

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 June 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 on class actions for discrimination and fight against inequalities**, n°1699, filed before the National Assembly on January 14, 2014 – Adopted in first reading by the National Assembly on June 10, 2015.
- **Draft law relating to 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 on March 26, 2014 – Adopted in first reading by the National Assembly on March 24, 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 – Amended in first reading by the National Assembly on June 24, 2015 - Joint committee (disagreement).
- **Draft law relating to energy transition towards green growth**, n°2188, filed on July 30, 2014. Adopted in new reading by the National Assembly on May 26, 2015 – Under examination in new reading at the Senate from July 9, 2015.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 – Adopted by the National Assembly on April 14, 2015.
- **Draft law for growth, activity and equal economic opportunities**, n°2447, filed on December 11, 2014 – Adopted in new reading by the

National Assembly on June 18, 2015 – Amended in new reading by the Senate on July 1, 2015.

- **Draft law relating to duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in first reading by the National Assembly on March 30, 2015.
- **Draft law relating to intelligence**, n°2669, filed on March 19, 2015 – Final adoption by the National Assembly on June 24, 2015.
- **Draft law relating to the second digital dividend and the pursuit of the modernisation of digital television transition**, n°2822, filed at the National Assembly on May 28, 2015 – Adopted in first reading by the National Assembly on June 23, 2015.
- **Draft law relating to social dialogue and employment**, n°2739, filed at the National Assembly on April 22, 2015 – Adopted in first reading by the National Assembly on June 2, 2015 – Amended in first reading by the Senate on June 30, 2015.

Enacted laws

- **Law n°2015-714 of June 24, 2015 which aims at clarifying home invasion crimes** - OJ of June 25, 2015.
- **Ordinance n°2015-682 of June 18, 2015 for the simplification of employers' social declarations** – OJ of June 19, 2015.
- **Ordinance n°2015-681 of June 18, 2015 for the simplification of companies' tax mandatory declarations** – OJ of June 19, 2015.
- **Ordinance n°2015-615 of June 4, 2015 on the launch and use of fertilizers, additives for fertilizers and substrates for crops** – OJ of June 5, 2015.
- **Law n°2015-588 of June 2, 2015 relating to reinforcement of the protection of civilian facilities containing nuclear materials** – OJ of June 3, 2015.

1. Banking

France - Legal interest rate

The ministerial decree (*arrêté*) dated 24 June 2015 relating to the legal interest rate determination ([J.O n°0148 dated 28 June 2015](#)) specifies the applicable legal interest rate for the second semester 2015. The legal interest rate is (i) for receivables of individuals acting for purposes other than professional: 4,29 %; and (ii) in any other cases: 0,99%.

The ministerial decree (*arrêté*) dated 24 June 2015 entered into force on 1st July 2015.

France - Usury rate

The notice (*avis*) dated 24 June 2015 relating to the implementation of articles L. 313-3 of the French consumer code and L.313-5-1 of the French monetary and financial code regarding usury rate ([J.O n°0147 dated 27 June 2015](#)) specifies the threshold of usury rate applicable as from 1st July 2015.

European Law - Interchange fees for card-based payment transactions

The regulation (EU) 2015/751 of the European Parliament and of the Council dated 29 April 2015 on interchange fees for card-based payment transactions ([JOUE L123/1 dated 19 May 2015](#)) lays down uniform technical and business requirements for card-based payment transactions carried out within the Union. In particular, it provides that payment service providers shall not offer or request (i) a per transaction interchange fee of

more than 0,2% of the value of the transaction for any debit card transaction and (ii) a per transaction interchange fee of more than 0,3% of the value of the transaction for any credit card transaction.

The regulation (EU) 2015/751 entered into force on 8 June 2015.

2. Capital Markets

European Law - Pension fund clearing exemption extended by two years

The European Commission has published on 5 June 2015 a delegated regulation that extends the transitional clearing exemption for pension scheme arrangements by two years. As such, pension funds meeting certain requirements are not required to clear OTC derivatives until 16 August 2017. The requirement to clear trades would have forced pension funds to post collateral, but it is rare that pension funds hold significant amounts of cash or liquid assets. Pension funds will have to continue to research technical solutions regarding this matter.

