

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 February 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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For additional information, please speak to your usual contact.

#### Contact

##### **Bruno Knadjian**

Avocat à la Cour, Partner

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

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#### Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law 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 – In discussion in first reading from March 16 to 19, 2015.
- **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 to 19, 2015 and on March 3, 2015.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 before the National Assembly. Examination in Commission from March 17 to 19, 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.
- **Draft law relating to various provisions on the modernisation of the press sector**, n°2224, filed on September 17, 2014 – Adopted in

first reading by the National Assembly on December 17, 2014 and by the Senate on February 5, 2015 - joint parliamentary committee (agreement).

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## Enacted laws

- **Law n°2015-136 of February 9, 2015 relating to sobriety, transparency, information and coordination in connection with exposure to electromagnetic waves** – OJ of February 10, 2015.
- **Law n°2015-177 of February 16, 2015 relating to the modernisation and simplification of law and procedures in relation to justice and home affairs** – OJ of February 17, 2015.
- **Law n°2015-195 of February 20, 2015 relating to various provisions in connection with literary and artistic works property and cultural heritage for the transposition of EU Law into French Law** - OJ of February 22, 2015.

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## 1. Audiovisual

### France - Simplification of the Law and procedure in the audiovisual sector.

The Act n°2015-177 du 16 February 2015 suppresses the duties of the recorder of cinematographic and audiovisual registrars. It provides for a transfer of the responsibility of recording cinematographic and audiovisual registrars to the national centre of film and moving image (Article L. 125-1 of the French film and moving image code).

This Act will enter into force on 16 May 2015.

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## 2. Capital Markets

### France - MiFID II / MIFIR: publication by ESMA of an addendum consultation paper in relation to technical standards

For the purposes of amending the Markets in Financial Instruments Directive (MiFID II) and the Financial Instruments Regulation (MIFIR), the European Securities and Markets Authority (ESMA) published on 18 February 2015 an addendum to the consultation paper dated 19 December 2014, which relates to technical standards on Pre-trade and Post-trade transparency requirements for certain derivatives (in particular, foreign exchange derivatives; credit derivatives and CFDs (contracts for difference)). The addendum is open for consultation until 20 March 2015.

### France - Publication by ICMA (International Capital Market Association) of the Pan-European Corporate Private Placement Market Guide dated February 2015

The International Capital Market Association (ICMA) has published a Pan-European Corporate Private Placement Market Guide in February 2015. This guide aims to develop the private placement market in Europe by providing standardised documentation to European investors and issuers. The guide refers to French and English law model contracts drafted by the EuroPP Working Group and the Loan Market Association (LMA).

## **France - Publication in January 2015 by the EuroPP Working Group and by the LMA of standardized documentation in relation to European private placement transactions**

The EuroPP working group has published two French law model contracts covering private placement loans and note transactions, which can be adapted for other governing laws. These contracts are the final complement to EuroPP charter published in 2014. The Loan Market Association (LMA) has also published English law standardised documentation for use in private placement loans and note transactions.

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### **3. Competition**

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

The French Competition Authority launched on 27 February 2015 a public consultation on its new Procedural Notice relating to the French Leniency Programme. The Authority decided for the third time to revise its leniency programme in order to take into account developments in its decisional practice as well as those introduced by the ECN Model Leniency Programme. With a view to strengthening the attractiveness of leniency for undertakings, the Authority wishes to make the following modifications: (i) provide clarifications regarding the practical implementation of the leniency programme (by strengthening the role of the leniency officer, by specifying the requirements and time for applying for a marker, and by more explicitly describing the investigation procedure of a leniency application), (ii) consolidate the practice of the Authority by integrating certain of its principles developed since the last revision of its Notice in 2009 (by clarifying in particular the undertakings' obligations with regard to cooperation with the Authority and the legal entities that may apply for leniency), and (iii) adapt the Notice to the Model Leniency Programme of 2012 (by including one of the major innovations in relation to the extension of admissibility of summary applications to all applications).

Interested third parties can submit their comments until 20 March 2015.

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### **4. Corporate**

#### **France - Clarification from the AMF on the information obligation pursuant to the Directive *Transparency***

A press release and a recommendation (n°2015-03) dated 3 February 2015 issued by the AMF clarify (i) the implementation terms of the directive *Transparency* and (ii) the rules related to quarterly or provisional financial information.

