

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 2014.

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 law granting amnesty for acts committed in the course of social movements and trade unions' protesting activities** – Filed on November 28, 2012 – Adopted in first reading by the Senate on February 27, 2013 – A vote for a referral to commission was adopted during the first session on May 16, 2013.
- **Draft law for farming, food and forest**, n°1548, filed before the National Assembly on November 13, 2013 – adopted in first reading by the National Assembly on January 14, 2014 and by the Senate on April 15, 2014 – adopted in second reading at the National Assembly on July 9, 2014 and then at the Senate on July 21, 2014 – CMP (agreement) – Seisin of the Constitutional Council on September 15, 2014.
- **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 28, 2014.
- **Draft law for the modernisation and simplification of law and procedures in relation to justice and home affairs**, n°175, filed on November 27, 2013 – adopted in first reading by the Senate on January 23, 2014 and by the National Assembly on April 16, 2014 – Failure of the CMP – Filed before the National Assembly in new reading on May 14, 2014.
- **Draft law relating to the limitation of the use of biometric technology**, n°361, filed at the Senate on February 12, 2014 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law relating to biodiversity**, n°1847, filed on March 26, 2014.
- **Draft law relating to 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.

- **Draft law for the simplification of existing regulations for the business sector**, n°2060, filed on June 25, 2014 – Adopted in first reading by the National Assembly on July 22, 2014.
- **Draft law for the ratification of ordinance** n°2014-329 of March 12, 2014 relating to e-commerce, n°2189, filed on July 30, 2014.
- **Draft law relating to various provisions in connection with economic and financial matters for the transposition of EU Law into French Law**, n°2148, filed on July 16, 2014.
- **Draft law relating to energy transition towards green growth**, n°2188, filed on July 30, 2014.
- **Draft law relating to taxis and chauffeur-driven cars**, n°2046, filed on June 18, 2014 – Adopted in first reading by the Senate on July 23 – In debate before the National Assembly on September 18, 2014.

Enacted laws

- **Law n°2014-743 of July 1, 2014 relating to the applicable procedure before the Industrial Tribunal in the scope of the termination of an employment contract by the salaried staff** – OJ of July 2, 2014.
- **Law n°2014-744 of July 1, 2014 for the creation of mixed economy company for single operation** – OJ of July 2, 2014.
- **Law n°2014-779 of July 8, 2014 to regulate the conditions of mail order of books and to empower the Government to amend by way of ordinance the provisions of the Intellectual Property Code relating to publication agreements** – OJ of July 9, 2014.
- **Law n°2014-788 of July 10, 2014 relating to the development, supervision of training periods and improvement of trainees' status** – OJ of July 11, 2014.
- **Law n°2014-790 of July 10, 2014 to fight against unfair social competition** – OJ of July 11, 2014.
- **Ordinance n°2013-676 of July 25, 2013 which amends the legal framework of asset management** – OJ of July 27, 2014.
- **Law n°2014-844 of July 29, 2014 relating to securitisation and structured lending agreements taken out by legal entities governed by public law** – OJ of July 30, 2014.
- **Law n°2014-856 of July 31, 2014 relating to social and solidarity-based economy** – OJ of August 1, 2014.
- **Law n°2014-872 of August 4, 2014 which reforms the railway system** – OJ of August 5, 2014.
- **Law n°2014-873 of August 4, 2014 regarding real equality between women and men** – OJ of August 5, 2014.
- **Amending Finance Law 2014 n° n°2014-891 of August 8, 2014** – OJ of August 9, 2014.
- **Amending Law n°2014-892 of August 8, 2014 relating to the financing of social security systems for 2014** – OJ of August 9, 2014.
- **Law n°2014-896 of August 15, 2014 relating to preventing repeat offence and the customization system of sanctions** – OJ of August 17, 2014.

