

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 October 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 biodiversity**, n°1847, filed on March 26, 2014 – Adopted in first reading by the National Assembly on March 24, 2015.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 – Adopted in first reading by the National Assembly on April 14, 2015 and by the Senate on October 6, 2015 – Under examination in new reading by the National Assembly from November 16 to 20, 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 – In discussion in public session at the Senate.
- **Draft law relating to the fight against discrimination at the rate of social precariousness**, n°378, filed at the Senate on March 31, 2015 – Adopted in first reading by the Senate on June 18, 2015.
- **Draft law relating to freedom of creation, architecture and heritage**, n°2954, filed at the National Assembly on July 8, 2015 – Adopted in first reading by the National Assembly on October 6, 2015.
- **Draft law relating to the cancellation of commercial advertising in public television youth programmes**, n°656, filed at the Senate on July 24, 2015 – Adopted in first reading by the Senate on October 21, 2015.

- **Draft law relating to various provisions in connection with risk prevention for the transposition of EU Law into French Law**, n°2982, filed at the National Assembly on July 15, 2015 – Adopted in first reading by the National Assembly on September 16, 2015 - Amended in first reading by the Senate on October 26, 2015 – Joint Committee meeting.
- **Draft law which ratifies ordinance n°2015-378 dated April 2, 2015 that transposes directive 2009/138/CE on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)**, n°3005, filed at the National Assembly on July 22, 2015.
- **Draft law for the enforcement of measures relating to the 21st century justice**, n°661, filed at the Senate on July 31, 2015 – In discussion in public session at the Senate on November 4 and 5, 2015.
- **Draft law relating to the free reuse and modalities of the public sector information**, n°3037, filed at the National Assembly on July 31, 2015 – Adopted in first reading by the National Assembly on October 6, 2015 – Amended in first reading by the Senate on October 26, 2015.
- **Draft law for the surveillance of international electronic communications**, n°3042, filed at the National Assembly on September 9, 2015 – Adopted in first reading by the National Assembly on October 1, 2015 – Amended in first reading by the Senate on October 27, 2015 - Joint Committee meeting.
- **Draft finance law for 2016**, n°3096, filed at the National Assembly on September 30, 2015 – The text of the first part was adopted by the National Assembly on October 20, 2015.
- **Draft law on the financing of Social Security for 2016**, n°3106, filed on October 7, 2015 before the National Assembly – Adopted in first reading by the National Assembly on October 27, 2015.

Enacted laws

- **Law n°2015-1350 of October 26, 2015 which authorises the ratification of the protocol to eliminate the illicit trade in tobacco products** – OJ of October 27, 2015.
- **Ordinance n°2015-1341 of October 23, 2015 relating to the legislative part of the Code between the public and the administration** - OJ of October 25, 2015.
- **Ordinance n°2015-1324 of October 22, 2015 relating to technological risk prevention plans** – OJ of October 23, 2015.
- **Ordinance n°2015-1288 of October 15, 2015 relating to the simplification and modernisation of family law** – OJ of October 16, 2015.
- **Law n°2015-1268 of October 14, 2015 relating to the updating of the French overseas departments' law** – OJ of October 15, 2015.
- **Law n°2015-1267 of October 14, 2015 relating to the second digital dividend and the pursuit of the modernisation of digital television transition** – OJ of October 15, 2015.
- **Law n°2015-1236 of October 7 2015 relating to the ratification of the agreement between France and the European Union which aims at applying, as for Saint Barthélémy, the legislation of the Union on the savings taxation and the administration cooperation in tax matters** – OJ of October 8, 2015.

- **Ordinance n°2015-1247 of October 7, 2015 with respect to products of the vine** – OJ of October 8, 2015.
 - **Ordinance n°2015-1246 of October 7, 2015 relating to signs of identifying quality and origin** – OJ of October 8, 2015.
 - **Ordinance n°2015-1244 of October 7, 2015 relating to the experimental establishment of plant protection products saving Certificates** – OJ of October 8, 2015.
 - **Ordinance n°2015-1242 of October 7, 2015 relating to the organisation of the surveillance of animal health, plant health and food** – OJ of October 8, 2015.
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1. Capital Markets

France - AMF – Consultation on the communication on social media by the management companies and the debt securities issuers

The AMF launched a public consultation lasting until 13 November 2015 related to communication on social media by the management companies, the debt securities issuers and the funds distributors.