The law n°2014-1662 dated 30 December 2014 transposed into the French Monetary and Financial Code the following aspects issued from the *Transparency* directive:

- increase from 5 to 10 years of the conservation period for the annual and bi-annual reports;
- extension from 2 to 3 months of the publication time period of the bi-annual financial reports for companies whose securities are admitted to trading on a regulated market; and
- cancellation of the obligation to publish a quarterly financial information, for companies for companies whose securities are admitted to trading on a regulated market.

Within this framework, the AMF encourages listed companies to update their financial agenda and/or to indicate it in their next press release.

The recommendation also provides the following in relation to quarterly or provisional financial information:

- the issuers may elect to publish or not a quarterly financial information or an interim financial information, provided that they are taking a clear and

consistent for the future position in this respect;

-if a quarterly or interim financial information is published, the information must be accurate, precise and fair;

-the principle of equal right to access to information between the different categories of investors and between countries must be complied with; and

-irrespective of the choice made, the AMF reminds that the permanent information obligation applies when information is considered as privileged.

#### **France - AMF recommendations on the shareholders general meetings of listed companies shareholders**

The AMF published a recommendation dated 11 February 2015 describing the result of the propositions previously issued and issues new ones relating to shareholders general meetings of listed companies.

Three new recommendations are issued:

-encourage all the directors to participate in shareholders general meetings;

-in the event of a conflict of interest, it is advised to prevent the concerned parties to participate in the discussions and to the vote at the meetings; and

-better information of the shareholders on the calculation method and the adjustment of the financial conditions provided by the regulated agreements likely to commit the company for more than a year.

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## **5. Employment**

### **France - Personal training account (*compte personnel de formation*): definition of the "knowledge and skills base" (*socle de connaissances et de compétence*)**

Decree n°2015-172 dated 13 February 2015 has been published in the Official Journal on 15 February 2015, in application with the "training law" n°2014-288 dated 5 March 2014.

Trainings eligible to the personal training account include those "enabling to acquire the base of knowledge and skills".

The decree defines these basic skills as the body of knowledge useful for professional involvement and social, civic and cultural education. Seven areas are listed by the decree, including, but not limited to, the ability to communicate in French, computing skills and the ability to work in a team.

Such training will be funded by a contribution owed by employers, which amounts to 1% of the payroll of companies with at least 10 employees (0,55% if less than 10 employees.)

### **France - Functioning of the trade-union and employers organizations financing joint Fund (*le fonds paritaire de financement des organisations syndicales de salariés et des organisations professionnelles d'employeurs*)**

Decree n°2015-87 dated 28 January 2015 has been published in the Official Journal on 31 January 2015.

The Fund finances the organizations mentioned above, pursuant to their missions of general interest (joint management, participation in public policies, and economic, social and union training).

The Fund will start exercising its missions as of the date of publication of the creation statement in the Official Journal.

The Fund is financed by contributions of the French State, and employers of common law on the basis of 0.016% of the payroll.

Besides the rules regarding funds allocation, the Decree provides details on the organisation and functioning of the fund, in particular with regard to the composition and the competence of the executive board and the role of the government representative within the Fund.

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## 6. Insurance

### **France - Advertising for life insurance contracts – Publication of ACPR's Recommendation on advertising communications for life insurance contracts**

The "*Autorité de Contrôle Prudentiel et de Résolution*" ("**ACPR**") published, on 16 February 2015, the Recommendation n°2015-R-01 on advertising communications for life insurance contracts (the "**Recommendation**"). The Recommendation is inspired from the reflections of the joint unit between the "*Autorité des Marchés Financiers*" ("**AMF**") and the ACPR in order to harmonize their expectations regarding advertising communication. The Recommendation is addressed to insurance and capitalisation companies, mutual insurance companies and their unions, provident societies, intermediaries and persons who subscribe a group insurance contract. This Recommendation affects any advertising communication, whatever the media and form of diffusion, for life insurance contracts or financial instruments promoted as units of accounts for life insurance contracts. The ACPR thus issues recommendations of good practices on both elements of general presentation as well as specific implementation modalities (nature of the contract, balanced presentation of the advantages promoted and the risks incurred, presentation of the rate of return, and of commercial operations). This Recommendation, which will enter into effect six (6) months after its publication, completes the previous specific recommendations on certain kinds of contracts (n°2011-R-04, 2011-R-03, 2001-R-02 and 2010-R-01).

