

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 July/August 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

Hoganlovells.com

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 health, n°2302, filed on October 15, 2014 – Adopted by the National Assembly on April 14, 2015 – In debate before the Senate from September 14 to 16, 2015, from September 28 to October 2nd and on October 6, 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 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 and by the Senate on July 22, 2015 – Joint committee.

Enacted laws

Law n°2015-912 of July 24, 2015 relating to intelligence – OJ of July 26, 2015.

Law n°2015-990 for growth, activity and equal economic opportunities – OJ of August 7, 2015.

Law n°2015-992 of August 17, 2015 relating to energy transition towards green growth – OJ of August 18, 2015.

Law n°2015-993 of August 17, 2015 relating to various provisions in connection with criminal procedure for the transposition of EU Law into French Law – OJ of August 18, 2015.

Law n°2015-994 of August 17, 2015 relating to social dialogue and employment - – OJ of August 18, 2015.

1. Banking

France - Law on economic growth, activity and equal opportunities

The Law n°2015-990 dated 6 August 2015 on economic growth, activity and equal opportunities ([J.O n°0181 dated 7 August 2015](#)) includes several provisions relating to banking and finance.

-The provisions relating to the banking mobility support introduced by the Law n°014-344 dated 17 March 2014 on consumption are strengthened and detailed.

-Two new exceptions to the banking monopoly are introduced. Those exceptions relate to (i) loan with a maturity of less than two years granted by certain companies under certain conditions to the benefit of micro enterprises, small and medium enterprises with which they have economical relationships and (ii) credit transactions carried out by certain pension institutions and by approved bodies regulated by the *Livre II* of the French *Code de la mutualité*.

-The government is authorized to take by order (*ordonnance*) measures in order to amend and clarify the legal provisions applicable to the pledge over stocks and make those provisions more similar to the general legal provisions applicable to pledges over moveable tangible assets.

-The time limit to register a pledge over business has been extended to thirty days (instead of fifteen days previously).

France - Recovery and resolution of credit institutions and investment companies

The order (*ordonnance*) n°2015-1024 dated 20 August 2015 ([J.O n°0192 dated 21 August 2015](#)) setting forth various provisions modifying French legislation to comply with the European Union transposes the Directive 2014/59/EU dated 15 May 2014. The order (*ordonnance*) specifies in particular the rules applicable to credit institutions and investment companies in case of early intervention by the French Prudential Control Authority (*Autorité de Contrôle Prudentiel et de Résolution*) and amends the provisions relating to the crisis prevention and the crisis management.

Most of the provisions of the order (*ordonnance*) n°2015-1024 entered into force on 22 August 2015.

France - Modifications of bank details

The Decree n°2015-838 dated 8 July 2015 ([J.O n°0158 dated 10 July 2015](#)) details the provisions introduced by the Law n°0181 dated 17 March 2014 to support the bank mobility designed to facilitate a change of bank by the customer. The decree provides that the issuers of bank withdrawals that have been informed by the new bank of the customer's new bank details shall take into account the new bank details within ten days.

The Decree n°2015-838 dated 8 July 2015 will enter into force on 1st October 2015.

France - Inactive bank accounts

The Decree n°2015-1092 dated 28 August 2015 ([J.O n°0200 dated 30 August 2015](#)) implementing the Law n°2014-617 dated 13 June 2014 on inactive bank accounts and life insurance contracts amends the French monetary and financial code.

The Decree regulates the fees and commissions applicable to inactive accounts. Moreover, the decree specifies the conditions of transfer to the *Caisse des dépôts et des consignations* of the deposits and assets registered on inactive accounts.

The Decree n°2015-1092 will enter into force on 1st January 2016.

European Law - Financial stabilisation mechanism

The Regulation (EU) n°2015/1360 of the European Union Council ([JOUE L210/1 dated 7 August 2015](#)) amends Regulation (EU) n°407/2010 establishing a European financial stabilisation mechanism.

The Regulation provides that the granting of the Union financial assistance to a Member State whose currency is the euro is conditional upon the enactment of legally binding provisions with a dedicated arrangement guaranteeing that the Member States whose currency is not the euro are immediately and fully compensated for any liability they may incur as a result of any failure by the beneficiary Member State to repay the financial assistance.

The Regulation n°2015/1360 entered into force on 8 August 2015.

2. Capital Markets

CAPITAL MARKETS

France - Macron Bill – *Société de Libre Partenariat*

The article 145 of the Macron Bill dated 6 August 2015 introduced a new type of dedicated fund : the *société de libre partenariat* (SLP).

