

The Paris office of Hogan Lovells is pleased to provide this English language edition of our monthly e-newsletter, which offers a legal and regulatory update covering France and Europe for December 2014.

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 for the modernisation and simplification of law and procedures in relation to justice and home affairs**, n°175, filed on November 27, 2013 – adopted in new reading before the National Assembly on October 30, 2014.
- **Draft law relating to the limitation of the use of biometric technology**, n°361, filed at the Senate on February 12, 2014 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law relating to biodiversity**, n°1847, filed before the National Assembly on March 26, 2014.
- **Draft law relating to various provisions in connection with criminal procedure for the transposition of EU Law into French Law**, n°482, filed before the Senate on April 23, 2014 – Adopted in first reading at the Senate on November 5, 2014.
- **Draft law relating to energy transition towards green growth**, n°2188, filed on July 30, 2014. Adopted in first reading by the National Assembly on October 14, 2014.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 before the National Assembly.
- **Draft law relating to various provisions in connection with literary and artistic works property and cultural heritage for the transposition of EU Law into French Law**, n°2319, filed on October 22, 2014 – Adopted in first reading at the National Assembly on November 20, 2014 – Amended in first reading by the Senate on December 18, 2014.
- **Draft law relating to growth and economic activity**, n°2447, filed before the National Assembly on December 11, 2014.

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## Enacted laws

- **Law n°2014-1663 of December 30, 2014 which authorises the Government to take any legal required steps to ensure, within the French legal scope, the compliance with the principles of the World Anti-Doping Code** – OJ of December 31, 2014.
- **Law n°2014-1662 of December 30, 2014 relating to various provisions in connection with economic and financial matters for the transposition of EU Law into French Law** – OJ of December 31, 2014.
- **Amending finance law n°2014-1655 of December 29, 2014 for 2014** – OJ of December 30, 2014.
- **Finance act n°2014-1654 of December 29, 2014 for 2015** – OJ of December 30, 2014.
- **Public Finance Planning Act n°2014-1653 of December 29, 2014 for 2014 to 2019** – OJ of December 30, 2014.
- **Law n°2014-1554 of December 22, 2014 on the financing of Social Security for 2015** – OJ of December 24, 2014.
- **Ordinance n°2014-1555 of December 22, 2014 relating to the merger of the Agence française pour les investissements internationaux (French agency for foreign investment projects in France) and UBIFRANCE (French agency for the development of French companies overseas)** – OJ of December 24, 2014.
- **Ordinance n°2014-1567 of December 22, 2014 relating to the enforcement of article 55 of Law n°2013-1168 of December 18, 2013 regarding the military planning law for 2014 – 2019 and various provisions on defence and national security** – OJ of December 24, 2014.
- **Law n°2014-1545 of December 20, 2014 for the simplification of existing regulations for the business sector and clarification of law and administrative procedures** – OJ of December 21, 2014.
- **Ordinance n°2014-1543 of December 19, 2014 relating to various measures for the creation of the Lyon Urban Community** – OJ of December 20, 2014.
- **Law n°2014-1528 of December 18, 2014 relating to the appointment of the members of the elected industrial tribunal** – OJ of December 19, 2014.
- **Ordinance n°2014-1490 of December 11, 2014 which completes and clarifies budget, financial, tax and accounts rules applicable to metropolitan cities** – OJ of December 12, 2014.

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## 1. Banking

### France - Country-by-country reporting

The Decree n°2014-1657 dated 29 December 2014 implementing article L.511-45 of the French monetary and financial code ([OJ n°0301 dated 30 December 2014](#)) amends the French monetary and financial code to include article R. 511-16-2. This article specifies the conditions under which the credit institutions, financial holding companies, mixed financial holding companies and investment firms disclose the information relating to their locations country by country set out in paragraph II of article L. 511-45 of the French monetary and financial code.

The Decree n°2014-1657 entered into force on 31 December 2014.