3. Corporate

France - Employee representatives at boards of directors and supervisory boards: further details regarding their corporate office and training

[Decree n°2015-606 of 3 June 2015](#), enacted in relation to Law n°2013-504, and published at the Official Journal on 5 June 2015, sets the time the representatives need to carry out their corporate office, and determines the details of their training. These provisions came into effect on 6 June 2015.

The board of directors, or the supervisory board, must determine the period of time necessary for them to perform their corporate office. This time period shall not be less than 15 hours, and more than half of the monthly working time.

Furthermore, after consulting the representatives concerned, the board of directors must establish the content of the training program, it being specified that the aim of such training program is the acquisition and development of the technical knowledge necessary to the performance of the representatives' corporate office.

France - AMF Position/Recommendation on acquisition/disposal of major assets

In a [position-recommendation n°2015-05 of 17 June 2015](#), the French market authority advocates the prior consultation of the shareholders' meeting for the disposal of major assets under certain conditions. The French regulatory authority also specifies measures concerning the market information and measures aiming at promoting best practices in order to demonstrate compliance with the social interest of the issuer in an acquisition/disposal of major assets.

4. Employment

France - Social declarations simplified by ordinance (*ordonnance*)

[Ordinance n°2015-682 of June 18, 2015](#) related to the simplification of social declarations was published in the Official Journal of June 19, 2015.

This Ordinance establishes the "identifying social declaration" (*Déclaration sociale nominative - DSN*) as the only required social declaration and

specifies the scope of the statements to be gathered within the DSN.

As a reminder, the DSN will replace, as of January 1st, 2016, almost all social statements that currently fall on businesses. Thus, the DSN will replace the current "annual declaration of social data" (*Déclaration annuelle des données sociales - DADS*).

5. Insolvency proceedings

European Law - Recast Regulation (EU) 2015/848 of the European Parliament and of the Council dated 20 May 2015 on insolvency proceedings

The Recast Regulation of the European Parliament and of the Council on insolvency proceedings, amending Council Regulation (EC) n°1346/2000, appeared in the Official Journal on 5 June 2015 but only applies to relevant insolvency proceedings from 26 June 2017.

The Recast Regulation aims to extend its scope of application by revising the definition of insolvency proceedings to include the proceedings in which the debtor retains some control albeit subject to the control / supervision by a court / a judicial administrator. French pre-insolvency proceedings are not included.

It clarifies the notion of Centre of Main Interests (COMI), improves the jurisdictional rules to avoid "*forum shopping*" and requires the court to examine its jurisdiction *ex officio* prior to the opening of insolvency proceedings. It also improves the cooperation between main and secondary proceedings, particularly by abolishing the requirement that secondary proceedings must be winding-up proceedings.

With respect to groups of companies, coordination of the insolvency proceedings concerning different members of the same group of companies will be improved: now, clear rules of cooperation and communication between the liquidators and courts are set up.

With regard to the creditors, a publicly accessible electronic register will list the court decisions in cross-border insolvency cases. In this respect, national registers will communicate amongst themselves. The Recast Regulation also introduces standard forms for the lodging of claims.

6. Intellectual Property

France - Clarification regarding the geographical indications protecting industrial and craft products

[Decree n°2015-595 of 2 June 2015](#) enforcing [Article 73 of Act n°2014-344 of 17 march 2014](#) specifies the conditions for the filing of applications for approval and amendment requests relating to the specifications of geographical indications protecting industrial and craft products as well as their review by the French Intellectual Property Office ("INPI").

This Decree provides in particular that the INPI implements a public access to the list of these geographical indications, to their approved specifications, as well as to their operators, i.e. any natural or legal person who participates to the production or modification in accordance with the geographical indications' specification.

The Decree also clarifies the conditions for local and regional authorities and geographical indication's holders to file an opposition to the registration of a trademark.