This new structure falls into the category of AIF (article L. 214-154 of the French financial and monetary code) and is characterised by a flexibility of management and a strengthened governance structure. Fiscally transparent, this structure presents the main characteristics which apply to French law *sociétés en commandite simple*. However, unlike a classic *société en commandite simple*, the shares of the SLP are negotiable financial instruments, the management of the SLP can be delegated, the manager or the management company of the SLP has a limited liability which is not challenged by the potential detention of *commanditaires* shares. Finally, the SLP can have several compartments and unless the articles of association provide otherwise, the assets of that compartment are only liable for the debt and liabilities relating to that compartment.

European Law - EMIR – Clearing obligation for certain certain over-the-counter (OTC) interest rate swaps (IRS)

On 6 August 2015, the European Commission adopted regulatory technical standards (RTS) on the clearing obligation for certain over-the-counter (OTC) interest rate swaps (IRS).

This clearing obligation will initially apply to interest rate swaps denominated in certain currencies (EUR, GBP, JPY, USD) only.

The RTS is expected to be published in September or October in the Official Journal of the European Union and to come into effect 20 days after its publication. However, obligations under the RTS will apply on a phased-in basis depending on the type of categorisation under EMIR (clearing members of CCPs, financial counterparties and non-financial counterparties) from April 2016 and onwards.

European Law - ESMA – Recommendations related to changes to EMIR Framework

On 13 August 2015, ESMA published four reports containing recommendations aimed at amending the current EMIR framework.

Significantly, ESMA proposes to amend the EMIR framework related to the clearing obligation (including the amendment of the process for determining clearing obligations and introduction of tools allowing the suspension of the clearing obligation when certain market conditions arise). ESMA is suggesting a rethink of the entire equivalence and recognition process of third country CCPs, to improve the supervision of trade repositories, to remove the hedging criteria from EMIR in order to determine the systemic relevance of NFCs.

3. Commercial Law

France - the key contributions of the Macron law to commercial law

The new provisions below came into effect on 7 August 2015.

-New starting point for the withdrawal period in respect of distance selling

The withdrawal period for distance sales agreements shall not run from the purchase date anymore, but from the delivery date.

-Changes with respect to payment terms

The contractual payment term of 60 days turns into the legal limit in principle (instead of the prior limit of 45 days from end of the month). Nonetheless, the parties may decide to keep a 45 days from end of the month payment term by contract.

The pre-existing exemptions from these payment terms maximum in favour of five economic sectors (because of the seasonal nature of their sale) are maintained. The agreed deadline must be expressly provided in the contract.

The companies whose accounts are certified by statutory auditors are required to share information about their suppliers and customers payment terms.

-A future obligation relating to electronic invoice

The French Government will have to compel companies to accept electronic invoices in the 9-month period from the publication of the law.

-Disclosure requirements for digital platforms and marketplaces

The digital platforms that aim to connect several parties (marketplaces and collaborative platforms) are subject to new disclosure requirements according to whether the connection is between professionals or non-professionals. The failure to comply with these requirements is subject to an administrative penalty.

-Change in the regulation of the purchase of Internet advertising space

The rules applicable to the purchase of advertising space by an intermediary for the benefit of an advertiser applies now to the Internet advertising.

-Consumer associations' intervention in proceedings

In addition to the intervention in the proceeding initiated by a consumer, the approved consumer associations are now entitled to bring an action jointly with the consumer.

4. Competition

France - Antitrust – Publication of the Law on economic growth, activity and equal opportunities

Law n°2015-990 of 6 August 2015 on economic growth, activity and equal opportunities (the "Macron Law") was published in the OJ on 7 August 2015. The main changes include the following:

- The French Competition Authority ("FCA") is vested with new consultative powers in a variety of sectors, as well as the power to review concentrations between retailers *ex ante*.
- The French procedure of not objecting to the statement of objections is replaced by a settlement procedure.
- Local anticompetitive practices can now be examined by the Minister of Economy.
- Changes concerning merger control rules relate to the derogation from the suspensive effect, the length of the review process and the FCA's power of injunction.
- As regards competition investigations, the FCA agents' powers have been increased.
- The formal requirements in relation to annual single conventions between suppliers and wholesalers have been reduced.
- In B-to-B contracts, payment must occur within 60 days of the issuance of the invoice. However, parties may agree on a maximum of 45 days end of month, provided that the payment term is stipulated in the contract and that it is not unfair to the creditor.
- New rules on distribution networks set up the principle of simultaneous expiration and termination of all contracts to the relationship and the prohibition of post-contract terms restricting the freedom of exercise of the commercial activity.
- The civil fine incurred for restrictive practices can now amount to up to 5% of the undertaking's turnover achieved in France.
- Commercial relationships between hotels and OTAs are regulated to a greater extent.