## France - Legal interest rate

The ministerial order (*arrêté*) dated 23 December 2014 relating to the legal interest rate determination ([OJ n°0299 dated 23 December 2014](#)) specifies the applicable legal interest rate for the first semester 2015. The legal interest rate is (i) for receivables of individuals acting for purposes other than professional: 4.06%; and (ii) in any other cases: 0.93%.

The ministerial order (*arrêté*) dated 23 December 2014 entered into force on 1<sup>st</sup> January 2015.

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## 2. Competition

### France - Antitrust – Public consultation on commitments proposed by Booking.com

The French Competition Authority launched on 15 December 2014 a market test on the commitments offered by Booking.com, the leader of hotel booking websites. In the context of a procedure initiated before the French Competition Authority, Booking.com proposed to remove the so-called “pricing parity clause” obliging hotels to grant it pricing conditions that are at least as favorable as those granted to the other online platforms. Booking.com proposes to extend that commitment to all EEA countries. Under the guidance of the European Commission, seven national competition authorities (French, German, UK, Italian, Austrian and Irish) have been closely cooperating in order to harmonize the handling of the issues of these online platforms.

Interested third parties can submit their comments until 15 January 2015.

### European Law - Antitrust – Publication of the Directive on antitrust damages actions

The Directive 2014/104/EU of the European Parliament and of the Council on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union was published in the OJEU L 349/1 on 5 December 2014. The main provisions of the Directive include: (i) national courts can order companies to disclose evidence when victims claim compensation; (ii) a final decision of a national competition authority finding an infringement will automatically constitute proof of that infringement before courts of the same Member State in which the infringement occurred; (iii) victims will have at least one year to claim damages once an infringement decision by a competition authority has become final; (iv) if an infringement has caused price increases and these have been “passed on” along the distribution chain, those who suffered the harm in the end will be entitled to claim compensation; (v) consensual settlements between victims and infringing companies will be made easier.

The text entered into force on 25 December 2014. The Member States will have two years, i.e. until 25 December 2016, to implement it.

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## 3. Consumer law

### France - Digital economy – Publication of a joint report on ecosystems and their effects on competition

A report on the “Economics of open and closed systems” was published, jointly with the UK Competition and Markets Authority, by the French Competition Authority on 16 December 2014. Based on the economic literature on ecosystems, the report shows that the degree of their openness or closure should be assessed on a case-by-case basis, taking into account the degree of competition between systems, the ease with which consumers may switch between systems, the degree of coordination required to ensure a system’s viability and the ability of consumers to assess the overall cost associated with a system before making a choice.

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#### 4. Corporate

##### **France - The Law relating to the simplification of corporate life was published to the Official Journal on 21 December 2014**

Law n°2014-1545 dated 20 December 2014 relating to the simplification of corporate life includes the authorization to legislate by decree to the Government in corporate law and certain directly applicable provisions.

The Government is authorized to take by ordinance within 9 months of the promulgation of the law, any action in order to:

- decrease the minimum number of shareholders in unlisted SA; and
- establish a simplified winding-up procedure for commercial companies with a small amount of assets and liabilities and not hiring employees.

The Law particularly amends Article L. 236-6 of the Commercial Code. From now on, in case of a merger or cross-border merger within the EU, only the SA and SE are required to file a declaration of conformity with the court.

##### **France - Modification of the date and the settlement criteria for the list of persons entitled to participate in meetings of shareholders and bondholders of corporations**

Decree n°2014-1466 dated 8 December 2014 comes into force on 1 January 2015. It specifically changes:

- the establishment date of the list of shareholders entitled to participate in a general meeting of shareholders;
- the date of establishment of the list of bondholders entitled to participate in a bond assembly; and
- the deadline for the inclusion in the agenda of a point or a resolution filed by a shareholder.

These dates are now set on the second business day preceding the meeting at midnight, Paris time instead of the third business day preceding the meeting at midnight, Paris time).

Furthermore, with regard to companies whose securities are admitted to trading on a regulated market, Article 3 amends the conditions for registration to vote in such meetings. This text sets as a necessary condition to the vote the final registration of the securities account as the buyer (unwound position).