### **France - Anti-Money Laundering and Combatting Terrorist Financing ("AML") – Publication of ACPR's Sectorial Principles of Application for the insurance sector**

The ACPR published, on 18 February 2015, its Sectorial Principles of Application ("SPA") on Anti-Money Laundering and Combatting Terrorist Financing for the insurance sector. These SPA revise the SPA adopted in June 2010 and aim at clarifying the texts which are currently in effect, taking into account the legislative amendments and the experience of the ACPR through its on-site checks on the one hand, and of the insurance companies through the application of this regulation on the other hand. These SPA are addressed to all insurance companies which are subject to the AML regulation, as well as to banking entities holding one or several insurance company(ies). These SPA complete and specify the ACPR's guidelines, including those on the reporting of suspicion, information exchange inside and outside a group, the introduction by a third party, and asset management.

### **European Law - Sales of insurance and pension products via the internet – Publication of EIOPA opinion**

On 3 February 2015, the European Insurance and occupational Pensions Authority ("**EIOPA**") published an opinion on consumer protection issues relating to sales of insurance and pension products via the internet. EIOPA wants to ensure that consumers' interests are adequately protected when purchasing insurance and pension products online. EIOPA recommends, among others, that national competent authorities take the necessary and proportionate supervisory actions to ensure that online distributors comply with a duty of advice, if such a duty exists, and also ensure that consumers are provided with appropriate information on the selling process of the online distributor with a view to avoiding unsolicited, or mistakenly concluded, contracts. Within six (6) months from the date of publication of this opinion, national competent authorities are requested to provide feedback and, where investigations or regulatory/supervisory actions are undertaken in view of these recommendations, provide details of those investigations/actions.

## European Law - Solvency II – EIOPA issues first set of guidelines

On 2 February 2015, EIOPA published on its [webpage](#) its first set of guidelines under Solvency II in each of the official languages of the EU. These Guidelines are addressed to national competent authorities or financial institutions in order to ensure common, uniform and consistent application of Union law as well as to establish consistent, efficient and effective supervisory practices. National competent authorities have to confirm whether they comply or intend to comply with the guidelines within two (2) months of the issuance date. If a national competent authority does not comply or does not intend to comply with these guidelines, it should inform the EIOPA and explain the reasons of its decision.

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### 7. Intellectual Property

#### France - Act containing various provisions to adapt French law to the European Union law in the sector of literary and artistic property and cultural heritage

The [Act n°2015-195 of 20 February 2015](#), aiming at the transposition into French law of various dispositions of (i) the [Directive 2011/77/UE on the term of protection of copyright and certain related rights](#), (ii) the [Directive 2012/28/EU of 25 October 2012](#) on certain permitted uses of orphan works, and of (iii) the [Directive 2014/60/EU of 15 May 2014](#) on the return of cultural objects unlawfully removed from the territory of a Member State, was published in the Official Journal of 22 February 2015.

The bill had been the subject of a previous analysis in our [Legal and regulatory Newsletter of October 2014](#).

This Act entered into force on 23 February 2015.

#### France - Creation of the joint conciliation board specific to the protection of new plant varieties

The [Decree n°2015-164 of 12 February 2015](#), enforcing [Article L.623-24 of the French intellectual property code](#), determines the composition and operation of the joint conciliation board, which must be seized in case of a disagreement between an employee and the employer when a new variety of plant was discovered by the employee, in particular during the execution of his employment contract or in the sector of the company's activities ([Article D. 623-58-1 of the French intellectual property code](#)).

It also specifies that the joint conciliation board is held at the headquarters of the competent national instance for new plants varieties protection.

This Decree entered into force on 15 February 2015.

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### 8. New technologies

#### France - Blocking of "sensitive" websites

Decree n°2015-125 of 5 February 2015 implementing Article 6-1 of Law n°2004-575 on Confidence in the Digital Economy allows administrative authorities to request Internet service providers to block within 24 hours access to child pornography websites and to websites inciting or condoning acts of terrorism. The Decree entered into force on 7 February 2015.