1. Banking

France - Compartmentalization of the speculative operations

Decree n°2014-785 dated 8 July 2014 relating to the threshold mentioned in article L. 511-47 of the French Monetary and Financial Code ([J.O n°0158 dated 10 July 2014](#)) issued under the law on the separation and regulation of banking activities dated 26 July 2013 sets out the threshold of trading on financial instruments beyond which credit institutions are required to create a subsidiary dedicated to their speculative operations. Such new subsidiary shall be created within twelve months after the end of the financial year during which the threshold has been exceeded.

Pursuant to the new article R.511-16 I of the French Monetary and Financial Code there is a threshold of 7.5% of the balance sheet of the entity, based on the book value of the assets corresponding to trading on financial instruments.

Decree n°2014-785 came into force on 11 July 2014.

2. Capital Markets

France - Alert on the distribution of financial instruments

In the context of their joint unit, the French ACPR and AMF decided to redefine their expectations as for the content of financial distributions agreements through ACPR guidelines and AMF [position-recommendation DOC-2014-05](#), that will both come into effect as of 1 January 2015.

European Law - UCITS V Directive

New Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amends Directive 2009/65/EC (the so-called UCITS V Directive) on three key issues: strengthening of the protection of UCITS investors through new sets of rules relating to the depositary functions, closer control over remuneration policies and better consistency of administrative sanctions. Member States will then have until 18 March 2016 to implement the Directive into national law.

3. Competition

European Law - Antitrust – Strengthening the position of national competition authorities to ensure effective enforcement of competition rules throughout the EU

The [Communication "Ten Years of Antitrust Enforcement – achievements and future perspectives"](#) was adopted on 9 July 2014 by the European Commission. This Communication aims to further strengthen the position and tools of the national competition authorities (NCAs). The Commission sets out priority areas where further progress should be made: (i) guaranteeing the independence of NCAs in the exercise of their tasks and making sure that they have sufficient resources; (ii) ensuring that NCAs have a complete set of effective investigative and decision-making tools; and (iii) ensuring that effective tools for imposing deterrent and proportionate fines and well-designed leniency programs are in place in all Member States. The Communication is accompanied by two Staff Working Papers on (i) a [facts-based review of competition law enforcement between 2004 and 2013](#), and (ii) an [examination of key aspects of this enforcement, with a view to further enhancing it](#).

European Law - Antitrust – Consultation on the functioning and the future of the Insurance Block Exemption Regulation

The European Commission launched on 5 August 2014 a public consultation on the functioning and the future of the [Insurance Block Exemption Regulation](#) (IBER), which exempts certain agreements between the companies in the insurance sector from the prohibition of anticompetitive arrangements laid down in Article 101(1) TFEU. The exemption covers two types of agreements between insurance or reinsurance companies: (i) agreements with respect to joint compilations, joint tables and studies, and (ii) common coverage of certain types of risks (co-insurance or co-reinsurance). The [questionnaire](#) established by the Commission aims to consult stakeholders on the application and the future of the IBER, which is

due to expire in March 2017.

Interested third parties can submit their comments until 4 November 2014.

European Law - State Aid – Adoption of revised guidelines for supporting firms in difficulty

The new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty adopted by the European Commission on 9 July 2014 were published in the OJ of the EU on 31 July 2014. These guidelines replace the previous ones adopted in 2004. Although some of the key principles remain the same (such as temporary rescue aids granted for a period of 6 months or the 'one time, last time' principle), the new Guidelines introduce certain changes: (i) new rules allowing temporary restructuring support for SMEs (granted for at most 18 months); (ii) better filters to ensure that state aid is used where it is really needed and to avoid waste of taxpayers' money; (iii) new rules ensuring that investors pay a fair share of the costs of the firm's restructuring.

The new Guidelines entered into force on 1 August 2014.