For companies whose securities are not admitted to trading on a regulated market, Article 4 continues to expect that voting in general meeting is justified by the registration of shares in the name of shareholder in the registered securities accounts held by the company.

##### **France - AMF Recommendation dated 9 December 2014 relating to communication for listed companies using their websites and social media**

In order to assist listed companies in managing their corporate website and in the use of social media as a means of sharing information, the AMF has published a recommendation reminding that the requirement for exact, accurate and honest information also applies to content found on issuer websites. In addition, the AMF cites the applicable legislation and regulations and gives best practices concerning:

- accessibility of information published on corporate websites,
- updating of information on website and terms, and
- archiving of published information, for which it is recommended in particular that a policy that is stable and consistent over time be adopted and a link to the centralized national archiving site be made.

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## 5. Energy

### France - Unique authorization for the offshore wind farms

Law n°2014-1545 dated 20 December 2014 ([please refer to the Real Estate section](#)) authorizes the French government to take directly any measure aimed to allow the regional prefect to deliver to the future developers of offshore wind farms located on the public marine domain a unique authorization for (a) the electric connections inside the related installations and the electricity delivery points which are linked to such installations and for (b) the connection to the public network of such installations. The government is in particular allowed to set out the conditions in which such authorization will replace the requested authorizations for the project in regard of the French *code de l'environnement*, *code forestier*, *code de l'urbanisme*, *code de l'énergie* and *code général de la propriété des personnes publiques*.

### France - Continuation of the expiration date of the building permits for wind farm

Decree n°2014-1661 dated 29 December 2014 ([please refer to the Real Estate section](#)) applies to building permits applicable to wind farms. Those building permits can also be subject to an extension request every year in the limit of 10 years after the delivery of the authorization. This measure is applicable to all authorizations in full force on 30 December 2014.

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## 6. Environment

### France - List of the public establishments and organizations holding a registry of warning regarding environmental and public health matters

Decree n°2014-1628 dated 26 December 2014 published in the Official Journal on 28 December 2014 sets out the list of the public establishments and organizations which must hold a registry of warning regarding environmental and public health matters, such as the French *Agence Nationale de Sécurité du Médicament et des produits de santé* (ANSM) or the French *Centre National de la Recherche Scientifique* (CNRS).

Such Decree is taken pursuant to the provisions of Law n°2013-316 of 16 April 2013 which creates a whistle blowing process, giving the possibility to any person to officialise an information about a fact, a data or an action, if the disregarding of such fact, data or action may cause a risk for the public health or the environment.

Such measures will enter into force six months after the publication of the provisions related to the elements that the registry of warning shall contain.

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## 7. Insurance

### France - Law Hamon - Publication of the Decree relating to the termination at any time of insurance contracts

Decree n°2014-1685 dated 29 December 2014 has been adopted in implementation of Law n°2014-344 dated 17 March 2014 related to consumption. It defines the terms and conditions of a termination at any time of insurance contracts in accordance with Article L.113-15-2 of the French Insurance Code. As a result, insured natural persons are able to terminate at any time certain insurance contracts which are not in relation with their professional activity. The contracts within the scope of this Decree are automobile insurance contracts, comprehensive householder multi-risk policies and affinity insurance contracts relating to goods or services provided that these contracts are tacitly renewable. This termination takes effect one month after the receipt of the request by the insurer and gives the consumer the right to obtain the reimbursement for the portion of the non-covered insurance premium or contribution due to the termination. The Decree is immediately applicable for contracts concluded from 1<sup>st</sup> January 2015, and from their tacit renewal date for contracts concluded before 1<sup>st</sup> January 2015.