#### France - Digital Agency

Decree n°2015-113 of 3 February 2015 created the so-called "Digital Agency" (*Agence du Numérique*) within the Ministry of the Economy, Industry and Digital. This new institution will be in charge of pooling and strengthening three existing poles: Very High-Speed Mission (in relation to the roll-out of very high-speed broadband), the French Tech (dedicated to the development of start-ups) and the Delegation of Internet Uses (the mission of which is to promote digital diffusion).

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## 9. Public Law

### France - Railway reform

Seven Decrees dated 10 February 2015, published in the O.J. dated 11 February 2015, precise the management and governance principles defined by Law n°2014-872 dated 4 August 2014 on railway reform concerning the new integrated public railway group resulting from the merger of SNCF and RFF (French National Rail).

Three Decrees (Decree n°2015-137, n°2015-138 and n°2015-140) define the missions, administrative organization, operation of governance bodies, economic and financial control of the State on each entity of this new railway group consisting of SNCF, SNCF Réseau and SNCF Mobilités, and the way each entity interacts with the others. These Decrees shall enter into force at the date where the national regulator for railway safety (Etablissement public de sécurité ferroviaire, EPSF) will deliver its authorizations to SNCF Réseau and SNCF Mobilités, and no later than 1 July 2015. Two other Decrees (Decree n°2015-141 and n°2015-142) precise the special employment status of the employees of this railway group and provide rules concerning the operation of employees' representative bodies.

Two Decrees (Decree n°2015-139 and 2015-143), relating to SNCF Réseau, i) prohibit and make subject to criminal penalties the disclosure of confidential information to any person who is not working within charging and allocation capacity services of infrastructure managers and ii) define a way to align rules on safety of railway traffic and interoperability with Law n°2014-872. These Decrees shall apply at the date where EPSF will deliver its authorization to SNCF Réseau and no later than 1 July 2015.

### European Law - Procedure of licencing railway undertakings

Commission Implementing Regulation n°2015/171 dated 4 February 2015, published in the O.J.E.U dated 5 February 2015, having regard to Directive 2012/34/ UE establishing a single European railway area, sets out the details for the use of a common template for license documents and provides for certain aspects of the procedure for granting a licence. This regulation shall apply from 16 June 2015 onwards.

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## 10. Real Estate

### France - Commercial Development

The Decree n°2015-165 dated 12 February 2015 published in the Official Journal on 14 February 2015, pursuant to the Law n°2014-626 dated 18 June 2014 ( "Loi Pinel"), amended the Title V of the French Commercial Code's Regulatory Part related to commercial development. Notably, this Decree sets out the new conditions for obtaining commercial authorisation for projects which require a building permit. From 15 February 2015, commercial authorisation's requests will be consolidated with the building permit requests.

### France - Integrated Housing Procedure ("PIL")

The Decree n°2015-218 dated 25 February 2015 published in the Official Journal on 27 February 2015 specifies the conditions of the Integrated Housing Procedure created by the Order n° 2013-889 dated 3 October 2013. This Decree, applicable to the procedures started after 27 February 2015, notably specifies (i) the documents which are necessary for processing the case, (ii) the competent public authority conducting the procedure and (iii) the conditions for consulting the competent environmental authority.

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## 11. Tax

### France - Corporate Income Tax

#### ***Offsetting the CICE against corporate income tax instalments***

Previously, the French Tax Authorities (FTA) considered that the tax credit for encouraging competitiveness and jobs (CICE) could be offset against corporate income tax of the subsequent year, but not against corporate income tax instalments.

The FTA updated their guidelines and now consider that any surplus of CICE which could not be entirely offset against the amount of corporate income tax for a given tax year can be offset against corporate income tax instalments for the subsequent year ([BOI-BIC-RICI-10-150-30-10-20150204](#); [BOI-BIC-RICI-10-150-30-20-20150204](#); [BOI-IS-DECLA-20-10-20150204](#); [BOI-IS-GPE-30-30-30-40-20150204](#)).

#### ***Interest deduction limitation rules: updated rates***

The FTA have updated the maximum interest rate which is deductible for tax purposes under the provisions of Article 39-3°-1 of the French Tax Code. The reference rate on deductible interest expenses for the accounting period ending between 31 December 2014 and 30 March 2015 ranges from 2.72% to 2.79% ([BOI-BIC-CHG-50-50-30-20150204](#), n°40).

