two months 'salary up to more than 24 months' salary depending

on the seniority of the employee.

The reference system in front of the judgment office provides for compensation of 1 month's salary at 21.5 months depending on the seniority of the employee.

These references also take into account the age and the situation of the employee in relation to employment. The amounts fixed by him shall be increased by one month's salary if the employee is at least 50 years old at the date of termination of his contract of one month's salary in the event of special difficulties in returning to work, and level of qualification in relation to the labour market situation at the local level or in the sector of activity concerned.

### **France – Working time**

Decree n°2016-1551, n°2016-1553 and n°2016-1556 of 18 November 2016, OJ 19 of November, taken in application of the Labour Act n°2016-1088 dated 8 August 2016, OJ 9 August relating to leave, paid leave and hours of work recodify, at constant law, the statutory part of the Labor Code, distinguishing, in accordance with the legislative provisions, public policy, collective bargaining and suppletive rules.

Henceforth, information on hours of work must be kept at the disposal of the Labor Inspector. Previously, the employer had to send the elements to the Labor Inspector.

These decrees come into force on 1 January 2017.

### **France - The generalization of the *Déclaration Sociale Nominative (DSN)***

Decree n°2016-1567 of 21 November 2016, OJ 23 November begins the third phase of the generalization of the DSN.

This third phase makes it possible to extend the number of declarations to which the DSN substitutes: the declaration of the taxable remuneration, (for withholding tax); Declarations on the fund of pay holidays, formalities enabling the supply of the personal training account), the declaration of the professional risk factors (*Compte pénibilité*), the declaration of the staff necessary for the allocation of the product of value added companies.

The DSN must be carried out the month following the period of work in respect of which the remuneration is payable not later than the 5th of the month for companies with 50 or more employees and whose pay is made during the same period than the period of work; on the 15th of that month in the other cases.

The lack of transmission of the DSN to the URSSAF or errors in its establishment exposes the employer to penalties.

### **France - Restructuring of branches: the merger criteria**

Decree n°2016-1540 of 15 November 2016, OJ 17 November, lays down the criteria for determining any mergers between the professional sectors and in particular the applicable collective agreements.

The merger will be undertaken as a matter of priority between the branches: (i) with fewer than 5,000 employees, within three years of the publication of the decree; (ii) or having not negotiated on one or more of the subjects of compulsory bargaining on wages, professional equality between women and men and classifications in the last three years; (iii) or whose geographical scope is only regional or local; (iv) or in which less than 5% of enterprises adhere to a representative professional organization of employers; (v) or when the negotiation and interpretation committee has not been convened during the preceding year (from 1 January 2019).

### **France - Religious Neutrality in the Rules of Procedure**

The Ministry of Labor presented to the Social Partners on 7 November 2016 a "practical guide to the religious fact in private companies".



It is not possible to impose absolute neutrality within a company. The obligation of neutrality must meet strict conditions, namely: (i) to be justified by the nature of the task to be performed, the necessity for the proper functioning of the undertaking or the exercise of other fundamental rights and freedoms, and (ii) be proportionate to the intended purpose.

For example, the principle of neutrality may be imposed: due to the necessity of the activity of the company as regards to the personnel (compliance with health, hygiene or safety rules) and interested third parties (contact with young children, for example); or when an individual or collective religious practice undermines respect for the freedoms and rights of each. This may include, for example, breaches of the right to believe or not to believe (in the case of proselytizing practices or behaviors that exert pressure on other employees) or equality between men and women.

The Ministry of Labour also invites companies to engage in dialogue on the issue of neutrality with the unions.

## **European Law**

N/A

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## **10. Energy**

**France**

N/A

**European Law**

N/A

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## **11. Environment**

**France**

N/A

**European Law**

N/A

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## **12. Insolvency Proceedings**

**France - The Law on modernization of the 21<sup>st</sup> century's justice definitely published on 19 November 2016 makes several changes to French insolvency law.**

The main amendments aim to:

- Enhance the prevention: if the conditions for the opening of a safeguard proceeding (*procédure de sauvegarde*) are not met, the court will advise the debtor to request the opening of a conciliation proceeding;
- Clarify the information rules of employees' representatives : in case of opening of a *mandate ad hoc* or conciliation proceeding, the debtor does not need to inform the employees' representatives;

- Allow a modification of the articles of association prior to the adoption of the restructuring plan;
- Clarify the scope of the privilege of conciliation in case of subsequent insolvency proceeding. Claims guaranteed by the privilege of conciliation cannot be subject to write-offs or extension of maturity without the agreement of the creditors benefiting from the guarantee (even if the plan is being implemented via a creditors committees process);
- Ensure the impartiality of the proceedings, in particular by preventing the President of a court who dealt with preventive measures to be appointed as bankruptcy judge (*juge commissaire*) in case of future insolvency proceedings opened against the same debtor.