## **France - Investment rules - Publication of the Decree amending the investment rules of insurance companies for their loans in the economy or assimilated bonds**

Decree n°2014-1530 dated 17 December 2014 amends the investment rules for insurance companies, provident societies, mutual insurance companies and their unions in relation to their loans in the economy or assimilated bonds. The Decree extends to entities governed by the French Social Security Code and the French Mutuality Code the amendments that were brought to the French Insurance Code by Decree n°2013-717 of 2 August 2013 which had extended to loans granted to unlisted companies and public authorities the list of investment mechanisms that insurance companies can invest in, in representation of their regulated commitments. For those three Codes, the Decree also extends the scope of the admitted receivables under the asset section of the lending funds to the economy, by including notably receivables on European Union Member States. The Decree entered into force on 20 December 2014.

## **European Law - Publication of PRIIPS KID Regulation**

On 9 December 2014, Regulation n°1286/2014 on key information documents for packaged retail and insurance-based investment products (the PRIIPs KID Regulation) has been published in the Official Journal of the European Union. Companies producing or selling packaged retail investment and insurance-based investment products (PRIIPs) will have to produce key information documents (KIDs). This Regulation aims at standardizing the pre-contractual information given to non-professional investors. Regarding PRIIPS, a unique document of information will have to be given to investors notably in order to ensure that the investor understands the financial risks incurred. The Regulation has already entered into force but will apply from 31 December 2016.

## **European Law - EIOPA – Public consultation on second set of Solvency II implementing technical standards and guidelines**

On 2 December 2014, the European Insurance and Occupational Pensions Authority (EIOPA) opened a public consultation on the second set of draft implementing technical standards (ITS) and guidelines required under the Solvency II Directive (2009/138/EC) following a precedent public consultation launched by EIOPA on 8 November 2011 and 21 December 2011 on the proposal for reporting and disclosure requirements on insurance and reinsurance undertakings and insurance groups. The current public consultation concerns the three pillars of Solvency II and notably, the guidelines on the valuation of assets and liabilities, on the extension of the recovery period and on reporting and disclosure. Responses to this consultation are requested by 2 March 2015, with the exception of the consultation on the Call for Advice on recovery plan, finance scheme and supervisory powers in deteriorating financial conditions for which responses are requested by 18 February 2015.

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## **8. Intellectual Property**

### **France - Simplification of the infringement seizure proceedings for author rights, softwares and databases**

Decree n°2014-1550 of 19 December 2014, implementing Law n°2014-315 of 11 March 2014 strengthening the fight against counterfeiting, amended the regulatory part of the Intellectual Property Code related to infringement seizure proceedings.

This Decree amends in particular the starting point of the time period for author, software or database rights holders to take action on the merits or file a legal complaint before the French Public Prosecutor after an infringement seizure. This time period now runs "*from the day of the infringement seizure or description*" and not from the date of the ordinance authorizing the seizure (Articles R.332-3 and R. 332-4 of the Code of Intellectual Property).

Furthermore, as regards author rights, softwares, databases, designs, patents, plant varieties, trademarks and geographical indications, the Decree confirms the alternative offered to the distrainer by Law n°2014-315 of 11 March 2014 to avoid the cancellation of the infringement seizure for questions of non-compliance of deadlines: it is now possible to initiate an action on the merits or to file a legal complaint before the French Public Prosecutor in the relevant time period (Articles R.332-3, R. 332-4, R. 343-1, R. 521-1, R. 615-1, R. 623-50-1, R. 716-1 and R. 722-1 of the Intellectual Property Code).

The Decree entered into force on 22 December 2014.

## **France - Details about the method of appointment and duties of the single agent exercising the industrial property rights related to inventions owned by several public bodies**

Decree n°2014-1518 of 16 December 2014, implementing Article L. 533-1 of the Code of the research, indicates the method of appointment, duties and method of reimbursement of the costs incurred by the single agent responsible for the management, exploitation and negotiation of patent applications, patents and their extensions relating to inventions made by personnel of State and public bodies holding a research task in the frame of a research publicly funded and which are owned by several public bodies holding a research task.

