

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 January 2015.

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

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Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law 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 final reading by the National Assembly on January 28, 2015. The Constitutional Council has been seized.
- **Draft law relating to sobriety, transparency and coordination in connection with exposure to electromagnetic waves**, n°1635, filed on December 11, 2013 – adopted in second reading without amendments by the National Assembly on January 29, 2015.
- **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. Under examination in public session at the Senate from February 10, 2015.
- **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 – Meeting of the joint parliamentary committee - Adopted after the joint parliamentary committee by the National Assembly on January 20, 2015 and in debate at the Senate on February 10, 2015.
- **Draft law for growth, activity and equal economic opportunities**, n°2447, filed before the National Assembly on December 11, 2014 – Under examination in first reading by the National Assembly from January 26 to February 13, 2015.

Enacted laws

- **Ordinance n°2015-82 of January 29, 2015 relating to simplification and securing of enforcement provisions of the rules relating to temporary work deriving from law n°2013-504 of July 14, 2013 on employment securing** – OJ of January 30, 2015.
- **Law n°2015-29 of January 16, 2015 on delimitation of regions, on elections in regions and departments elections and the modification of the election calendar** – OJ of January 17, 2015.
- **Law n°2014-1753 of December 30, 2014 which authorises the ratification of the amendment to the Kyoto protocol of December 11, 1997** – OJ of January 1, 2015.

1. Banking

France - Registration with the register of insurance, banking and finance intermediaries

Decree n°2015-47 dated 22 January 2015 relating to the commission in charge of the registrations with the register of insurance, banking and finance intermediaries ([J.O n°0020 dated 24 January 2015](#)) is taken pursuant to article L. 512-1 of the French insurance code and L. 546-1 of the French monetary and financial code. The decree amends the article R. 512-3 of the French insurance code in order to specify the composition and the functioning rules (in particular the voting and quorum rules) of the commission in charge of the registrations with the register of insurance, banking and finance intermediaries.

The decree n°2015-47 entered into force on 24 January 2015.

France - Disclosure of encumbered and unencumbered assets

The ministerial decree (*arrêté*) dated 19 December 2014 relating to the disclosure of encumbered and unencumbered assets ([J.O n°0297 dated 24 December 2014](#)) implements in France the guidelines published by the European banking authority on 27 June 2014. This ministerial decree specifies the conditions of disclosure and the nature of the information relating to encumbered and unencumbered assets that should be disclosed by the credit institutions, the financing companies and certain investment firms.

The ministerial decree (*arrêté*) dated 19 December 2014 entered into force on 25 December 2014.

European Law - Liquidity coverage requirement for Credit Institutions

The Commission Delegated Regulation (EU) n°2015/61 ([JOUE L11/1 dated 17 January 2015](#)) supplements the Regulation (EU) n°575/2013 of the European Parliament and the Council. This Regulation specifies in particular the formula and the modalities for the calculation of the liquidity coverage ratio.

The Regulation n°2015/61 entered into force on 6 February 2015. It shall apply from 1 October 2015.

European Law - Leverage ratio

The Commission Delegated Regulation (EU) n°2015/62 ([JOUE L11/37 dated 17 January 2015](#)) amends the Regulation (EU) n°575/2013 of the European Parliament and the Council. Pursuant to the Regulation (EU) n°575/2013 the credit institutions and the investments firms (referred to collectively as "institutions") have to disclose their leverage ratio since 1 January 2015. The Regulation n°2015/62 amends the methodology of calculation of the leverage ratio in order to ensure a more accurate measure of leverage and a better comparability of the leverage ratio disclosed by institutions.

The Regulation (EU) n°2015/62 entered into force on 18 January 2015.

European Law - Supervisory reporting of institutions

The Commission Implementing Regulation (EU) 2015/79 dated 18 December 2014 ([JOUE L14/1 dated 21 January 2015](#)) amends the Implementing Regulation (EU) n°680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions. This regulation requires that the institutions include, in their supervisory reporting, information on asset encumbrance. In addition, the regulation provides that the reporting on own funds and own funds requirements, financial information, losses stemming from lending collateralised by immovable property, large exposures, the leverage ratio, liquidity and asset encumbrance should be submitted according to a single data point model, whose criteria are specified in the regulation.

The Regulation (EU) n°2015/62 entered into force on 10 February 2015.

2. Capital Markets

France - AIFM Directive: publication of a decree defining eligibility criteria for securitisation vehicles managers

Article L.214-167 I of Financial and Monetary Code sets out a principle by which securitisation vehicles are excluded from the AIFMD scope.