These new provisions are applicable to the proceedings opened after 19 November 2016.

<https://www.legifrance.gouv.fr/eli/loi/2016/11/18/JUSX1515639L/jo>

### **European Law - The European Commission proposes a new approach to business insolvency within the European Union**

The European Commission published a proposition of directive on 22 November 2016 aiming, for the first time, at implementing a harmonized substantial insolvency law within the EU. The proposed directive aims to set a minimum level of harmonization across the EU concerning:

- Preventive restructuring proceedings;
- Second chances for honest entrepreneurs – discharge of debt after no more than 3 years; and
- Measures to generally increase the efficiency of restructuring, insolvency and discharge proceedings.

For further details, you will find [here](#) the Newsflash published by Hogan Lovells.

[http://ec.europa.eu/information\\_society/newsroom/image/document/2016-48/proposal\\_40046.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2016-48/proposal_40046.pdf)

## **13. Insurance**

### **France - Law "Sapin 2" – limitation of the surrender's right in life insurance contracts**

The Law "Sapin 2" on "transparency, the fight against corruption and the modernisation of the economy" has been published in the Official Journal of the French Republic on 10 December 2016 ("Law"). In the event of a threat to the financial system, this Law allows the Financial stability board (Haut conseil de stabilité financière) to limit the right of insureds to surrender their life insurance contracts for a maximum period of 6 months, and to modulate the rules of the constitution and for the reversal of the profit sharing provision.

### **France - Law "Sapin 2" – Implementation of the intermediation Directive**

The Law provides that the French Government is empowered to adopt an order (*ordonnance*), within 18 months following the enactment of the Law, aiming at the implementation of the Directive (EU) 2016/97 of 20 January 2016 on insurance distribution, and in particular, to ensure that rules are defined regarding transparency which shall be appropriate and proportionate to specificities of the various stakeholders of the sector.

A draft ratification law shall be submitted to the French Parliament within 5 months from the publication of said order.

### **France - Law "Sapin 2" – Modification to the legal regime of mutuals**

The Law provides that the French Government is empowered to adopt by way of an order, within 6 months following the enactment of the Law, all measures aiming at the legal regime of mutuals and unions of the French Mutual Insurance Code. The Law allows in particular to (i) extend their field of activity to sporting activities and funeral services, (ii) modify the composition of the unions governed by Article L. 111-4-3 of the French Mutual Insurance Code in order to include commercial companies, (iii) modernise the governance of mutuals and unions, (iv) modernise the statute of elected board members in accordance with mutualist principles (v) modernise common principles and operating rules of mutuals, (vi) harmonise the regime of contracts and regulation of mutuals, institutions and unions and (vii) reform the functioning of the High Council on Mutual Insurance

(Conseil supérieur de la mutualité).

A draft ratification law shall be submitted to the French Parliament within 5 months from the publication of said order.

#### **France - Termination of payment protection insurance contracts due to the aggravation of the risk**

The [Decree n°2016-1559](#) implementing Article L. 113-12-2 of the French Insurance Code, creates a new Article R. 113-13 in the French Insurance Code which aims at specifying conditions under which the insurer can terminate a payment protection insurance contract because of an increase of the risk resulting from a voluntary change of behavior of the insured. Article R. 113-13 only mentions as a cause increasing the risk, the practice of a new sporting activity, presenting a particular risk to the health or the safety of the insured. The list of said sporting activities shall be determined by order.

#### **France - Guarantee fund for victims of terrorism and other offences – amount of the contribution**

The [Order of 10 November 2016](#) setting the amount of the insured's contribution to the Guarantee funds for victims of terrorism and other offences has been published in the Official Journal of the French Republic on 15 November 2016. The insured's contribution increases from €4.30 to €5.90 per insurance contract as from 1 January 2017.

#### **France - Strengthening of the French anti money laundering and the financing of terrorism provisions**

The [Decree n°2016-1523](#) of 10 November 2016 relating to the fight against the financing of terrorism provides for an increase of Tracfin's prerogatives, enabling in particular Tracfin agents to access the wanted persons file.

The [Order n°2016-1635](#) of 1 December 2016 implements into French law the Directive (EU) 2015/849 ("**Order**"). The Order extends the application of the rules relating to the fight against money laundering and the financing of terrorism. The Order clarifies the business relationship's definition and reinforces (i) the measures concerning the risk assessment, control procedures and the exchange of information which have to be implemented, (ii) Tracfin's prerogatives relating to the exchange of information with concerned persons and foreign financial intelligence units and finally, (iii) the supervision and sanction scheme for people subjected to the fight against the financing of terrorism.