Law n°2013-660 of 22 July 2013 on higher education and research amended Article L. 329-7 of the Code of Research (repealed by Ordinance n°2014-135 of 17 February 2014 creating Article L. 533-1 of the Code of research) to simplify and accelerate the transfer of the aforementioned industrial property rights by providing for the appointment of a single agent. Previously, the public body which employed the inventor(s) was responsible for enhancing the results from their research by exploiting the invention.

This single agent will be responsible, where appropriate, for negotiating and signing the co-ownership agreements, filing the priority patent application and maintaining in force the issued patents, exploiting the invention, in particular by means of license, and finally, collecting and redistributing the incomes relating to their exploitation on behalf of the mandating public bodies.

The Decree entered into force on 19 December 2014.

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## **9. New Technologies**

### **France - Free Internet access and Wi-Fi providers**

An inspection conducted by the French data protection authority (the CNIL) regarding free Internet access and Wi-Fi providers has revealed several breaches of the French data protection law. Further to this inspection, the CNIL issued a list of five guidelines allowing providers to comply with the relevant provisions of the law, including a term for the retention of traffic data limited to one year.

### **France - Smartphones**

For the past three years, the CNIL has been carrying out a project aimed at analysing the personal data of smartphone users to which applications and operating systems developers have access. As part of the second phase of this project, the CNIL noted *inter alia* the risks associated with access to the data generated by smartphone users and reaffirmed the principles that the various actors have an obligation to comply with.

### **France - Unfair terms**

On 3 December 2014, the Unfair Terms Commission published a list of provisions included in the agreements concluded between social network providers and their users which the Commission considers as being unfair. Clauses providing for an implicit acceptance of the agreement by the users were among the list.

### **France - Electronic communication operator**

The Implementing Decree of Article L246-1 of the Internal Security Code creates a Chapter in the said Code relating to administrative access to connection data retained by electronic communication operators in the name of national security and the prevention of terrorism. The Decree describes the types of data that can be collected by duly empowered agents and conduct of the procedure. The Decree entered into force on 1 January 2015.

## **European Law - Delisting**

Further to the European Court of Justice's "Google Spain" ruling of 13 May 2014 ([please refer to the Legal and Regulatory Update - May 2014](#)), the WP29 (the Article 29 Working Party, established by Article 29 of the 1995 Data Protection Directive, composed of the 28 European Union data

protection authorities), published on 26 November 2014, guidelines including the criteria that search engines should take into account when dealing with delisting requests as well as recommendations aimed at guaranteeing the efficiency and harmonisation of the delisting.

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## **10. Public Law**

### **France - Implementation of Directives 2014/24/UE, 2014/25/UE on public procurement**

Law n°2014-1545 dated 20 December 2014, published in the OJ dated 21 December 2014, allows the Government to adopt legal measures to implement into national laws provisions of Directives 2014/24/UE and 2014/25/UE of the European Parliament and of the Council of 26 February 2014 on public procurement and on procurement by entities operating in the water, energy, transport and postal services sectors. Article 42 of the Law specifies that implementation measures shall be aimed at simplifying national rules on procurement and performance of public contracts, clarifying the legal interpretation of arrangements for temporary occupation of public property and circumscribing the use of PPPs. Implementation measures shall be adopted within nine months from the promulgation of the Law.

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## **11. Real Estate**

### **France - Simplification and clarification of the law in town planning matter**

Law n°2014-1545 dated 20 December 2014 published in the Official Journal on 21 December 2014 authorizes the French government to adopt any measures which are normally under the authority of the parliament, in the field of town planning. Such measures aim particularly (i) to facilitate the development of construction projects located at the entrance to the town or in commercial areas, (ii) to improve and clarify the scope of the information given to the buyers of a building under the status of the co-ownership or (iii) to modify, clarify and adapt the legal provisions applicable to the installations subject to a Plan for the Prevention of Technological Risks.