However, in accordance with Part II of such article, AIFs in the form of a securitisation vehicle and using similar strategies to an AIF (in practice, AIFs looking to bypass AIFM directive rules) are subject to AIFMD.

Decree n°2014-1366 dated 14 November 2014 came into force on 15 November 2014 and sets out criteria for securitisation vehicles to be subject to AIFM regulations.

France - Fees owed to the AMF: increase of some fees owed to the AMF from 1 January 2016

Decree n°2014-1512 dated 15 November 2014 and which shall come into force on 1 January 2016 will increase fees due to the AMF (French *Autorité des marchés financiers*).

Such is the case notably for:

-fees owed by ISP for each investment service provided;

-rate of fees owed by management companies which have their registered office in the EEA and manage French law UCITS, except for money market funds or short term money market funds.

3. Competition

European Law - Antitrust – Public consultation on draft guidelines on joint selling of olive oil, beef and veal livestock and arable crops

The European Commission launched on 15 January 2015 a public consultation on its draft guidelines on joint selling of olive oil, beef and veal livestock and arable crops. A reform of the EU's Common Agricultural Policy (CAP) in 2013 had established new specific rules for the agricultural sector, allowing producers to jointly commercialise olive oil, beef and veal livestock and arable crops via producer organisations or associations of producer organisations if certain conditions are fulfilled (especially that their cooperation creates significant efficiencies). The draft guidelines aim to provide guidance on how these new rules can best be used in order to stimulate growth and investment, while maintaining a level playing field for all operators in the Single Market. They include in particular: (i) examples of how producer organisations can provide services that generate significant efficiencies for farmers, (ii) guidance on how to check that the volumes marketed by producer organisations do not exceed certain production volume limits, and (iii) the situations in which competition authorities may apply a safeguard clause and have joint commercialisation contracts by a producer organisation re-opened or cancelled.

Interested third parties can submit their comments until 5 May 2015.

4. Corporate

France - Increased transparency obligations: the Law relating to various provisions adapting French law to European Union Law in financial and economics was published in the Official Journal on 31 December 2014

Law n°2014-1662 dated 30 December 2014, published in the Official Journal on 31 December 2014, adapts our legislation in economic and financial matters to European rules. It transposes several European directives and empowers the Government to take by ordinance various adaptation measures in these areas. The main provisions deal with company law and include strengthening transparency obligations imposed to certain companies.

The Law notably provides for:

-improved financial reporting of listed companies through a partial implementation of the amendments made by Directive 2013/50 dated 22 October 2013 to Directive 2004/109 (called "transparency"). In particular, it increases from five to ten years the period during which the annual financial report shall be made available to the public and makes it optional to publish the quarterly financial reports. This transposition being partial, the Law allows the government to take by ordinance, until 30 December 2015, measures to complete it;

-the obligation for the Court of Appeal to decide within five months of the notice of appeal against the AMF individual decisions regarding public offers (OPA or OPE, mandatory or not, offer withdrawal);

-the ability of the government to take by ordinance, until 3 July 2016, the provisions (non-criminal) necessary for the transposition of Directive 2014/65 dated 15 May 2014 (known as "MiFID II") on financial instruments markets and the compliance of our law with the Regulation 600/2014 dated 15 May 2014 on the same subjects; and

-the empowerment of the government to take by ordinance the provisions necessary to transpose Directive 2014/56 dated 16 April 2014 on statutory audits of the consolidated accounts.

France - The AMF publishes its position-recommendation on initial public offering

Following the approval of the amendments to the General Regulation, which are required in order to implement the new framework for initial public offerings; the AMF has published its position-recommendation paper completing this framework (DOC-2015-02).

The AMF provides in particular the following:

- the upkeep, for any initial public offering, of the obligation to forecast a category to the attention of the particular investors;
- a broader flexibility in the rules relating to price range rules;
- the possibility offered to individuals to revoke their past orders online at any time until the closing of the offer made in their favor;
- access of the analysts banks of the union to the information provided prior to the publication of the documentation vided by the AMF;
- the possibility offered to the companies to establish a prospectus written in a language other than French commonly used in the financial sector provided that the summary of the prospectus is also translated into French.

5. Employment

France - Simplifying and securing the modalities of application of the rules relating to part time work

The Ministerial Order ("Ordonnance") n°2015-82 dated 29 January 2015 was published in the Official Journal on 30 January 2015.

According to this Ministerial Order, employees who requested to work less than 24 hours per week and then changed their mind benefit from a priority right to work 24 hours per week or to work the duration set out in the applicable collective bargaining agreement.