Such consultation aims at specifying the existing rules and notably the ones contained in the AMF recommendation 2014-15 of the AMF related to communication by listed companies. The consultation relates mainly to the type of targeted public, the archiving policy of the published information, the treatment and the responsibility of the publications made by users other than the management companies, the issuers or the distributors, the prohibition of publication of notice whose commercial nature would not be identifiable, the internal identification and within the distributors of the authorised persons to communicate on behalf of the management company or the debt securities issuer.

France - AMF - Consultation on the possibility for an investment fund to provide loans

The AMF launched a public consultation lasting until 4 December 2015 on the possibility for French law to lend directly to corporate entities. Such consultation follows the adoption of the European regulation 2015/760 on which will enter into force in December 2015 on long-term investment funds, regulation which authorises on certain conditions, funds to lend directly to corporate entities.

France - AMF - Public consultation in order to adjust book II of the general regulation of the AMF following the implementation of the revised transparency directive

The AMF launched a public consultation which ended on 30 October 2015 in order to adjust book II of the general regulation of the AMF following the implementation of certain provisions of the revised Transparency Directive. The modifications subject to consultation related to provisions on threshold crossings, the ESMA technical standards, the list of the financial instruments published by ESMA, the removal of the pro-forma financial information, the language of the regulated information and the choice of the home state member.

France - ESMA - Public consultation on sound remuneration policies under the UCITs V directive

ESMA launched a public consultation on sound remuneration policies applicable to AIFs and UCITs from 23 July 2015 to 23 October 2015. Such consultation mainly aims to harmonise the sound remuneration policies applicable to AIFs and UCITs managers.

European Law - European Parliament - Adoption on 29 October 2015 of a European regulation on transparency of securities financing transactions and of reuse

The European Parliament adopted on 29 October 2015 a European regulation on transparency of securities financing transactions which create a disclosure obligation to trade depositories for all the securities financing transactions except for operations concluded with a central bank. Furthermore, the collateral securities will not be able to be used again as collateral in another transaction unless explicit consent is obtained from the counterparty.

The investment funds will be subject to increased disclosure obligations from the date of entry into force of the regulation. Such regulation must now be approved by the European Council and published in the Official Journal of the European Union in order to be fully effective.

2. Employment

France - Search requirements in order to find an investor

The Decree n°2015-1378 dated 30 October 2015, pursuant to the Law n°2014-384 dated 29 March 2014 provides for the search requirements in order to find an investor.

Pursuant to the Law, companies, which are not under judicial redress or liquidation, over 1,000 employees, contemplating collective dismissals, are compulsory to look for an investor before closing an establishment.

The Decree specifies the scope and requirements to comply with the legal obligation.

Closing of an establishment is defined as (i) the complete closing of the establishment business which would lead to a social plan with envisaged collective dismissals at the establishment or the company level or (ii) merging of several establishments outside their employment area or (iii) the transfer of an establishment outside its employment area, which would lead to a social plan with envisaged collective dismissals.

The definition of the establishment must be understood as an economy entity which must implement a Works council.

France - Black list for companies condemned for illicit work

The Decree n°2015-1327 dated 21 October 2015, pursuant to the Law n°2014-790 dated 14 July 2014, provides for the modalities of the black list created for companies and services suppliers condemned for illicit work.

When a physical or legal person is condemned for undeclared work, illegal bargaining, illegal subcontracting, illicit supply of workers or for hiring a foreigner without a working title, the judge can give a fine, and, whatever the amount, the publication of the decision.

The publication is made under a specific section on the Ministry of labor website. The search engines are not allowed to index the list, the access to the list is only voluntary.