### **France - Continuation of the expiration date of town planning authorizations**

Decree n°2014-1661 dated 29 December 2014 published in the Official Journal on 30 December 2014 brings to 3 years, instead of two years, the time limit for building permits, demolition permits, development permits and decisions of non-opposition to a town planning declaration taken at the latest on December 31st, 2015. This measure is applicable to all authorizations in full force at 30 December 2014. If such authorizations have been subject to a one year prorogation before this due date in the conditions provided by the French town planning Code, such prorogation will be increased of one year.

### **France - Rents of 1948 leases for 2015**

Decree n°2014-1516 dated 15 December 2014 published in the Official Journal on 17 December 2014 sets up that the rents regarding leases concluded under Law n°48-1360 of 1st September 1948 shall not exceed a percentage equal to 0.60% in 2015.

### **France - Real estate tax**

Please refer to the Tax section regarding the provisions of the LFR 2014 in real estate.

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## **12. Tax**

### **France**

Further to the French Constitutional Court's decision dated 29 December 2014, the Finance Act for 2015 (*loi de finances pour 2015 – LF 2015*) and the Amended Finance Act for 2014 (*loi de finances rectificative pour 2014 – LFR 2014*) were published in their revised and final form in the Official Gazette on 30 December 2014.



You will find below the key measures adopted as part of such Finance Acts with respect to corporate taxation (a) and real estate taxation (b).

## **France - Corporate Taxation**

### ***"Horizontal" tax consolidation regime***

Article 63 of the LFR 2014 provides for the possibility to constitute a tax group with the French subsidiaries of a parent company established in an EU member state. Thus, a French subsidiary may become a "mother company" for French tax purposes, and therefore, be liable for the payment of French corporate income tax on behalf of its French sister companies belonging to the same tax group. For the application of such tax group regime, the share capital of the above mentioned French subsidiaries should be held directly or indirectly (*i.e., through EU resident companies*) up to more than 95% by a non-resident mother entity established in the EU.

The above-mentioned provision is applicable to fiscal years ending on 31 December 2014.

### ***Hybrid instruments: denial of the French participation-exemption regime to certain distributions***

Article 72 of the LFR 2014 modifies Article 145, 6-b of the French Tax Code (FTC) in order to exclude the application of the French participation-exemption regime (*i.e., the parent-subsidiary regime*) to distributions made by a company when such distributions are deductible from the taxable results of the distributing entity.

Indeed, Article 72 of the LFR 2014 transposes the 2014/86/UE directive dated 8 July 2014, whose purpose was to prevent double non-taxation of profits, resulting from the different tax treatments (*in the jurisdiction of both the parent company and the subsidiary*) of cross-border financial flows.

The above-mentioned provision is applicable to fiscal years starting as from 1 January 2015.

### ***Application of participation-exemption and tax consolidation regimes to shares held in a French "fiducie"***

Article 71 of the LFR 2014 provides for the application of the French participation-exemption and the tax consolidation regimes to shares transferred in a French "fiducie". For the application of such tax regimes, the shares transferred in the "fiducie" are taken into account for the computation of the minimum ownership threshold and the holding period of such shares is not interrupted by the transfer (*provided that the settlor keeps the voting rights attached to the transferred shares*).

The above-mentioned provision is applicable to fiscal years ending on 31 December 2014.

### ***Increased penalties for failure to comply with French transfer pricing reporting obligations***

Pursuant to Article 78 of the LF 2015, the failure to provide the transfer pricing documentation during a tax audit triggers, per entity and for each period under tax audit, a penalty equal to the higher of the following amounts:

- 0.5% of intra-group transactions subject to transfer pricing reporting obligation; or
- 5% of the reassessed profits related to intra-group transactions (*Article 1735 ter of the FTC*).

The above-mentioned provision is applicable to tax audits starting as from 1 January 2015.

### ***Redemption of shares: new tax regime***

Pursuant to Article 88 of the LFR 2014, profits deriving from the redemption of shares are taxed, in the hands of the shareholders, as capital gains only and not as dividends. Therefore, such redemption of shares will not trigger the 3% tax on distributed income anymore (*Article 235 ter ZCA of the FTC*).