The Ministerial Order also indicates that the minimum weekly working time of 24 hours applies neither to employment contracts concluded for a period of 7 days or less, nor to employment contracts concluded for the replacement of an employee.

France - Employment contract with a defined object

Law n°2014-1545 dated 20 December 2014 was published in the Official Journal on 21 December 2014.

The Law on 25 June 2008 created, on an experimental basis, a new short term employment contract, named the employment contract with a defined object ("contrat à objet défini"). This employment contract has been perpetuated by the Law dated 20 December 2014.

The employment contract with a defined object is reserved to engineers or employees with executive status. This short term employment contract ends when the mission of the employee is accomplished. Such an employment contract can only be concluded if it is permitted by a collective bargaining agreement or a company agreement.

France - Conversations recording and taping at the work place

Please refer to the New Technologies section.

6. Insurance

France - Payment protection insurance – Opinion of the CCSF on the equivalence of guarantee level between payment protection insurances

The Financial Sector Advisory Committee ("CCSF") has published an Opinion dated 13 January 2015 on the equivalence of the level of guarantee in payment protection insurances which follows the Law of 1st September 2010 completed by Laws of 26 July 2013 and 17 March 2014. The CCSF's

opinion defines a transparent three-step method allowing the lender to appreciate with more automaticity the equivalence of the level of guarantee between payment protection insurances. In this respect, a limitative list of the characteristics of the guarantees which can be taken into account to assess the equivalence is appended to this opinion. The CCSF also reinforces the role of the Standardized Information Sheet. Finally, the CCSF has made various commitments among which the assessment of the equivalence of the guarantees solely in the light of the guarantees required by the lenders, to the exclusion of any reference to the relationship between the insurer or the intermediary and his client. This opinion will come into force on 1st October 2015. However, the lenders undertake, as from 1st May 2015, to only use the criteria included in the list of the guarantees' characteristics in order to justify any equivalence refusal.

France - Solvency II – Publication of the Law empowering the Government to implement Solvency II Directive by way of ordinance

On 31 December 2014 the Law n°2014-1662 adapting legislation to EU law in economic and finance fields was published in the Official Journal of the French Republic. It empowers the Government to implement Solvency II Directive by way of ordinance and to implement the delegated and implementing acts provided for by this directive. The ordinance must be adopted by the Government within twelve months as from the promulgation date of this law. The new prudential regime applicable to insurance companies will come into force on 1st January 2016.

France - ORIAS – Publication of the Decree determining the composition and functioning of ORIAS' registration commission

Please refer to the Banking section.

European Law - Solvency II - Publication of Delegated Regulation laying down implementing measures for the Solvency II Directive

Delegated Regulation n°2015/35 dated 10 October 2014, published in the Official Journal of the European Union of 17 January 2015 (the "**Regulation**"), adopts the implementing measures for the Solvency II Directive on the taking-up and pursuit of the business of insurance and reinsurance. It completes all the Solvency II Directive's three pillars on (i) valuation and risk-based capital requirements, (ii) enhanced governance and (iii) increased transparency. The Regulation also completes the rules applicable to insurance groups and details the procedure for assessing the equivalence granted to a third country. The Delegated Regulation, entered into force on 18 January 2015, is binding in its entirety and directly applicable in all Member States.

7. New technologies

France - General authorisation relating to ATU and RTU

On 14 January 2015, the French data protection authority (the CNIL) published a decision relating to a general authorisation allowing the implementation of automated processing of health data collected as part of a Temporary Recommendation for Use (RTU) and Temporary Authorisation for Use (ATU) by laboratories. This general authorisation will allow the processing of health data, considered as sensitive data, pursuant to the filing of a compliance undertaking with the terms of the general authorisation.

France - Recording and monitoring telephone conversations in the workplace

In a decision dated 27 November 2014, the CNIL adopted a new simplified norm n°57 on the automatic processing of personal data relating to the recording and monitoring of telephone conversations in the workplace, to take into account the development of this practice. This simplified norm relates to the processing implemented for the purposes of training, evaluating and improving the quality of the service provided. This simplified norm will allow the entities concerned to no longer submit a so called "normal" declaration to the CNIL regarding the processing covered by the norm but only a declaration of compliance with the content of the simplified norm.

France - CNIL label

After the publication of the "training", "audit procedure" and "digital safe" evaluation document, the fourth evaluation document which will allow the CNIL to label procedures of governance was published in the *Journal Officiel* on 10 January 2015. This label once awarded will constitute a guarantee with regards to the quality and compliance of these services to the requirements imposed by French data protection legislation and the CNIL. Submissions for labelling are now open.