France - Maximum number of trainees

The Decree n°2015-1359 dated 26 October 2015, pursuant to the Law n°2014-788 dated 10 July 2014, specifies the maximum number of trainees welcomed in a company.

Companies over 20 employees are allowed to welcome trainees up to 15% of their workforce. Companies of less than 20 employees are allowed to welcome three trainees to a maximum.

The academic authority can allow a higher number of trainees for compulsory trainings included in an academic program, up to 20% of the workforce for companies over 30 employees, and up to 5 trainees for companies of less than 30 employees.

Failure to comply allows the DIRECCTE to give an administrative fine which cannot exceed EUR 2,000 per trainee or EUR 4,000 in case of repeat offence.

3. Environment

France - Procedure of elaboration/development of the Soil Information Sectors

The Decree n°2015-1353 dated 26 October 2015, published in the Official Journal of 28 October 2015, details the procedure of elaboration of the Soil Information Sectors.

The Law n°2014-366 dated 24 March 2014 for access to housing and to a renewed urban planning, also known as "Law ALUR", modified the Article L. 125-6 of the Environmental Code and created the Soil Information Sectors (SIS) established by the State.

These Soil Information Sectors identify the plots of land where the known polluted soils justify, notably in case of change of use, carrying out soil analyses and implementing measures to manage soil pollution to preserve security, public health and environment.

According to Article L. 125-7 of the Environmental Code, when the plot of land is concerned by a Soil Information Sector, the seller or the lessor of such land is required to inform the purchaser or the tenant in writing.

Failing to do so and if the pollution found makes the plot of land improper to the use mentioned in the contract, the purchaser or the tenant is entitled to rescind the contract or to be partially refunded of the sale price or to obtain a rent discount. The purchaser can also ask for the reinstatement of the plot of land at the seller's costs if it is not disproportionate in relation to the sale price.

The relevant Prefect responsible for the creation of the Soil Information Sectors in the relevant department has 3 years starting on 1 January 2016 to draw up the list of the sectors which will then be updated each year pursuant to the database he received.

4. Insurance

France - The Decree relating to consumer disputes mediation – insurance intermediaries

The Decree n 2015-1382 of 30 October 2015 on consumer disputes mediation has been published in the Official Journal of the French Republic on 31 October 2015 (the "**Decree**"). The Decree is adopted in application of the Ordinance n 2015-1033 of 20 August 2015 and amends article R.520-1 of the French Insurance Code in order to set out the information modalities of enabling the insured to have recourse to an ombudsman. The intermediary will therefore be required to provide the details and address of (i) its claims service when it has such service in place and, (ii) those of the ACPR (*Autorité de contrôle prudentiel et de résolution*), and specify the modalities to have recourse to a mediation process. The Decree entered into force on 1st November 2015.

France - Guarantee fund for victims of terrorism and other offences

The Order of 30 October 2015 determining the amount of the insured's contribution to the Guarantee fund for victims of terrorism and other offences has been published in the Official Journal of the French Republic on 1st November 2015. The insured's contribution increases from €3,30 to €4.30 per insurance contract for year 2016.

France - ACPR: instruction relating to a questionnaire on commercial practices and customer protection

The ACPR (*Autorité de contrôle prudentiel et de résolution*) published an [Instruction n 2015-I-22](#) relating to a questionnaire on commercial practices and customer protection (the "**Instruction**"). The Instruction provides that the insurers carrying out their business in France, including on a freedom of establishment basis, must annually answer to the questionnaire attached as annex 2 to the Instruction. The questionnaire is composed of four parts relating to (i) the identification data of the insurer, (ii) commercial activity data, (iii) commercial practices and to means dedicated and (iv) to the internal control system.