European Law - Merger control – Consultation on possible improvements of EU merger control rules

The European Commission launched on 9 July 2014 a public consultation on its White Paper "Towards More Effective EU Merger Control", in which it makes proposals aiming to improve EU rules on merger control, ten years after the entry into force of the reform of the Merger Regulation in 2004. The key proposals of the White Paper principally relate to: (i) a light and tailor-made review of acquisitions of non-controlling minority shareholdings which could harm competition; (ii) making case referrals between Member States and the Commission more business-friendly and effective; (iii) making procedures simpler; (iv) fostering coherence and convergence.

Interested third parties can submit their comments until 3 October 2014.

4. Corporate

France - Draft bill regarding the simplification of companies' existence

Article 12 of the draft bill regarding the simplification of companies' existence, which has been adopted in first reading by the French *Assemblée nationale* on 22 July 2014 and is now being under review by the French *Sénat*, provides, in particular:

the possibility to reduce, by way of ordinance, the minimum numbers of shareholders in non-listed *sociétés anonymes*;

the simplification of the regime applicable to the transfer of the registered office of a *société à responsabilité limitée* and the update of articles of association;

an authorisation for the government to remove the obligation to file a conformity statement within the framework of merger or demerger transactions, when such an obligation is not provided under EU Regulation 2157/2001 dated 8 October 2011 regarding the status of the European Company (SE), EU Directive 2011/35/UE dated 5 April 2011 regarding mergers between *sociétés anonymes* or Directive 2005/56/CE dated 26 October 2005 regarding cross border mergers.

France - Prior information of the employees in case of a sale of the company in order to enable them to make an purchase offer

The Law n°2014-856 dated 31 July 2014 on the social and solidarity economy, published on 1st August 2014, establishes a time period enabling the employees to submit, in certain cases, an offer in case of a sale of business as going-concern or a sale of shares (representing more than 50% of the share capital) within company having less than 50 employees and a prior information for employees of companies in which the total headcount is between 50 and 250 employees.

This information may be completed by any mean. Employees benefit then from a 2-month period to answer. The sale may nonetheless take place before the expiry of this 2-month period in case each of the employees has indicated that he/she will not submit any offer.

In the event this information obligation is not complied with, any employee may request the judge to annul the sale. The statute of limitation applicable to this nullity claim is 2 months upon the date of publication of the sale.

These provisions are applicable to all sales concluded at least 3 months after the date of publication of this law, i.e. as from 3 November 2014.

5. Employment

France - Adoption of the Law regarding social and solidarity economy

The Law n°2014-856 regarding social and solidarity economy published in the Official Journal on 1 August 2014 fosters the purchase of small and middle companies by their employees. It creates an obligation to inform employees about the project of sale of the company in order for employees to be able to make an offer to purchase the company as from 1 November 2014. The employer has also an obligation to inform employees every 3 years on the possibilities to purchase the company. Implementing decrees shall be published.

The Law also strengthens sanctions provided by the "Florange Law" dated 29 March 2014, allowing the Administration to refuse to validate a social plan of an employer who breached his obligation to look for a purchaser.

France - Adoption of the Law regarding real equality between women and men

The Law n°2014-873 regarding real equality between women and men, published in the Official Journal on 5 August 2014, merges in a unique annual negotiation the two former negotiations on objectives of professional equality and on pay disparities between men and women.

This new obligation relates to the objectives of equality in terms of jobs and remunerations and tackles condition for job access, professional training, careers progress, work conditions, job desegregation and the planning of measures encountered to delete pay disparities between men and women.

The Law provides other numerous provisions such as:

- the modification of the provisions regarding moral and sexual harassment;
- the creation, as from 6 August 2014, of a four-day paid leave when signing a "Pacte civil de solidarité" (French civil union agreement);
- the protection of young fathers against termination of their employment contract, except for serious misconduct or inability to maintain the contract, during 4 weeks starting from the child birth;
- the authorisation of absence for pregnant employees in order to have compulsory antenatal medical exams and authorisation of absence of their companion for three of these medical exams;
- the reform of the parental leave applicable for any child born as from 1 October 2014.