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

#### ***Payroll tax: 2015 rates***

The rates of the payroll tax have been updated in respect of 2015 ([BOI-TPS-TS-30-20150204](#); [BOI-TPS-TS-40-20150204](#)). As a reminder, the French payroll tax is due by employers established in France which are not subject to value added tax on at least 90% of their turnover. The tax is levied according to a progressive scale on the wages paid to employees during each year.

#### ***FTA's 60 days delay to answer: exclusion of certain holding companies***

In principle, when auditing companies, French tax inspectors have 60 days to answer the taxpayer's comments (*observations du contribuable*). According to the FTA's updated guidelines, this deadline does not apply to holding companies owning investment shares for a value exceeding EUR 7,600,000 ([BOI-CF-IOR-10-50-20150204](#)).

#### ***Occult activities: updated deadlines and proceedings***

The tax audit of a company's statutory accounts carried out by the FTA "on site" (*sur place*) cannot be extended for more than 3 months for companies whose turnover does not exceed certain limits ([Article L. 52 of the French Tax Procedure Code](#)). However, the FTA have updated their guidelines and consider that this deadline does not apply to taxpayers who have engaged in occult activities ([BOI-CF-IOR-50-20-20150204](#); [BOI-CF-PGR-10-70-20150204](#); [BOI-CF-PGR-20-30-20150204](#)).

### France - Taxation of Investors and Managers

#### ***Saving plans in shares: management by investment companies established in EU member States***

According to the FTA's updated guidelines, it is now possible for investment companies established in a EU member State to manage saving plans in shares (PEA) and saving plans in shares dedicated to financing small and medium-sized enterprises (PEA-PME). Such PEAs and PEA-PMEs remain entirely subject to French law ([BOI-RPPM-RCM-40-50-10-20150210](#)).



### **Real estate capital gains of non-residents: new tax rate**

The FTA have updated their guidelines pursuant to Article 60 of the French Amending Finance Act for 2014 which extended to non-EU residents the benefit of the reduced tax rate of 19% applicable on capital gains realised upon the sale of French properties. Such reduced tax rate previously benefited to EU residents only (BOI-RFPI-PVINR-20-20-20150223, n°50).

As a reminder, capital gains realized by non-residents on the sale of (i) French properties, (ii) rights to such French properties, and (iii) shares of predominantly real estate companies are subject to a levy at the ordinary tax rate of 33.1/3%, reduced to 19% for individuals, regardless of their country of residence (Article 244 bis A of the French Tax Code).

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## **12. Telecoms**

### **France - Adoption of the law on exposure of the general public to electromagnetic waves**

The law relating to sobriety, transparency, information and dialogue on exposure to electromagnetic waves was passed on 29 January 2015 by the National Assembly.

This law entrusts the French Frequency Agency (ANFR) with new missions and strengthens its current missions.

The law underlines the importance of sobriety in terms of exposure of the public to electromagnetic waves. It provides provisions to ensure public access to better information relating to electromagnetic waves.

### **France - ARCEP's opinion on the Decree on the protection of internet users**

On 20 January 2015, ARCEP published its opinion n°2015-0001 on the Decree of 5 February 2015 on the protection of internet users against websites promoting terrorism or websites with paedophile content. This Decree provides that in the absence of reaction from publishers and hosters, a "blacklist" of websites with paedophile content or promoting terrorism will be forwarded to the internet service providers that will have to quickly block access to these sites by a DNS blockade.

ARCEP expressed its comments to the Minister of the Interior in terms of implementation procedures and deadlines.

CNIL also expressed its opinion on 15 February 2015.

### **France - ARCEP's decision establishing the conditions of use of radio frequencies (Short Range Devices)**

In its decision n°2014-1263 on 6 November 2014, ARCEP determined the conditions of use of radio frequencies (Short Range Devices). These technical conditions are mentioned in the annex for each frequency band.

Under these conditions, the use of frequencies (Short Range Devices) listed in the decision will not be subject to individual authorisations.

ARCEP specifies that these devices must not cause harmful interference to radio communication stations that was granted a primary allocation.

### **France - ARCEP's decision designating the body responsible for the audit of costs and revenues of "PagesJaunes"**

In its decision n°2015-0109 of 3 February 2015 designating the body responsible for the audit of costs and revenues of "PagesJaunes" relating to the "printed directory" for the universal service in 2013 and 2014, ARCEP chose the firm "Mazars".

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