France - ACPR: instruction relating to electronic signature of electronically transmitted documents to the ACPR

The [Instruction n 2015-I-18](#) relating to electronic signature of electronically transmitted documents to the ACPR (the "**Instruction**") was published on 21 October 2015. This Instruction provides for the requirements that electronic certification service providers have to meet to make the electronic signature of the insurer compliant with the certification requirements requested by the ACPR. This Instruction specifies that the insurers using electronic signature have to declare to the ACPR (i) the identity of the electronic certification service provider, (ii) the type of certificate used and (iii) the person empowered to sign. The Instruction also outlines the person which could be authorised to sign on behalf of the insurer.

This Instruction is completed by an [annex](#) which sets out the ACPR's Secretariat General signature policy.

European Law - IAIS: HLA requirement for G-SIIs and the 2015 update of the G-SII list

The International association of insurance supervisors ("**IAIS**") has published, on 5 October, a [document](#) containing the first version of the high loss absorbency capacity (HLA) for insurers who are considered to be systemically important ("**G-SIIs**") the list of which has been updated by the Financial Stability Board (FSB) on 3 November 2015. The primary purpose of the HLA is to assist to reduce the probability and impact on the financial system of the distress or failure of G-SIIs.

European Law - EIOPA: Action plan updated 2016

The European insurance and occupational pensions authority ("**EIOPA**") has published on 8 October an updated [action plan for 2016](#) for colleges of supervisors. This action plan notably provides for the progress of discussions on whether group supervision should be extended to the sub-group level. Another update refers to a call for colleges to share their views on how EIOPA could provide analytical and technical support for an efficient and secure exchange of information within colleges.

European Law - EIOPA: Modification of the methodology for calculating the relevant risk-free interest rate term structures

The EIOPA has announced the publication of an [updated version](#) of the technical document on the methodology used for calculating the term structures and has decided on the following modification:

-The selection of financial instruments used to derive the basic risk-free interest rate term structures will be aligned to recent market developments in order to ensure that the term structures are based on information from deep, liquid and transparent markets.

-The treatment of government bonds issued by countries of the European Economic Area that are not Member States of the EU in the calculation of the volatility adjustment and the fundamental spread will be aligned to the treatment of government bonds issued by Member States.

5. Intellectual Property

France - Harmonization of the quality and origin identification labels and enhancing mentions

On 7 October 2015, the Government adopted an [Ordinance \(n°2015-1246, published in the Official Bulletin of 8 October 2015\)](#) relating to the quality and origin identification labels, in order to amend a number of the provisions of the French Rural and Maritime Fishing Code (French Rural Code) on the designations of origin and enhancing mentions.

This reform aims at further harmonizing French law with the abundant European law in order to ensure compliance with said provisions.

On the one hand, the Ordinance provides in particular new quality terms that may be affixed on products such as "mountain products" and new conditions to existing ones such as the respect of animal welfare applying to the "organic farming".

On the other hand, new Article L. 642-3 of the French Rural Code now states that the persons in charge of the packaging of products, when such operation is provided for by the specifications of an identification label, shall be designated as "operators". Besides, the control of said operations might be conducted outside of the production geographical area specified in the specifications.

Lastly, the respective powers of the approvals and inspections board and the Executive Director of the National Institute of Origin and Quality are clarified. The former is entitled to define the general principles applicable to the controls while the latter shall determine the common control framework to multiple requirements specifications or to multiple control organizations and shall approve control and inspection plans.

This Ordinance entered into force on 9 October 2015.

6. New Technologies

France - Surveillance Law

The Surveillance Law of 24 July 2015 (please refer to the [Legal and Regulatory Update of July/August 2015](#)) came into force on 3 October 2015. Two decrees were have been adopted: one setting the procedure relating to the implementation of intelligence techniques and access to files relating to State security and the [Decree n°2015-1185 of 28 September 2015](#) appointing specialized intelligence services and the other appointing specialized intelligence services.

European Law - Safe Harbor

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) issued an [Opinion](#) on 16 October 2015 on the recent EUCJ decision invalidating the Safe Harbor (please refer to the [Legal and Regulatory Update - September 2015](#)). In this opinion, the WP29 provides that transfers on the basis of the Safe Harbor are no longer valid and that the concerned entities must implement legal and technical solutions in due course.