France - E-commerce websites

In view of the increasing number of online purchases by consumers during the sales, the CNIL published on 7 January 2015, guidelines regarding the information which online sellers may collect. The CNIL reminded that the nature of the data collected must always be related to the commercial relationship.

8. Public Law

France - Territorial reform

Law n°2015-29 dated 16 January 2015, published in the O.J. dated 17 January 2015, reduces the number of French regions from 22 to 13 (outside of overseas regions). These new regions shall assume the respective rights and obligations of the regions they replace from 1 January 2016.

France - Promotion of socially responsible public procurement

Order n°2015-90 dated 28 January 2015, published in the O.J. dated 31 January 2015, on the basis of Article 13 of the Law n°2014-856 dated 31 July 2014 on social and solidarity-based economy, specifies that the threshold beyond which contracting authorities concerned by the Law shall adopt a scheme to promote socially responsible public procurement is equal to one hundred million euros a year (without tax).

France - Partial toll freeze

Ministerial Order dated 27 January 2015, published in the O.J. dated 29 January 2015, provides that networks' tolls of France's largest motorway concessions (owned by Cofiroute, APRR, ESCOTA, AREA, SANEF, ASF and SAPN) shall remain at their current levels from 1 February 2015. This toll freeze does not apply however to the whole French motorway network since Ministerial Orders dated 29 and 30 January 2015, published in the O.J. dated 31 January 2015, approve toll increases for some other motorway concessions, as of 1 February 2015, in accordance with the terms of these contracts.

European Law - Financial guarantees for applicants for rail infrastructure capacity

Commission Implementing Regulation n°2015/10 dated 6 January 2015, published in the O.J.E.U dated 7 January 2015, relating to criteria for applicants for rail infrastructure capacity, defines the conditions under which financial guarantees can be imposed by infrastructure managers to applicants in order to ensure that their legitimate expectations about future revenues and utilisation of the infrastructure are safeguarded. This regulation shall apply from 16 June 2015 onwards.

9. Tax

France - Corporate Income Tax

Monthly publication of the FTA's general guidelines

As from January 2015, the French Tax Authorities (**FTA**) general guidelines with respect to businesses and corporations will be published every first Wednesday of each month. FTA's general guidelines with respect to individuals will continue to be published progressively.

Abusive tax schemes

The FTA published, on their website, examples of abusive schemes that are exclusively tax driven. Hence, the following schemes are considered as abusive for French tax purposes: fictitious relocation of businesses carried out in France, aggressive employees' profit sharing plans, and abusive investments in French overseas departments.

France - Real Estate Taxation

Annual tax on office premises: new rates for 2015

The rates of the annual tax on office, commercial and storage premises and parking space areas (**TSB**) were updated as from 1st January 2015 on the basis of the construction cost index published by the National Institute for Statistics and Economic Studies (INSEE).

The 2015 rates of the TSB are 0.61% lower compared to the rates applicable in 2014 (*BOI-IF-AUT-50-20-20141230, n°200, BOI-ANNX-000463-20141230*).

France - Taxation of Investors and Managers

Wages paid to non-residents: withholding tax rates for 2015

The rates of the withholding tax applicable on French-source wages, pensions and annuities paid to non-residents have been published with respect to 2015 (*BOI-IR-DOMIC-10-20-20-10-20141226, n°180*).

Saving plans in shares (PEA and PEA-PME)

The FTA updated their guidelines regarding the saving plans in shares (**PEA**) and the saving plans in shares aiming to finance small and medium-sized enterprises (**PEA-PME**) (*BOI-RPPM-RCM-40-50-10-20150115, BOI-RPPM-RCM-40-50-20-10-20150115, BOI-RPPM-RCM-40-50-20-20-20150115, BOI-RPPM-RCM-40-50-30-20150115, BOI-RPPM-RCM-40-50-40-20150115* et *BOI-RPPM-RCM-40-55-20150115*).

As a reminder, under the PEA tax regime, dividends and capital gains generated by the shares held in the PEA are exempt from income tax provided that an unavailability period of 5 years is respected. The tax regime of the PEA-PME is based on the tax regime applicable to the PEA, except for the type of shares authorized to be held in the PEA-PME and the maximum investment ceiling.

Tax credits on foreign-source income

In order to comply with EU law, the FTA have modified the method used with respect to the calculation of the tax credit equal to French tax relating to foreign source income of French residents. This new method takes into account deductible expenses relating to the taxpayer's personal and family situation (*BOI-INT-DG-20-20-100-20141226, n°43*).