European Law - Antitrust – Adoption of amendments to Regulation No. 773/2004 and four related Notices

The European Commission adopted on 3 August 2015 amendments to Regulation n°773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty and four related Notices (on (i) Access to the File, (ii) Leniency, (iii) Settlements, and (iv) Cooperation with National Courts). The amendments are aimed at aligning these texts with Directive n°2014/104 of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

European Law - Antitrust – Email address for leniency applications

The European Commission assigned a specific email address for leniency applications. Previously, such applications were only accepted by fax. As of 1 September 2015, submissions may also be made to the following email address: comp-lenieny@ec.europa.eu

5. Corporate

France - Management report: new reference and new definition of exemption thresholds

Decree n°2015-903 and Ordinance n°2015-900 of 23 July 2015, published at the Official Journal on 24 July 2015, provide for new exemption thresholds for the obligation to prepare the management report.

Whereas, for the time being, the exemption benefits to French simplified joint stock companies ("sociétés par actions simplifiées") and single owner limited liability companies ("EURLs") whose sole shareholder personally serves as General Manager or President when they do not exceed the thresholds provided pursuant to Article R. 232-1-1 of the French commercial code, the abovementioned Order provides for a reference to the thresholds setting out the small enterprises, resulting in an increase of these exemption thresholds.

The Ordinance specifies that this exemption shall not apply to credit institutions, insurance companies and companies whose activity relates to the management of interests and securities.

Furthermore, the Ordinance provides for a new information to be indicated in the management report: the list of existing branch offices.

These provisions will apply for the fiscal years beginning on or after 1 January 2016.

France - AMF Guide on listed companies' financial statements

After having noticed that the increase of the length of financial statements of listed company makes them difficult to read, the AMF published a guide on the relevance, coherence and readability of financial statements in order to help the companies to tailor the presentation of financial information they contain. This guide, the aim of which is to contribute to the discussion on the drafting of the financial statements, brings forward several improvements and suggests examples of good practices.

France - Macron Law: the main contributions of the Macron Law in corporate law

Law n°2015-990 of 6 August 2015 for growth, activity and equality of economic opportunities, known as "Macron Law", brings forward several changes in corporate law.

-New exemption from the obligation to file a tender offer

It provides for a new exemption from the mandatory filing of a tender offer when crossing the "speed" threshold in order to correct the consequences arising from the automatic attribution of double voting rights pursuant to the Florange law.

-New conditions for supplementary pensions for managers of listed companies

The granting of supplementary pension commitments to the management of listed companies is capped and submitted to performance conditions. The compliance of these conditions is to be verified by the board of director or the supervisory board. These provisions are generally applicable (i) as from 7 August 2015 for the commitments taken in this respect by the company in favour of managers, (ii) for commitments taken in this respect by the company in favour of managers appointed or renewed after 7 August 2015, as from their appointment or renewal.

-Reduction of the obligation to provide information to employees in case of transfer of business or 50% or more of the share capital of a company

Where a business (as a going concern) or 50% or more of the share capital of a company are to be transferred, the prior obligation to inform the employees of their right to submit a purchase offer is limited to sales and does not apply when the information has already been provided to the employees within the last 12 months. The penalty of nullity for non-compliance with the procedure is replaced by a civil fine. These provisions shall come into effect at a date provided by a decree within 6 months from 7 August 2015.

-New ceiling for combination of corporate offices

Persons performing an executive corporate office in a large listed company shall not be entrusted for more than a total of three corporate offices performed in a listed company. These persons shall be compliant with this ceiling on 7 August 2016 at the latest.

-Measures related to transfer of public interests

The rights of the State attached to specific shares are subject to a gradation and will be determined by decree. The obligation for the State to offer to the employees of the target company 10% of the securities transferred is reintroduced.

-Easing of the business assets sale regime

The obligations to publish the transfer of business assets in a newspaper empowered to publish legal notices and to register the assignment when drawn up in the form of a notarial deed are removed for the transactions completed as from 8 August 2015. Also is removed the opposing creditors' right to a higher bid of one-sixth.

-Easing of the legal conditions of free shares

Please refer to the Tax section

6. Employment

France - Law on Social Dialogue and Employment: presentation of the major measures

The Law, dated August 18th, 2015 n°2015-994 on social dialogue and employment, so-called "Rebsamen" law, was published in the Official Journal.