The European Commission also published on 6 November 2015 a [fact sheet](#) and [guidelines](#) on transatlantic transfers of personal data. The European Commission has in particular indicated that standard contractual clauses and Binding Corporate Rules (BCRs) remained adapted.

7. Procedures

France - Criminal Procedure

-Crime: police officers can offer deals

The Decree n°2015-1272 of 13 October 2015 – implementation decree of the Law on individualization of sentences and published in the Official Journal of 15 October 2015 – enables police officers to compromise with individuals and legal entities on the prosecution of some offenses. The Decree targets some infractions and offenses and the deal cannot be offered while the person is in police custody. However, the Decree does not specify that the person must be told his or her rights before consenting to the proposed deal. The police officer who offered a deal must seek the public prosecutor's approval and specify the amount of the proposed fine. If the person accepts the deal, it is then subject to approval of a judge.

-Investigation under pseudonym: publication of an Order relating to the empowerment of police officers

The Order of 21 October 2015 that was published in the Official Journal of 29 October 2015 adds some points to some provisions of the French Criminal Code which provides that in some matters (procuring or health-relating matters, for instance), police officers may be authorised to take part in online conversations under a pseudonym, when offenses are committed electronically. This course of action is for the purpose of gathering evidence, reporting offences and identifying the authors, being specified that it protects police officers from liability, unless they incite people to commit offenses. The Order of 21 October specifies in which departments and units officers will be authorised to use this investigation method and the conditions for this authorisation.

8. Public Law

France - Liberalization of inter-urban passenger road transport services

Decree n°2015-1266 dated 13 October 2015, published in the O.J dated 14 October 2015, relating to inter-city passenger road transport services, sets out implementing provisions for law n°2015-990 on growth, activity and equal economic opportunities dated 6 August 2015 (also known as "loi Macron"), which provides for the liberalization of inter-urban passenger road transport services. The Decree defines the scope of road connections and the way local public transport authorities and the National Rail and Road Regulator should interact to regulate those new inter-urban passenger transport services, especially for road connections covering more than 100 kilometers.

France - Code relating to the relations between the general public and public authorities

Ordinance n°2015-1341 and Decree n°2015-1342, both dated 23 October 2015, published in the O.J dated 25 October 2015, consolidate, with no impact on existing laws and regulations, general rules relating to non-judicial administrative procedures within a new code on relations between the general public and public authorities. The code consists of five parts related to (i) exchanges between the general public and public authorities, especially for electronic exchanges (ii) administrative unilateral acts, (iii) right of access to administrative documents, (iv) dispute resolution and (v) specific regulations concerning overseas territories. The code shall apply from 1 January 2016 onwards, with the exception of the rules on cancellation of administrative acts which shall apply from 1 June 2016 onwards.

9. Tax

France - Corporation tax

-Tax consolidation: new developments on reporting obligations

The Decree n°2015-1356 dated 26 October 2015 specifies the reporting obligations applicable to the setting-up of (i) French consolidated tax groups composed of industrial and commercial public entities ("*établissements publics industriels et commerciaux*" – "**EPIC**") and (ii) French "*horizontal*" consolidated tax groups (*i.e., consolidated tax groups composed of sister companies whose common mother company is established in a member State of the European Union*).

This Decree also specifies the method to determine the overall result with respect to French "*horizontal*" consolidated tax groups.

France - International taxation

-Extension of the double tax treaty signed between France and Saudi Arabia

The French tax authorities draw the consequences, in their general guidelines, of the publication of the Decree n°2014-1036 dated 11 September 2015 which extends the double tax treaty signed between France and Saudi Arabia on 18 February 1982 for a period of 5 years, as from 1 January 2014 (*BOI-INT-CVB-SAU-20151007*).

-Amendments to the double tax treaty signed between France and the Sultanate of Oman

The French tax authorities draw the consequences, in their general guidelines, of the approval by the Law n°2013-155 dated 21 February 2013, of the new amendments to the double tax treaty signed between France and the Sultanate of Oman on 8 April 2012.