This Decree entered into force on 4 June 2015.

France - New notification procedure for the local and regional authorities in case of filing of a trademark application including their name

[Decree n°2015-671 of 15 June 2015](#) states the conditions of the notification procedure implemented for the local and regional authorities as well as public inter-municipal cooperation establishments in case of filing of a trademark application including their name.

This Decree provides in particular that this free-of-charge monitoring service created by [Article 73 of Law n°2014-344 of 17 March 2014](#) is carried out by the INPI on electronic demand.

This Decree indicates that the notification is sent by electronic means within five working days of the publication of the application for a French trademark or within three weeks of the publication of a Community trademark or International registration.

This Decree entered into force on 18 June 2015.

European Law - Agreement of Council and European Parliament on the reform of the "Trademark Package"

A compromise agreement on the reform of [Regulation n°207/2009 on the Community trademark](#) and the [Directive 2008/95/EC to approximate the laws of the Member States relating to trade marks](#) was adopted by the Council and the European Parliament. Both draft texts were published on 8 June 2015. On 10 June 2015, the Council's Permanent Representatives Committee approved this compromise agreement.

After these important steps, these texts would need to be endorsed by the Legal Affairs committee of the European Parliament, come back to the Council for political agreement, be translated by legal-linguistic experts and finally adopted by the Council and the European Parliament.

7. Procedures

France - Criminal procedure

Access to the file of criminal records and the file of requested persons

[Decree n°2015-648 published on 10 June 2015](#) modifies the rules on access to the file of criminal records and the file of requested persons by providing agents of the national center for private security activities and prefectorial agents with more extensive access to this information in the scope of administrative inquiries.

Compensation for civil parties

[Decree n°2015-689 published on 18 June 2015](#) aims at improving the compensation procedure for civil parties, as well as the management of detained persons' nominative accounts. Detained persons can notably place money on the part of the account reserved for the compensation of civil parties.

European Law - Rules of Procedure of the General Court of the European Union

[The Practice Rules for the Implementation of the Rules of Procedure of the General Court of the European Union](#) were published on 18 June 2015 in the Official Journal of the European Union. They aim at explaining, specifying and completing certain provisions of the rules of procedure of the General Court published on 23 April 2015, notably by giving indications on how to present and lodge procedural documents and exhibits. On 18 June 2015 was also published in the Official Journal of the European Union the legal aid form, provided for in the rules of procedure, accommodating the extension of legal aid provision to legal persons.

8. Public Law

European Law - Modalities for the calculation of the costs directly incurred as a result of operating train services

Commission Implementing Regulation 2015/909/EU dated 12 June 2015, published in the O.J.E.U dated 13 June 2015, having regard to Directive 2012/34/ EU establishing a single European railway area, sets out the details for the calculation of the costs directly incurred as a result of operating train services in connection with the definition of the charges applicable for the minimum access package and access to infrastructure connecting service facilities. This regulation shall apply from 1 August 2015 onwards.

9. Real Estate

France - Housing leases' rent restriction

The [Decree n°2015-650](#) dated 10 June 2015 published in the Official Journal of 12 June 2015, pursuant to article 17, I of Law n°89-462 dated 6 July 1989 created by "ALUR" Law, defines the implementation conditions of the residential leases' rents restriction. This measure provides for a cap on rents at 20% of a standard comparative rent set by an order from the state representative (*préfet*). The towns in which the rents are restricted pursuant to this new legislation are those listed in the Decree n°2013-392 dated 10 May 2013 related to the annual tax on unoccupied housing.

France - Implementation of the housing leases' rent restriction in Paris

The [Prefect Order n°2015-176-0007](#) dated 25 June 2015, pursuant to the Decree n°2015-650 dated 10 June 2015, defines the conditions of implementation of the rental control mechanism, defined in a) above, in Paris. This Order defines the amount of the standard comparative rent in fourteen different geographic zones in Paris. This mechanism will enter into force on 1 August 2015 in Paris.