#### **France - ACPR's recommendation: social media**

On 16 November 2016, the French insurance supervisory authority (*Autorité de contrôle prudentiel et de résolution* - **ACPR**) published a [recommendation n°2016-R-01](#) relating to social media use for commercial purpose. This recommendation relates to the modalities of (i) identification of the sender, (ii) presentation of the content and (iii) archiving of content. The recommendation also specifies the modalities of control of the rules organizing the dissemination of content. This recommendation will be effective from 1 October 2017.

#### **France - ACPR's recommendation: claims handling**

On 16 November 2016, the ACPR published a [recommendation n°2016-R-02](#) relating to claims handling. This recommendation seeks to ensure (i) that clients are provided with transparent and clear information on claims handling procedures, (ii) harmonised, equal and effective claims handling and (iii) the setting up of potential remedial actions based on weaknesses identified through claims handlings. This recommendation replaces the recommendation 2015-R-03 of 26 February 2015 as from 1 May 2017.

#### **France - ACPR's recommendation on the duty to advise on life insurance: appendix dedicated to information collected via a digital interface**

On 14 November 2016, the ACPR completed its recommendation 2013-R-01 relating to the duty to advise in life insurance by publishing an

appendix dedicated to information collected via a digital interface ("Appendix"). This Appendix focuses on (i) the traceability and collection processes, (ii) use of information and (iii) the implementation of means and procedures to ensure the protection of customers and the implementation of an internal control.

#### **France – ACPR: Notice on the persons who effectively run the undertaking or hold key functions**

On 2 November 2016, the ACPR published a notice on the appointment of persons who effectively run the undertaking or hold key functions in the "Solvency II" regime ("Notice"). The Notice reminds general principles applicable in relation to governance. The Notice describes notifications processes to the ACPR relating to the appointment of managers and key function holders and highlights the key areas of focus in relation to the system of governance and the way the ACPR tackles these areas in the light of the principle of proportionality.

#### **European Law - PRIIPS: Postponement of the implementation date to 1 January 2018**

On 1 December 2016, the European Parliament adopted a legislative resolution postponing until 1 January 2018 the date of application of the Regulation on key information documents for packaged retail and insurance-based investment products ("**PRIIPS Regulation**"). The European Parliament considers that small investors must be better informed on the risks and fees of investments products that they would potentially purchase and expects that the Commission prepares a new delegated act relating to regulatory technical standard in 2017.

#### **European Law - Solvability II: Implementing Regulation (EU) 2016/1976**

The implementing Regulation (EU) 2016/1976 of 10 November 2016 ("**Regulation**") lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September until 30 December 2016. The Regulation shall apply from 30 September 2016.

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## **14. Intellectual Property**

### **France - Censorship of an unlawfully adopted provision within the Law aimed at reinforcing the freedom, the independence and the pluralism of the media**

In a Decision n°2016-738 DC of 10 November 2016, the Constitutional Council has censured, as adopted following a procedure that was contrary to the Constitution, the Article 27 of the Law n°2016-1524 aimed at reinforcing the freedom, the independence and the pluralism of the media which modified the competences of the journalists' copyrights commission regarding the validation of labor collective agreements.

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

### **France - Implementation of the European unitary patent and the Unified Patent Court**

The Constitutional Council has, in a Decision n°2016-739 DC of 17 November 2016, regarded as being consistent with the Constitution the 4° of the paragraph I of Article 109 of the Law n°2016-1547 of modernization of the justice of the XXI<sup>st</sup> century authorizing the Government to take by ordinances any legislative measure that would appear to be necessary to implement a reinforced cooperation regarding the creation of the Unified Patent Court.

Such Law entered into force on 20 November 2016.

### **France - Restitution of cultural goods having unlawfully left the territory of a Member State of the European Union**

Adopted pursuant the [Law n°2015-195 of 20 February 2015](#) transposing the [Directive 2014/60/UE](#) of the Parliament and the Council of 15 May 2014 (see [Legislative and Regulatory Newsletter – February 2015](#)), the [Decree n°2016-1573 of 22 November 2016](#) regarding the [restitution of cultural goods having unlawfully left the territory of a Member state of the European Union](#) distributes competencies between the Central Office of the fight against cultural goods trafficking, competent for the goods which are in France and unlawfully outside the territory of another Member State and the Heritage general direction of the culture minister, exclusively responsible for goods that are on the territory of another Member State and unlawfully outside France.