These new amendments notably relate to royalty payments and exchange of information (*BOI-INT-CVB-OMN-20151007*).

-New double tax treaty signed between France and the Principality of Andorra

The French tax authorities draw the consequences, in their general guidelines, of the approval by the Law n°2015-279 dated 13 March 2015 of the signature of the double tax treaty between France and the Principality of Andorra dated 2 April 2013.

As a reminder, the double tax treaty concluded between France and the Principality of Andorra is effective since 1 July 2015 (*BOI-INT-CVB-AND-20151007*).

-European Union law applicable to Saint-Barthelemy

The law n°2015-1236 dated 7 October 2015 ratified the agreement signed between France and the European Union, which enables the application to Saint-Barthelemy of the European Union legislation related to taxation savings income and administrative cooperation in tax matters.

10. Telecoms

France - The resale of TV frequencies is getting more complicated as a series of legal provisions limits the possibility of resale and reinforces taxation

In October 2015, the French Audiovisual Authority (CSA) decided to repeal the television broadcasting authorization of the channel "Numéro 23", following the acquisition of 15% of the channel's shares by a Russian investor. The proposed sale of the TV channel to NextRadioTV, which has been criticized since its announcement because of its speculative nature, is therefore of no further interest.

The Finance Bill for 2016 contains a provision that puts an end to the exemption of capital gains on sales, in case of a change of control of a TV channel company and thus indirectly targets the intended sale of channel "Numéro 23". The government would like to tax such capital gains provided certain conditions are met.

In addition, a provision of the Law n°2015-1267, dated 14 October 2015, on the second digital dividend and the continued modernization of digital terrestrial television, provides that, depending on the holding period for a given television broadcasting authorization, the taxation applicable to its sale will range from 5% to 20% of the sale price. The amount of tax may not however exceed 26% of the gross capital gain on the sale of securities. This measure intends to discourage speculation on resale of TV frequencies.

France - The French Government is determined to make the operators comply with the encryption of data through emails

In early October, Axelle Lemaire, French Secretary of State for the Digital Economy, announced the signing of a charter between the five major providers of email services in France. According to this announcement, the service providers commit to encrypt by default the data contained in emails. The French Network and Information Security Agency (ANSSI) led the initiative.

The provisions of the law on cyber security, under which authorities can access emails if authorized by a judge, will however be maintained.

France - The auction for 4G frequencies started on November 16, 2015

The auctions for the assignment of 4G frequencies started on 16 November, under the supervision of France's telecommunications regulator (ARCEP).

The auction will involve 4G 700MHz spectrum, which is being freed up by television broadcasters. Each operator will bid on a maximum of two out of the six blocks auctioned. Six blocks of 2x5MHz are on offer, and a single candidate cannot acquire more than three in total. Operators will not be able to hold more than 2x30MHz of low frequency spectrum in total, across the 700MHz, 800MHz and 900MHz bands combined.

The four selected operators must make proposals that, if adopted, will enable them to deploy 4G and, in a near future, 5G.

The auction terms follow an extremely strict protocol: geographical restrictions so that participants never meet during the auction process, applications delivered in paper form, diversity of profiles leading the negotiations, etc.

The French government expects to raise at least €2.5 billion from the sale.

France - A new Bill provides that the monitoring of international communications will involve fewer controls than interceptions in France

The Parliament adopted a bill on November 5, 2015 which fills a void left by the law on intelligence dated July 2015. The monitoring of international communications will involve fewer controls than interceptions in France.

The bill creates a specific legal framework by introducing a new chapter in the internal security Code. Where "*the defense and promotion of fundamental interests of the Nation*", which include "*the major economic, industrial and scientific interests*", are concerned, "*the monitoring of communications that are sent or received from foreign countries*" is permitted. The Prime Minister may "*designate geographical areas, organizations or persons to be targeted by such surveillance*".

For interceptions abroad, the Prime Minister will not need to seek the prior opinion of the new national intelligence oversight technical Commission (CNCTR).

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