This Law contains important measures on different social matters:

-Staff Representative Bodies: possibility to bring the staff representative bodies together (staff delegates, works council, health and safety committee), subject to implementing decrees to come; simplification of the information-consultation process of the works council and mandatory collective bargaining: rationalization of the negotiation on three areas as from January 1st, 2016; clarification of the rules related to the division of competences between the central works council ("*comité central d'entreprise*") and the works committee ("*comité d'établissement*"); easing of the rules related to the crossing of thresholds leading to mandatory establishment of staff representative bodies.

-Health and Safety at work: recognition as work-related illnesses of certain psychological pathologies, removing of the exposure record and simplification of the evaluation process related to the exposure to painful working conditions; modification of the obligation to reclassify in case of incapacity.

-Creation of the personal business account ("*compte personnel d'activité*"): upon entering the labor market, personal social rights are gathered: securing of the career path, rights related to the personal training account and those relating to the personal account for the prevention from exposure to painful working conditions.

France - Law in favor of growth, activity and equal opportunity: presentation of the major measures

The Law, dated August 6th, 2015 n°2015-990 in favor of growth, activity and equal opportunity, so-called "Macron" law, was finally promulgated after a parliamentary marathon, a recourse to article 49-3 of the Constitution and referral to the constitutional Court.

In Labor law, the Law focuses on measures concerning:

-Easing of the rules concerning Sunday working for retail businesses and certain establishments located in areas with high potential for activity.

-Redundancies on economic grounds: subject to implementation decrees to come, possibility to set the scope of the order of redundancies to a level below that of the company; reclassification abroad on request of the employee, possibility for the DIRECCTE to correct its drafting in case of cancellation by the judge due to the lack of reasoning; easing of the "Hamon" Law on the obligation to inform employees of companies of less than 250 employees in the event of the company's sale.

-Offense of obstruction: suppression of the prison sentence (except for the obstruction to the establishment of staff representative bodies) and doubling of the fine.

-Employee savings: modification of the rules determining the obligation to implement mandatory profit-sharing, payment of optional profit-sharing and non-mandatory profit-sharing, possibility for the employer to abound in terms of company savings plan and collective retirement savings plans.

7. Energy

France - Transition towards other energy sources for green growth

Law n°2015-992 dated 17 August 2015 on the *transition towards other energy sources for green growth*, published in the *J.O* dated 18 August 2015, contains many provisions relating to renewable energy. It provides a support framework for renewable energy called a "supplemental payment" (added to articles L.314-18 and following of the Energy code), at the end of which electricity producers will be entitled to sell the electricity produced directly to the market at market price whilst at the same time benefitting from payment of a premium called "supplemental payment". The list of the installations benefitting from this new purchase mechanism, as well as the precise conditions to be able to benefit from it will be determined by decree.

8. Environment

France - Classified installations

Decree n°2015-1044 dated 18 August 2015 *implementing article L.512-21 of the Environmental Code*, published in the *J.O* dated 20 August 2015, specifies (pursuant to law n°2014-366 dated 24 March 2014 called "ALUR" law) the conditions under which a third party can ask the administrative authority to replace the operator in the event of the shut-down of a classified installation and be liable for its administrative obligations.

9. Insolvency proceedings

France

Law n°2015-990 for growth, business and equality of economic opportunities (known as Macron Bill) was enacted on 6 August 2015 and published in the *J.O* on 7 August 2015. The main amendments relating to insolvency proceedings are the following:

Forced sale of shares in a reorganisation proceeding

In the event the judicial reorganisation plan provides for a modification of the share capital and the existing shareholders refuse to vote in favour of said modification, the Court can, upon request of the judicial administrator or of the public prosecutor, and following three months from the judgement opening the reorganisation proceeding:

-Appoint a judicial representative (*mandataire*) to vote in favour of the share capital increase to the benefit of third parties who have undertaken to execute the plan in lieu of the dissenting shareholders; once the share capital increase has been voted, it must be implemented within a maximum period of 30 days;

-Order in favour of the persons who have undertaken to execute the plan the transfer of all or part of the shares owned by the dissenting

shareholders. Other shareholders have the right to withdraw from the company and can simultaneously sell their shares to the transferees. In the absence of an agreement on the shares price, it is determined by an expert.

This possibility is limited to companies with more than 150 employees (or companies which control one or more companies having more than 150 employees).

This measure will only be available if the disappearance of the company would cause serious disturbance to the economy and to the local employment area (*bassin d'emploi*) and if the share capital reorganisation of the debtor is the only solution to avoid such disturbance.