This Decree also specifies the conditions for restitution proceedings initiated by a requiring Member State before the competent court of the required Member State to be admissible, as well as the conditions in which the sufficiently diligent bona fide possessor can be indemnified for the restitution of a cultural good.

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

## **European Law**

N/A

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### **15. Life Sciences**

#### **France**

N/A

#### **European Law**

N/A

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### **16. Procedures**

#### **France**

N/A

#### **European Law - Criminal procedure**

##### **Publication in the Official Journal of the European Union of the Directive regarding the legal aid in the criminal proceedings**

Directive n°2016/1919 of 26 October 2016 was published in the [Official Journal of the European Union of 4 November 2016](#). It established common minimum rules regarding the right to legal aid for suspects and individual prosecuted pursuant to criminal proceedings and the individual subject to proceedings related to the European arrest warrant.

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### **17. Product regulation**

#### **France**

N/A

#### **European Law**

N/A

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## **18. Profession and ethics of the profession**

### **France**

N/A

### **European Law**

N/A

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## **19. Public law**

### **France - Development of e-billing**

Decree n°2016-1478 dated 2 November 2016, published in the OJ dated 4 November 2016, relating to the development of e-billing, completes the dematerialisation strategy of public contracts pursued by the French Government, and specifies in particular the mandatory content of the electronic invoices to be transmitted by the holders and subcontractors admitted to direct payment of contracts concluded by the State, local and regional authorities and public institutions, as well as the procedure for their submission. The Decree comes into force on a progressive basis, as of 1 January 2017.

### **France - Reform of the Code of Administrative Courts**

Decree n°2016-1480 dated 2 November 2016, published in the OJ dated 4 November 2016, amends the regulatory part of the Code of Administrative Courts and introduces important procedural developments. The Decree aims, in particular, at speeding up the processing of requests and improving the access conditions to the judge. It shall enter into force on 1 January 2017.

### **France - Use of electronic procedures to lodge a complaint before administrative courts**

Decree n°2016-1481 dated 2 November 2016, published in the OJ dated 4 November 2016, relating to the use of electronic procedures to lodge a complaint before the Conseil d'Etat, the administrative courts of appeal and administrative courts, makes the use of the "Télérecours" (an electronic application) compulsory, for the claimants as well as the defendants (these being either lawyers, public entities - with the exception of municipalities with less than 3,500 inhabitants - or private entities entrusted with public service missions). The Decree shall enter into force on 1 January 2017.

### **France - Adoption of the provisions of the third regulatory part of the Code of Transports**

Decrees n°2016-1549 and n°2016-1550 dated 17 November 2016, published in the O.J dated 19 November 2016, relating to section III of the regulatory part of the Code of Transports, codify, without affecting existing regulation, a set of texts relating to transport services of passengers and goods by road. These provisions shall enter into force on 1 January 2017.

### **France - Railway incidents and accidents investigations**

Decree n°2016-1569 dated 22 November 2016, published in the O.J dated 24 November 2016, completes the regulatory provisions of the Code of Transports relating to the conditions of performance of technical and safety investigations following accidents or rail transport incidents.

### **European Law**

N/A

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## **20. Real Estate**

**France - The derogation system from the general rules for the works on adaptation of the accommodation for disabled persons or**

## persons with diminishing autonomy

In order to facilitate the adaptation works of the accommodation for disabled persons or persons with diminishing autonomy, the law n°2015-1776 of December 28th, 2015.

Under article 7 of the law of July 6th, 1989 when the landlord cannot oppose the works realized by the tenant when these works are fittings-out of the accommodation. However, the landlord is entitled to refuse the works which represent a transformation of the accommodation.

Consequently, the tenant can carry out at its expense the works subject to obtaining of the prior tacit approval of the lessor. Failing to answer with four months the approval request sent by registered letter with acknowledgement of receipt from the tenant, the silence of the landlord will be deemed as acceptance. The second derogation of the law is that the landlord cannot require a restoration of premises from the tenant.

The decree dated 29 September 2016:

- **Fix the list of the works which represent a transformation of the accommodation.** It is a restrictive list, but which defines widely the works that the tenant can perform.
- **Specify the contents of the approval request to send to the landlord.** This request should describe precisely the envisaged transformations and the conditions in which these works will be carried-out , but also indicate the company in charge of works;
- **Provides the modalities of information of the landlord** upon completion of the works. Within two months of the completion of the works, the tenant should justify to the landlord that the works have been performed by the chosen company and correspond effectively to the works of transformation notified and authorized by the landlord.