France - Decrees regarding the company's list, hiring medical records and the annual activity report

The Decree n°2014-798 and Decree n°2014-799 published in the Official Journal on 13 July 2014 restore in the French Labour Code the obligations related to Occupational Medicine and more precisely regarding the Company's list, hiring medical records and the annual activity report.

France - Ministerial Order regarding the professional securing contract ("Contrat de sécurisation professionnelle")

The Ministerial Order dated 23 July 2014 regarding the approval of the amendment agreement n°4 to the convention date 19 July 2011 about the professional training contract published in the Official Journal on 7 August 2014 extends the provisions relating to the professional securing contract until 31 December 2014.

6. Environment

France - Waste electrical and electronic equipment

Decree n°2014-928 dated 19 August 2014 published in the Official Journal of 22 August 2014 is to transpose the EU Directive 2012/19/EU dated 4 July 2012 on waste electrical and electronic equipment (WEEE).

This Order amends Articles R.543-172 to R.543-206-4 of the French Environmental Code, in particular by modifying the definition of producer and authorising a producer of EEE not established in France to appoint a proxy in France who will be responsible for such producer's obligations. The Decree also includes photovoltaic panels on the list of electrical and electronic equipment. Orders should be published shortly to complete this Decree.

7. Insolvency Proceedings

France - The decree n°2014-736 dated June 30th 2014 was published in the Official Journal dated July 1st 2014

This text clarifies the conditions of application of the Ordinance dated March 12th 2014 reforming the prevention of the companies' difficulties and insolvency proceedings, come into effect on July 1st 2014. Among these new predictions we have raised the thresholds for the application of the accelerated safeguard and the accelerated financial safeguard which are 20 employees, 3,000,000 euros of turnover before tax or 1,500,000 euros of total balance sheet (article 76 of the decree). The former article D. 628-2-1 of the French Commercial Code provided 25,000,000 euros of total balance sheet or 10,000,000 euros when the debtor owes a company with more than 150 employees and 20,000,000 euros of turnover.

France - The minister of justice order dated July 25th 2014 issued for the application of the new article L. 611-16 of the French Commercial Code was published in the Official Journal dated July 30th 2014

Pursuant to the Article L 611-16 paragraph 2, is deemed unwritten any clause providing that the fees of the creditor's counsel over a portion set by minister of justice order will be borne by the debtor, due to the sole opening of a conciliation proceedings or a *mandat ad hoc* proceedings.

This order sets the portion to be borne by the debtor at three-quarter of the fees of the creditor's counsel in the framework of *mandat ad hoc* and conciliation proceedings.

8. Insurance

France - Recommendation on life insurance distribution agreements

In order to clarify the French requirements provided under articles L. 132-28, R. 132-5-1 and R. 132-5-2 of the French Insurance Code, the French banking and insurance supervising authority (ACPR) has published on 3 July 2014, a recommendation relating to distribution agreements for life insurance products which will enter into force on 1st January 2015. The ACPR sets out the recommendations relating to:

- (i) advertising communications;
- (ii) information relating to insurance contracts;
- (iii) the implementation of these recommendations in case of distribution chains;
- (iv) the adoption of internal procedures in order to monitor the compliance with these requirements and to justify (as the case may be) the reasons for non-compliance.

France - Decennial liability insurance for candidates for public contracts

The law n°2014-790 dated 10 July 2014 against social unfair competition has amended article L. 241-1 of the French Insurance Code providing for the obligation, for any constructor, to have concluded decennial liability insurance. Article L. 241-1 now sets out that such obligation applies before the commencement of the construction work for candidates for public contracts. Indeed, French insurance Code now provides that "*a candidate for public contracts must justify that it has concluded an insurance contract covering itself*" for decennial liability.