Prohibition on management functions

Before the Macron Bill, a director could be prohibited from managing if he failed to request the opening of an insolvency proceeding within 45 days of the company becoming cash-flow insolvent. The law now provides that the director must have "knowingly" omitted to request the opening of the insolvency proceeding to risk being prohibited from managing (Bill art. 239; c. com. art. L. 653-8).

Big companies before a specialised court

As from 1 March 2016, commercial Courts specifically appointed will have exclusive jurisdiction over conciliation, safeguards, reorganisation and liquidation proceedings, when the debtor meets certain criteria (turnover, number of employees...)

Companies facing an insolvency proceeding with subsidiaries also facing an insolvency proceeding will be subject to the same court, to find a global workout. If a specialised commercial Court has jurisdiction over the parent company, it will also have jurisdiction over the subsidiaries (Bill art. 233; c.com art. L.622-8).

10. Insurance

France - Macron Law - Amendments of French insurance Law

The [Law n°2015-990 of 6 August 2015](#) for the growth, the activity and the equal opportunities (the "**Law**") has been published in the Official Journal of the French Republic on 7 August 2015. This Law amends some provisions of the French Insurance Code notably in relation to the obligation of the Central office of fees (*Bureau central de tarification*) to adopt a position on the requests received, the obligation for the persons subject to Articles L. 241-1 and L. 241-2 of the French Insurance Code to provide the certificate of decennial insurance at the beginning of each construction work, the composition of the French register of the insurance intermediaries (*Organisme pour le registre des intermédiaires d'assurance - "ORIAS"*) and the nature of the shares that can be delivered upon termination of life insurance contracts (see below).

France - Termination of life-insurance contract – Transfer of securities or shares

The [Law n°2015-990 of 6 August 2015](#) for the growth, the activity and equal opportunities (the "**Law**") has amended Article L. 131-1 of the French Insurance Code by expanding the categories of securities or shares that can be delivered upon the termination of life insurance contracts. Prior to the adoption of the Law, upon termination of a unit-linked life insurance contract, the settlement in securities or shares could only be done in securities or companies shares which do not confer voting rights. Pursuant to the Law, this right of settlement in securities or shares is now opened to "non-negotiated securities or shares on a regulated market, notably securities or shares of venture capital or non-marketable mutual investment funds". This provision is applicable to contracts concluded as from 8 August 2015 and to contracts existing on that date.

France - Alternative dispute resolution for consumer disputes – Publication of the Ordinance implementing the European Directive

The [Ordinance n°2015-1033 of 20 August 2015](#) on alternative dispute resolution for consumer disputes (the "**Ordinance**") has been published in the Official Journal of the French Republic on 21 August 2015. This Ordinance implements, into French Law, the [Directive 2013/11/EU of 21 May 2013](#) on alternative dispute resolution for consumer disputes. The Ordinance requires, prior to the conclusion of distance insurance contract, that insurers provide information in relation to the modalities under which an insured may have recourse to a mediation process. Such information must be provided to the insured as part of the documents delivered prior to the conclusion of the insurance contract, in the copy of the draft contract, the appendices or the information notice.

France - Unclaimed life insurance contracts – Publication of the Decree

The [Decree n°2015-1092 of 28 August 2015](#) relating to inactive bank accounts and unclaimed life insurance contracts (the "**Decree**") has been published in the Official Journal of the French Republic on 30 August 2015 and adopted on the basis of [Law n°2014-617 of 13 June 2015](#) relating to inactive bank accounts and unclaimed life insurance contracts (the Eckert Law). This Decree regulates the fees applicable to life insurance contracts and the *post mortem* reevaluation rate of life insurance contracts. The Decree specifies the modalities of transfer of unclaimed contracts to the deposit and consignment office (*Caisse des Dépôts et Consignations* - "**CDC**") and the conditions of restitution of the amounts gathered by the CDC to the legal successors or beneficiaries, or to the State at the term of the limitation period.

France - Statistical reports – Amendment of statistical reports

The [Decree n°2015-1121 of 4 September 2015](#) amending the statistical reports of insurance companies, mutual insurance and pension institutions in relation to supplementary social protection (the "**Decree**") has been published in the Official Journal of the French Republic on 8 September 2015. This Decree amends the statistical reports E1, E2, E3 and E5 with a view to identifying more precisely the guarantees provided by insurance undertakings and mutual insurance in relation to persons covered and financial guarantees. The provisions of the Decree will be applicable as from the date of the remittance of the statistical reports relating to the financial year 2015, occurring on 30 April 2016.