The above-mentioned provision is applicable to redemptions of shares carried out as from 1 January 2015.

#### ***Reverse-charge mechanism on import VAT***

Contrary to intra-Community acquisitions, import operations are subject to the payment of value added tax (**VAT**) and therefore trigger a cash-out effect for importers (*Article 1695 of the FTC*). Article 52 of the LFR 2014 introduces the possibility to apply the reverse-charge mechanism on import VAT for companies benefiting from the simplified customs clearance procedure for exports with unique domiciliation (*procédure de dédouanement simplifiée avec domiciliation unique – PDU*).

This regime is applicable to import transactions carried out as from 1 January 2015.

#### **France - Real Estate Taxation**

##### ***Registration duties on the sale of French real estate companies***

The sale of shares of French predominantly real estate companies is subject to registration duties at the rate of 5%. Until now, these registration duties were based on the fair market value of the real estate assets owned by the company, after deduction of the liabilities related to the acquisition of such assets. Pursuant to Article 55 of the LFR 2014, the registration duties will be based, from now on, on the purchase price of such shares (*or their market value if higher*).

This provision is applicable to transfers carried out as from 31 December 2014.

##### ***Taxation of real estate capital gains realized by non-resident individuals***

Pursuant to Article 60 of the LFR 2014, real estate capital gains realized by non-resident individuals are taxed at the fixed rate of 19% regardless of whether such taxpayers are resident of EU member states or not.

We draw your attention to the fact that the French Constitutional Court struck down the 75% tax rate applicable to real estate capitals gains realized by individuals or legal entities established in a non-cooperative state or territory, since it provides for an excessive tax burden on these taxpayers. This tax rate should be readjusted in future Finance Acts.

This provision is applicable as from 1 January 2015.

##### ***No obligation to appoint a French tax representative for foreign taxpayers***

Article 62 of the LFR 2014 abolishes the obligation to appoint a French tax representative for foreign taxpayers that are resident in the EU or the European Economic Area (*excluding Liechtenstein*).

The present provision is applicable to (i) individual income tax reported and paid as from 2015, (ii) wealth tax due as from 2015, (iii) corporate income tax for financial years ending on or after 31 December 2014, (iv) capital gains realized on the sale of French real estate properties carried out as from 1 January 2015, and (v) the 3% tax on the market value of real estate properties owned in France as from 1 January 2015.

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### **13. Telecoms**

#### **France - ARCEP's decision on market definition relating to voice call termination**

On Tuesday 9 December 2014, ARCEP adopted decision n°2014-1485 on market definition relating to voice call termination on fixed and mobile networks, the designation of operators having significant market power, and the obligations imposed in this regard from 2014 to 2017.

In the voice call termination market, Orange and the other five major operators will be required to comply with obligations relating to cost accounting and accounting separation.

As regards the wholesale voice call termination on individual public telephone network provided at a fixed location, ARCEP suggested that IP-based interconnection become the norm. As of July 1<sup>st</sup>, 2015, a request for an IP-based interconnection will therefore be considered to constitute a reasonable request for access to the network.

As regards the wholesale voice call termination on individual mobile networks, voice call termination rates will be based on a BU-LRIC model:

Calendar	MTR
	(euro cents/minute)
Until 12/31/2014	0,8
2015	0,78
2016	0,76
2017	0,74

The decision came into effect on 19 December 2014, and will remain in force for a period of three years.

### **European Law - The European Commission approves ARCEP's draft decision regulating voice call termination markets**

On 28 November 2014, the European Commission approved ARCEP's draft decision regulating the markets for fixed voice call termination and mobile voice call termination from 2014 to 2017.

However, the Commission requested additional justification for the regulation of the whole sale markets for SMS termination. The European Commission is questioning the relevance of a new SMS termination regulation that could, in the Commission's opinion, disadvantage the expansion of instant messaging services, and so reduce the resulting benefits to consumers in terms of choice, quality and price.

### European Commission's decision

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