European Law - Underlying assumptions for the standard formula for the solvency capital requirements calculation (Solvency II)

EIOPA has published on 31 July 2014, a document on the underlying assumptions for the standard formula for the solvency capital requirements calculation as provided in Solvency II Directive. In accordance with the directive, insurance undertakings must hold eligible own funds covering the capital solvency requirements. This capital is especially calculated in accordance with a standard formula which is structured in accordance with risk profiles (for example, non-life underwriting risk, life underwriting risk or market risk). EIOPA's document covers all risk modules of the standard formula, addressing the assumptions related to the risks covered by the respective modules as well as the assumptions for the correlation between the modules. EIOPA's document aims to provide to insurance undertakings key information for solvency capital requirements calculation under the standard formula.

9. Intellectual Property

European Law - Adoption by the European Commission of an EU Action Plan on the enforcement of intellectual property rights.

On the 1 of July 2014, the European Commission adopted an EU Action Plan for the enforcement of intellectual property rights.

According to the Commission, this action plan focusses on commercial scale counterfeiting, which is considered to be the most harmful for the economy.

It provides a series of ten actions which should be implemented in 2014 and 2015, including, for instance:

the launch of a series of consultations with a view to establish a European due diligence system applicable throughout the supply chains, which can be adopted by companies, on an initially voluntary basis;

to facilitate the adoption of further voluntary Memoranda of Understanding in order to reduce the profits of commercial scale IP infringements in the online environment, on the model of the one adopted in 2011 applying to online platforms;

-the publication of a Green Paper regarding the need for future EU action based on the best practice found in nationally financed schemes assisting SMEs to enforce their IP rights;

-the establishment of a Member State Expert Group on IP enforcement, with a view to share national best practice and to ensure the follow-up, in Member States, of the action plan's enforcement;

Alongside the action plan, the European Commission communicated a new [Strategy for the protection and the enforcement of intellectual property rights \(IPR\) in third countries](#).

10. Procedures

France - Reform of the legal interest rate

The Decree n°2014-947 dated August 20, 2014 regarding the legal interest rate modifies Article L. 312-2 of the French Monetary and Financial Code relating to the calculation of the legal interest rate for taking better account of the cost of refinancing for the creditor and of the changes in the economy. Accordingly, while this rate was updated once a year until now, the update will now take place every semester. Moreover, two distinct legal interest rates will now be established: one specific legal interest rate will be applicable only to the debts owed to private individuals while a second legal interest rate will be applicable to all other situations. This reform will enter into force on January 1st, 2015. The legal interest for 2014 is 0.04%.

11. Public Law

France - Railway reform

Law n°2014-872 dated 4 August 2014, published in the O.J. dated 5 August 2014, creates an integrated public railway group resulting from the merger of SNCF and RFF (Réseau Ferré de France). The aim of this railway reform is to prepare the opening to competition of the railway market in Europe scheduled in 2022 on the fourth railway package of the European Commission. The public railway group will consist of three entities: SNCF (a newly created holding), which will be in charge of the strategic management and economic consistency of the group, SNCF Réseau (the former RFF), which will be responsible for the management of railway infrastructures, and SNCF Mobilités (the former SNCF), in charge of the operation of train services. The law is also aimed at promoting rail freight and allows regions and communities to withhold a new tax on travellers to finance expenditures of railway stations fittings and fixtures. The new SNCF will be created on 1 December 2014.

France - Financial security of loan contracts between credit institutions and public entities

Law n°2014-844 dated 29 July 2014, published in the O.J. dated 30 July 2014, allows retroactive application of contractual provisions on interest rates in loan contracts between credit institutions and public entities. Most of those contracts do not include a global effective interest rate or mention a wrong percentage of such global effective interest rate. Two judgments of the Tribunal de Grande Instance de Nanterre invalidated those types of contracts and replaced the missing or wrong percentage of global effective interest rate by the legal interest rate. Consequently and subject to final decisions of highest courts, Law n°2014-844 secures the existing contractual situations.