France - Licence and extension of licence – Publication of a new instruction of the ACPR

The [instruction n°2015-I-15](#) relating to the content of the licence application or application for extension of the licence for insurers or reinsurers (the "**Instruction**") has been published on the ACPR's (*Autorité de contrôle prudentiel et de résolution*) website on 2 July 2015. The Instruction specifies in its appendices the documents and information required by the ACPR to constitute the applications to be submitted to the ACPR by insurers or reinsurers, which are subject to the prior authorisation of the ACPR for operating in France.

France - Freedom of services and freedom of establishment – Publication of a new instruction of the ACPR regarding requested documents

The [instruction n 2015-I-16](#) relating to the documents required by French insurers for carrying on activities in another country of the European Economic Area (the "**Instruction**") has been published on 2 July 2015 on the ACPR's website. The Instruction details the documents and information that insurers must provide to the ACPR. These documents and information must be provided in two copies, one version in French and one certified version in the original language of the host member state.

European Law - Solvency II – EIOPA issues second set of Technical standards and Guidelines

On 6 July 2015, the EIOPA published on its [website](#) its second set of draft Implementing Technical Standards (ITS) and Guidelines for Solvency II which are yet to be endorsed by the European Commission and translated into the language of all Member States. These ITS and Guidelines, covering the different domains of the Solvency II pillars, complete the first set of technical standards and guidelines previously published respectively on 17 December 2013 and 2 February 2015 by the EIOPA.

11. Intellectual Property

France - Transposition of the European definition of "perishable goods" in the course of the detention of allegedly infringing goods by the customs

A Ministerial Order, issued on 29 June 2015, published in the Official Bulletin of 4 August 2015, establishes a legal definition of "perishable goods" for allegedly infringing goods detained by the Customs.

Article 2.20) of Regulatory (EU) n°608/2013 of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) n°1383/2003 is directly transposed into the French Intellectual Property Code and thus applies to all intellectual property rights.

This article states that "perishable goods" are "goods considered by customs authorities to deteriorate by being kept for up to 20 days from the date of their suspension of release or detention".

This Ministerial Order brings a statutory definition that was yet to be defined in the Intellectual Property Code.

France - Practical rules of presentation of an application for customs action specified

A Ministerial Order, issued on 29 June 2015, published in the Official Bulletin of 4 August 2015, has set the practical rules of presentation of an application for customs action.

These provisions are applicable to a national application for customs action based on the French Intellectual Property Code. The right holder shall namely declare its contact details, information on his business partners authorized to use its IP rights and genuine merchandise's characteristics to an office which address is defined in the Order.

As a reminder, rights holders can apply for customs action on the basis of the national law, or on the basis of Regulatory (EU) n°608/2013 of 12 June 2013 in order to monitor the use of their rights in several Member States.

France - Clarification regarding the employees inventions and the control bodies of geographical indications protecting industrial and craft products

Law n°2015-990 of 6 August 2015 for the growth, activity and equality of economic opportunity amended some provisions of the Intellectual Property Code ("IPC").

On the one hand, this Law amends in particular the first indent of paragraph 1 of Article L. 611-7 of the IPC by providing that the employer shall inform its employee who is the author of a so-called invention under mission where an application for an industrial property title has been filed in relation to such invention and at the time of grant of such title, where applicable.

On the other hand, this Law amends Article L. 721-6 of the IPC according to which the defence and management bodies of geographical indications protecting industrial and craft products shall exclude from now on also any operator whose certification has not been granted, has been suspended or withdrawn by the certifying body. Moreover, Article L. 721-7 of the IPC specifies henceforth that the specifications of such geographical indication shall include the nature of the body in charge of the controls as well as the particular elements of the labeling which are subject to such control. Finally, Article L. 721-9 of the IPC provides that from now on the bodies that assess the compliance of the specifications may be either inspection bodies, in charge of the control and submitting their report to the defence and management body that decides on sanctions to punish any breach, either certifying bodies, deciding on the grant, upholding or extension of the certification as well as on sanctions to punish any breach.

This Law entered into force on 8 August 2015.

12. New technologies

France - Surveillance Law

The Surveillance law, aiming at strengthening French surveillance activities, was published in the *J.O* on 26 July 2015. Some provisions of the law have been effective since 27 July 2015, notably the provisions relating to the new police record, FIJAIT, including the names and addresses of the persons convicted, or subject to an investigation, for committing acts of terrorism as well as the provisions relating to the la defence and promotion of the "*Nation's fundamental interests*".