European Law - Parent-subsidiary directive: abusive schemes

The council *directive n°2015/121/EU* dated 27 January 2015 amended the parent-subsidiary *directive n°2011/96/EU* and provided with a common general anti-abuse rule. This anti-abuse rule aims to tackle schemes which are not genuine (*i.e. do not reflect economic reality*) and have been put into place for the main purpose of obtaining a tax advantage that defeats the object or purpose of the parent-subsidiary directive.

International - New Franco-Chinese tax treaty

The new Franco-Chinese tax treaty, signed on 26 November 2013, has been published by the *decree n°2014-1760* dated 31 December 2014.

As a reminder, this new tax treaty lowers the withholding tax rate on dividends distributed by Chinese subsidiaries to their French parent companies holding 25% or more of such Chinese subsidiaries' share capital from 10% to 5%.

International - FATCA

The agreement signed between France and the U.S. for the implementation of the Foreign Account Tax Compliance Act (**FATCA**) was published by the decree n°2015-1 dated 2 January 2015.

As a reminder, FATCA requires foreign financial institutions to disclose to the U.S. Internal Revenue Service the identity of U.S. persons holding accounts in such foreign financial institutions. Non-compliant financial institutions are subject to a 30% withholding tax in the U.S.

International - Amended tax treaty between Singapore and France

Singapore and France have signed an amended tax treaty which improves business relationships between France and Singapore and notably lowers the withholding tax rate applicable to dividend distributions (*from 5% to 10%*). The amended tax treaty also includes anti-abuse provisions.

The new agreement will enter into force as soon as both countries ratify it.

International - Termination of the Franco-Swiss tax treaty on inheritance

France unilaterally terminated the Franco-Swiss tax treaty on inheritance dated 31 December 1953 through a verbal note dated 17 June 2014 and published by the decree n°2014-1270 dated 30 October 2014. The agreement has ceased to apply for persons deceased as from 1 January 2015. The termination of the Franco-Swiss tax treaty on inheritance triggers risks of double taxation.

10. Telecoms

France - ARCEP withdraws its draft decision on wholesale SMS termination on individual mobile networks and places SMS termination markets under supervision

On 28 October 2014, ARCEP notified a draft decision on wholesale SMS termination on individual mobile networks to the European Commission, suggesting that the existing regulation be maintained for another 3 years.

On 28 November 2014, the Commission asked ARCEP for additional justifications, questioning the expansion of instant messaging services and the resulting benefits to consumers in terms of choice, quality and price.

On 29 January 2015, at the end of the two months allotted to the procedure by Article 7 of the Framework Directive, ARCEP withdrew its draft decision given the lack of consensus with the European Commission.

ARCEP also decided to place SMS termination markets under supervision in order to ensure that no regression undermines the benefits that the regulation in effect up until now has conferred on competition and consumers.

The Authority will also analyse any possible interaction between SMS and new Internet services (ex. Whatsapp, iMessage) and the way businesses employ SMS (ex. Confirmation of train ticket booking, confirmation codes for online purchases, etc.).

France - Decree on radio amateur services and management of television reception problems

First of all, the Decree n°2014-1621 of 24th December 2014 entrusted the French Frequency Agency (ANFR) with the mission of conducting the examinations giving access to the operator's certificates of radio amateur services and the mission of issuing and withdrawing these certificates, including in New Caledonia, French Polynesia, Wallis and Futuna Islands and the French Southern and Antarctic Territories.

ANFR previously carried out this mission on behalf of the Minister for Electronic Communications.

The Decree also entrusted the ANFR with the mission of guaranteeing, in collaboration with the Higher Audiovisual Council (CSA), continuity in the DTT reception. The ANFR will thus continue its tasks relating to the management of the fund designed to support digital activities (FAN) in order to ensure continuity in the DTT reception in case of interference due to the reorganization of frequency spectrum.

Lastly, the Decree defined a new tax allocation key amongst operators provided by the Article L.43.I.bis of the French Post and Electronic Communications Code, which would be based on the size of their frequency blocks, and applicable to the French overseas departments.

France - Decree on administration's access to connection data

The implementation Decree of the Article 20 of the French Military Programming Law on administration's access to connection data, published on 24 December 2014, came into force on 1 January 2015.

It provides the conditions under which the State services can access to connection data under the control of the National Control Board of security interceptions ("*Commission nationale de contrôle des interceptions de sécurité*").

An *arrêté* will establish the arrangements for repaying of the additional costs that are identifiable, specific and borne by operators in order to provide information and documents.

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