France - Governance modernization of public companies

Order n°2014-948 dated 20 August 2014, published in the O.J. dated 23 August 2014, establishes new rules on governance and transactions affecting the capital of public companies. The Order modernises the rules concerning the sizes of boards and terms of offices contained in the Law of 26 July 1983 on public sector democratisation. Moreover, the Order simplifies the rules and authorization process for the opening of the share capital of public sector companies having directly or indirectly more than a 50% public sector stake as they were defined in the privatisation laws of 2 July 1986, 6 August 1986 and 19 July 1993.

12. Real Estate

France - ALUR Law: Decrees

Decree n°2014-854 dated 30 July 2014 published in the Official Journal of 31 July 2014 specifies the method to limit the evolution of the rent for residential leases and the areas where it applies. These provisions apply to leases entered into or renewed between 1st August 2014 and 31 July 2015.

Decree n°2014-890 dated 1st August 2014 published in the Official Journal of 6 August 2014 sets out the method to cap the fees of real estate agents chargeable to the tenants. These provisions apply as from 15 September 2014.

Decree n°2014-843 dated 25 July 2014 published in the Official Journal of 27 July 2014 specifies the composition and operating rules of the National Council of the transaction and the property management ("*Conseil national de la transaction et de la gestion immobilière*").

13. Tax

France - Amended Finance Act for 2014

The following main measures were adopted as part of the Amended Finance Act for 2014 n°2014-891 of August 8, 2014:

The exceptional corporate income tax surcharge at a rate of 10.7%, due by companies with turnover exceeding EUR 250 million, is extended for the fiscal year ending on December 30, 2016.

The application of the transfer pricing procedure (article 57 of the French Tax Code – FTC) is no more subject to the existence of non-arm's length relationship between the French and the foreign company when the latter is established or incorporated in a non-cooperative State or territory.

The tax penalties applicable to the breach of the obligation to report computerized accounting records in dematerialized form or the obligation to report analytical accounting and consolidated accounts are increased.

In the context of the automatic exchange of information for tax purpose with foreign States, French financial institutions are now on allowed to undertake automatic processing of personal data. A new reporting device and a specific sanction have also been introduced.

The capital gains arising from the sale of shares subscribed in exercising a BSPCE (stock options on shares in start-up companies) are excluded from the scope of both the tax rebate for holding period and the fixed rebate of EUR 500,000. Gains resulting from the exercise of options awarded before June 20, 2007, already excluded from the scope of the tax rebate for holding period, are now on excluded from the benefit of the fixed rebate.

France - Corporate income tax

Parent-subsidiary regime: exemption of withholding tax on dividends paid to foreign parent companies

The French Tax Authorities (FTA) updated their guidelines regarding the exemption, under conditions, of the withholding tax on dividends paid by a French resident company to a non-resident company pursuant to article 119 ter of the FTC (BOI-RPPM-RCM-30-30-20-10, BOI-RPPM-RCM-30-30-20-30, BOI-RPPM-RCM-30-30-20-40, BOI-IS-BASE-10-10-10-20 and BOI-LETTRE-000077 dated July 25, 2014).

Besides, the FTA provided for clarifications as regards eligible companies. In this respect, the parent-subsidiary tax regime is applicable to companies subject to corporate income tax at the reduced rate of 15% provided by article 219, I, B of the FTC (BOI-IS-BASE-10-10-10-10 n°110).

Updates on the interest rate limiting the deductibility of financial expenses provided by article 39, 1, 3° of the FTC

The FTA updated their guidelines by integrating the reference rate used for calculation of the limit of deductible interest for the twelve-month periods ended between June 30, 2014 and September 29, 2014. This reference rate is raised to (BOI-BIC-CHG-50-50-30 n°40 dated July 9, 2014):

2,88% between June 30, 2014 and July 30, 2014;

2,89% between July 31, 2014 and August 30, 2014;

2,90% between August 31, 2014 and September 29, 2014.