France - CNIL's inspection program

On 25 May 2015, the French data protection authority, the CNIL, released its annual inspection program for 2015. This program plans on conducting 550 investigations in the upcoming year, in particular in relation to the Internet of Things improving health and wellbeing. The CNIL also plans on conducting inspections within companies that have implemented Binding Corporate Rules.

France - Dating websites

On 24 June 2015 the CNIL issued warning letters to eight companies operating dating websites due to their failure to comply with French data protection law, notably regarding the processing of sensitive data provided by their users as well as the term of retention and the deletion of their users' data. In the context of these letters, the CNIL issued advice to the attention of dating websites' users.

France - Ethnic statistics

In an article published on 7 May 2015, the CNIL recalled that, except regarding specifically enumerated exceptions, the creation of files displaying directly or indirectly the individuals' religious affiliation or their racial or ethnic origin, whether actual or supposed, is prohibited by law and the use of such files, in particular to target specific populations, is prohibited by the French Criminal code.

13. Procedures

France - Civil procedure

-Introduction of a simplified procedure for the collection of small debts

The [law n°2015-990, called the "Macron" law](#), of 6 August 2015, published in the *J.O* of 7 August 2015 introduced a new Article 1244-4 in the French Civil Code. This law provides for the opportunity for creditors to use new simplified and non-judicial procedure for the collection of small contractual debts between 1,000 and 2,000 Euros.

France - Criminal procedure

-Adaptation of the criminal procedure to European Union law

The [law n°2015-993 of 17 August 2015](#) concerning adaptation of the criminal procedure to European Union law, was published in the *J.O* of 18 August 2015.

This law aims at promoting an area of freedom, security and justice within the European Union and avoiding any situation of impunity that would result from the absence of recognition of legal decisions rendered in one Member State by the relevant authorities of the other Member States. Three framework decisions by the European Union are thus transposed into the French criminal procedure. (i) A section relating to the prevention and settlement of disputes regarding exercise of jurisdiction, (ii) a chapter relating to the enforcement of decisions relating to judicial review within the Member States of the European Union and (iii) provisions relating to the application of the principle of mutual recognition to judgments and probation decisions in order to supervise probation measures and alternative sanctions, have thus been added.

France - Commercial procedure

-The electronic portal of legal agents

The Decree n°2015-1009 of 18 August 2015 implements an electronic portal offering secure electronic communication services and enables to send and receive procedural instruments by agents appointed in the scope of insolvency proceedings.

- Mediation in consumer disputes

The ordinance n°2015-1033 of 20 August 2015 relating to settlement of consumer disputes outside of courts introduces a title V in the 1st book of the French Consumer Code entitled "Mediation in consumer disputes". This is the introduction of a conventional mediation process reserved to all domestic and cross-border disputes between consumers and professionals.

France - Administrative procedure

-Procedure before the French Audit Office

The decree n°2015-812 of 3 July 2015 amending the French Code of Financial Jurisdictions brings some adjustments to the procedure before the French Audit Office and the regional and territorial audit chambers. Notably, the public prosecutor's office is now expressly empowered to participate in the debate before the judicial formations of the Court.

14. Public Law

France - Reform of public procurement rules

Ordinance n°2015-899 dated 23 July 2015, published in the *O.J* dated 24 July 2015, implements into national law provisions of EU Directive 2014/24/UE on public procurement and Directive 2014/25/UE on procurement by entities operating in the water, energy, transport and postal services sectors and consolidates all the different legislative texts relating to public procurement, including the public procurement code, Ordinance n°2005-649 dated 6 June 2005 on contracts awarded by public authorities and private entities not subject to the public procurement code and Ordinance n°2004-559 dated 17 June 2004 on public-private partnerships. The Ordinance shall apply from a date to be set by decree and no later than 1 April 2016.

France - Law on growth, activity and equal economic opportunities

Law n°2015-990 dated 6 August 2015, published in the *O.J* dated 7 August 2015 (also known as "loi Macron"), widens the scope of the interventions of the regulatory authority in the rail transport sector to the area of motorway transports (including in particular the monitoring of toll tariffs) and supplements the existing legislation on the award of contracts by motorway operating companies. The Law ratifies and modifies Ordinance n°2014-948 dated 20 August 2014 on governance and transactions involving the capital of companies with public shareholding. It allows also the Government to adopt legal measures to implement into national laws provisions of Directive 2014/23/UE on the award of concession contracts and all necessary measures to simplify and consolidate national rules on the award of concession contracts within nine months from the date of its promulgation.