## France - Decree n°2016-1392 of October 17th, 2016 regarding the recognition of the professional qualifications

The decree dated October 17th, 2016 modifies several provisions of the decree n° 72-678 of July 20th, 1972, more particularly those regarding the recognition of professional qualifications acquired in a Member state of the European Union or party to the Agreement on the European Economic Area (the EEA Agreement), to exercise in France the activity of real estate agent, under the freedom of establishment or the free service offer.

This decree applies to the people exercising real estate activities of transaction and management governed by the mandatory law n°70-9 of January 2nd, 1970, called the "Hoguet" law: **real-estate agents, management agents, property managers, traders of lists.**

The decree dated 17 October 2016:

- allows the holder of the professional qualifications acquired in a member state of the European Union or party to the the EEA Agreement to exercise in France the activities governed by the law "law Hoguet", whatever is the level of these qualifications,
- also reduces the duration of the work experience which, in certain cases, should complete the professional qualifications to allow their holder to exercise in France the activities entering withinthe scope of the law Hoguet.

## European Law

N/A

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## 21. Tax

### France - Financial expenses: the French Tax Authorities ("FTA") updated the maximum rate of deductible interest from a tax standpoint

The FTA updated their guidelines by modifying the reference rate for the twelve month periods ending from 31 September 2016 to 30 December 2016 used to calculate the limit of deductible interest in accordance with the provisions of Article 39 of French Tax Code ("FTC").

The rates for this period are respectively 2.09%, 2.08% and 2.07% for fiscal years ended between 31 September 2016 and 30 October 2016,

between 31 October 2016 and 29 November 2016, and between 30 November 2016 and 30 December 2016 (BOI-BIC-CHG-50-50-30-20161102, n°40).

#### **France - R&D tax credit: the FTA specified the eligible expenses**

The FTA updated their guidelines drawing the consequences of the French Administrative Supreme Court's decision dated 13 November 2013 (CE, 13 November 2013, n°341432) ruling that the filing of a patent is not itself sufficient to confirm the substantial nature of technical improvements resulting from experimental development expenses.

As a reminder, companies incurring R&D expenses may benefit from a R&D tax credit assessed on such R&D expenses incurred during a given fiscal year, provided that certain conditions are met. In this respect, eligible companies must notably be in a position to evidence that experimental development expenses they incur aim to result in "*substantial improvements*" (i.e., *improvements which are not simply resulting from the state-of-the-art*).

#### **France - VAT exemption: the FTA updated the list of eligible airline companies**

The FTA updated the list of airline companies deemed to respect the conditions to benefit from the VAT exemption provided by Article 262 of the FTC which is notably applicable to the chartering and renting of aircrafts.

In principle, airline companies are required to deliver to each of their supplier a certificate evidencing that they fulfill all the conditions to benefit from this VAT exemption. However, certain French companies (*listed under BOI-ANNX-000215-20161102*) or foreign companies (**except for companies listed under BOI-ANNX-000216-20161102**) are deemed to fulfill the conditions to benefit from this VAT exemption without having to provide any certificates to their suppliers.

#### **France - Tax litigation: modification of the statute of limitations**

The decree n°2016-1480 dated 4 November 2016 modified Article R.421-3 of the French Administrative Justice Code and extended the application of the two-month limit available for claimants to introduce a request before the French administrative Courts to implied rejection decision as of 1<sup>st</sup> January 2017.

Until now, this two-month limit was only applicable in case of "*express*" rejection decision but not to "*implied*" rejection decision.

As a reminder, from a French tax perspective, the silence of the FTA to a claim filed by a taxpayer is deemed to constitute implied rejection after a six-month period following the filing by such taxpayer of its claim ("*réclamation préalable*" – Article R 199-1 of the French Tax Litigation Code).

#### **European Law**

N/A

#### **International - Implementation by the FTA of the most favored nation clauses provided by certain tax treaties**

The FTA updated their guidelines drawing the consequences of the most favored nation clauses provided by certain tax treaties (INT – CVB dated 4 November 2016).

As a reminder, most favored nation clauses are clauses whereby a contracting State undertakes to grant to another contracting State the same advantages it would grant to any third-party States.

As an example, the tax treaty between France and Chili provides for a most favored nation clause (BOI-INT-CVB-CHL-20161104, n°20). Therefore, further to the conclusion by Chili of a tax treaty with Australia on 10 March 2010, the rate of the withholding tax applicable to Chilean-source interests



paid to a French tax resident is decreased to 10% (*instead of 15% previously*).

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## **22. Telecoms**

### **France**

N/A

### **European Law**

N/A

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## **23. Transport**

### **France**

N/A

### **European Law**

N/A

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