10. Tax

France - Real estate tax

Exemption from capital gain in the case of a transferee's commitment to build social housing

The French Tax Authorities ("FTA") have updated their tax doctrine in order to integrate the changes made by the [French Amending Finance Act for 2015, article 9](#), and the [decree dated 3 June 2015](#), regarding the exemption from the real estate capital gain on transfers in favor of social housing organisms (article 150 U of the French Tax Code ("FTC")).

Indeed, the tax exemption on real estate capital gains applies to transfers of built or not built properties made as from 1st September 2014 in favor of transferees which take the commitment to build social housing within four years. ([BOI-RFPI-PVI-10-40-110](#))

Exemption from company real estate contribution ("cotisation foncière des entreprises" or "CFE"), company value-added contribution ("contribution sur la valeur ajoutée des entreprises" ou "CVAE") and estate tax on built properties ("taxe foncière sur les propriétés bâties" ou "ETBP") in favor of companies located in special districts

The FTA have updated their doctrine in order to integrate the temporary exemptions on CFE, CVAE and TFPB introduced by the [article 49 of the Act n°2014-173 dated 21 February 2014](#), regarding town planning and urban cohesion about existing or created commercial activities in town's policy priority district. These exemptions are reserved to very small firms (less than 10 employees and annual turnover or total assets which do not exceed 2 million euros) engaged in a commercial activity.

These provisions apply as from 1st January 2015. [BOI-CVAE-CHAMP-20-10](#), [BOI-IF-TFB-10-160](#), [BOI-IF-TFB-10-160-60](#), [BOI-IF-CFE-10-30-50](#), [BOI-IF-CFE-10-30-50-60](#), [BOI-ANNX-000229](#)

Income tax reduction in favour of rental investments: The « Pinel » regime

The FTA have updated their doctrine and draw the consequences of the [Act N°2014-1654 dated 29 December 2014](#). Article 5 softens the rules for the application of the « Duflot » regime (duration of the commitment to rent, tax reduction rate) and renames this regime, the « Pinel » tax reduction.

Since 1st September 2014, this new system has increased the duration of the commitment to rent from six to nine years, with a possibility to further extend this duration to twelve years, upon irrevocable option of the taxpayers.

The tax reduction rate is equal to 12% when the duration of the commitment to rent is equal to six years but this rate is increased to 18% for a commitment to rent of nine years.

Taxpayers are not allowed to benefit from the « Pinel » regime for more than two housing units (acquired or built) per year. ([BOI-IR-RICI-360-30-10-20150611](#))

Exemption of land tax on properties built for the intermediary housing units

The FTA have modernized their doctrine in order for them to comply with the tax legislation in force. Indeed, [Article 73 of the Act n°2013-1278 dated 29 December 2013](#) provides an exemption of land tax on built properties in favor of new housing used as principal dwelling. This article is applicable insofar as these new housing benefit from the value added tax (VAT) reduced rate, as defined under Article 279-0 Bis A of the FTC.

Now codified in Article 1384-0 of the FTC, this exemption is allowed for duration of twenty years from the year following the completion of construction.

Nevertheless, in case of mixed use residences, this exemption stops to be enforceable for the part of construction affected to the commercial or professional use. ([BOI-IF-TFB-10-75-20150603](#))

France - Tax audits and litigations

Offenses concerning serious failures: extension of the scope of penalty

The FTA have updated their doctrine to take into account the amendments to Article 1731 Bis of the FTC made by the Amending Finance Act for 2014 n°2014-1655 dated 29 December 2014.

Article 1731 Bis of the FTC provides a tax penalty for offenses concerning serious failures.

In order to fight effectively against tax fraud, Article 100 of the Amending Finance Act for 2014 strengthens, as from the tax income statement of 2015, penalties for taxpayers charged with serious failures by depriving them of the possibility to impute tax benefits from income tax and on wealth tax. This Act also deprives them to impute tax benefits regarding the deficit part of income tax. ([BOI-PAT-ISF-60-20-20150608](#))

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