France - Plan for Investment in Motorways

Three Decrees dated 21 August 2015 (n°2015-1044, n°2015-1045 and n°2015-1046), published in the *O.J.* dated 23 August 2015, approve the amendments to the existing contracts between the State and motorway operating companies (APRR, AREA, ASF, ESCOTA, COFIROUTE, SANEF and SAPN) reflecting the approval of the plan for investment in motorways.

European Law - Rail market monitoring

Commission Implementing Regulation 2015/1100/EU dated 7 July 2015, published in the O.J.E.U dated 9 July 2015, having regard to Directive 2012/34/ EU establishing a single European railway area, establishes content and format of the data to be submitted to the Commission by Member States under their reporting obligations for rail market monitoring purposes. This regulation shall apply from 1 January 2016 onwards.

15. Real Estate

France - Withdrawal period of a non-professional purchaser of a property

The Law n°2015-990 dated 6 August 2015, published in the Official Journal of 7 August 2015, extended the withdrawal period of the non-professional purchaser of a property from 7 to 10 days.

France - Use of the registered letter by a commercial tenant

The Law n°2015-990 dated 6 August 2015 published in the Official Journal dated 7 August 2015 extends the use of the registered letter with acknowledgment of receipt by a commercial tenant. In addition to his right to terminate a commercial lease each three years, the tenant can now use this letter in order to: request the lease's renewal (L.145-10 of the Commercial Code), exercise his priority right on the rebuilt premises (L.145-19 of the Commercial Code), notify a partial or total change of use of the premises (L.145-47 and 49 of the Commercial Code) etc.

16. Tax

France - Macron Law

-Amendment to the French social and tax regime applicable to free shares

The acquisition gain realised with respect to free shares granted as from 8 August 2015 is from now on subject to the same tax treatment applicable to capital gains realised on the disposal of such free shares. The acquisition gain is therefore subject to (i) individual income tax (*with possible application of tax rebates depending on the holding period of such free shares*), and (ii) social contributions at a rate of 15.5%.

As a reminder, the acquisition gain realised with respect to free shares granted before 8 August 2015 was treated as employment income and could not benefit from the tax rebates depending on the holding period.

Besides, as from 8 August 2015, social security taxes are due by the employer on the acquisition date of the free shares (*and not at the date of attribution*). The rate of such social security taxes is also lowered from 30% to 20%.

-Amendment to the French legal regime applicable to subscription warrants of business creator shares (BSPCE)

Companies are now allowed to grant BSPCE to the employees of their subsidiaries as well as certain directors eligible to the French tax regime applicable to employees.

The rules applicable to determine the seniority of 3 years of the employees (*from which the beneficiaries of the BSPCE can benefit from a reduced taxation at a rate of 19%*) are also specified.

France - Corporation tax

-Clarifications on the deduction of French tax credits

The French tax authorities ("**FTA**") updated their guidelines specifying that the French tax credit equal to the amount of French income tax assessed

on foreign income provided by certain tax treaties is to be deducted before other tax credits or reductions which deduction is spread over years or deferred ([BOI-IR-RICI-20150729 dated 29 July 2015](#))

-Transfer pricing: new developments on the regularisation procedure

The FTA updated their guidelines with respect to the regularisation procedure provided by [Article L. 62 of the French Tax Procedure Code](#) (*which allows entities subject to tax reassessments pursuant to Article 57 and/or Article 238 A of the French Tax Code to avoid paying withholding taxes in case of a transfer pricing audit performed by the FTA*) specifying that such regularisation procedure is now subject to (i) the formal acceptance (*without any reserve*) by the company of the tax reassessments proposed by the FTA, and (ii) the repatriation in France of the sums paid to the foreign entities ([BOI-CF-IOR-20 dated 2 September 2015](#))

France - International taxation

Publication of general guidelines with respect to "FATCA"

The FTA provided for general guidelines with respect to the "FATCA" agreement signed between France and the United States on 14th November 2013 relating to the automatic exchange of financial information. Those guidelines provide for clarifications on (i) the nature of the financial institutions falling under the scope of the "FATCA" agreement, (ii) the bank accounts which have to be reported, and (iii) the duty of care which has to be exercised by French financial institutions when identifying the bank accounts which have to be reported ([BOI-INT-AEA](#), [BOI-INT-AEA-10](#), [BOI-INT-AEA-10-20](#), [BOI-INT-AEA-10-20-10](#), [BOI-INT-AEA-10-20-20](#), [BOI-INT-AEA-10-30](#), [BOI-INT-AEA-10-30-10](#), [BOI-INT-AEA-10-30-20](#), [BOI-INT-AEA-10-30-30](#), [BOI-INT-AEA-10-40](#) dated 5 August 2015)

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