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

France - Taxation of investors and managers

New regime applicable to the stock options

The FTA updated their guidelines to take into account the new regime applicable to stock options and bonus shares issued as from September 28, 2012. The FTA specified the regime of bonus shares part of an employee savings plan (**PEE**) as well. (BOI-RSA-ES-20-10-10 ; BOI-RSA-ES-20-10-20-20 ; BOI-RSA-20-10-20-40 ; BOI-RSA-ES-20-20-10-10 ; BOI-RSA-ES-20-20-10-20 ; BOI-RSA-ES-20-20-20; BOI-RSA-ES-20-20-30 ; BOI-RSA-ES-10-30-10 dated August 12, 2014).

As a reminder, the acquisition gain benefited from flat rate taxation provided that a period of unavailability was respected. The acquisition gain is now subject to individual income tax at a progressive tax rate and to social contributions (CSG and CRDS).

Tax regime applicable to Bitcoins

The FTA specified the tax regime applicable to a virtual unit of account stored in electronic format (**Bitcoins**):

-Profits derived from the sale of Bitcoins are subject to the following tax regime:

taxation as business profits (*Bénéfices Industriels et Commerciaux*) if the activity is carried out on a regular basis (BOI-BIC-CHAMP-60-50 n°730 dated July 11, 2014);

taxation as non-commercial profits (*Bénéfices Non Commerciaux*) if the activity is carried out on an occasional basis (BOI-BNC-CHAMP-10-10-20-40 n°1080 dated July 11, 2014).

-the Bitcoins fall within the scope of the French wealth tax and thus have to be reported in the French annual wealth tax return (BOI-PAT-ISF-30-20-10 n°80 dated July 11, 2014);

-the transfer of Bitcoins is subject to transfer duties notwithstanding the application of any international tax treaty (BOI-ENR-DMTG-10-10-20-10 n°10 dated July 11, 2014).

France - Reporting obligations

The FTA specified the modality of appointment of a tax representative by a foreign company in France, in the context of the request of a ruling pursuant to article 115, 2° of the FTC. To avoid any ambiguity, the FTA confirmed the optional nature of such appointment (BOI-SJ-AGR-20-20 n°430 dated July 16, 2014).

As a reminder, the ruling request provided by article 115, 2° of the FTC provides for the tax exemption of the shares attributed to the shareholders of the transferring company, in remuneration of a partial transfer of assets benefiting from the special tax regime provided by [article 210 A](#), when such attribution, made in proportion to the shareholders' right in the share capital, takes place within the year of completion of the partial transfer of assets.

European Law

The [2014/86/UE directive](#) modified the parent-subsidiary tax regime provided by the 2011/6/UE directive which set forth (i) the exemption of withholding tax on dividends and other profits paid by the subsidiary to the parent company established in another member State, and (ii) the elimination of the double taxation of this income at the parent company's level.

To avoid double non-taxation situation consequently to the asymmetrical tax treatment applied to profit distribution between member States, the 2014/86/UE directive provides that the member State in which the parent company is established shall not grant any tax exemption to the profits received by the parent company when such profits are deductible for tax purposes at the subsidiary's level.

14. Telecoms

France - Publication of Decree n°2014-867 relating to the ARCEP sanction procedure

On July 5, 2013, in its [Decision QPC 2013-331](#), the *Conseil Constitutionnel* found that the legislative provisions of the French posts and electronic communications Code which determine the power of sanction of ARCEP (article L.36-11) were violating the Constitution. The [Ordonnance n°2014-329 du 12 mars 2014 relative à l'économie numérique](#) relating to digital economy amended such power of sanction to comply with the decision of the *Conseil constitutionnel*. Under the new rules, legal proceedings functions are distinct from judgment functions. Pursuant to decree n°2014-867 ([Décret n°2014-867 du 1^{er} août 2014 relatif à la procédure de sanction de l'ARCEP](#)), a chapter IV called "ARCEP Sanction procedures" was added to the *Livre IV* of the French posts and electronic communications Code. The chapter contains articles D. 594 to D. 599 which organize the sanction procedure within ARCEP, notably with respect to restricted formation, instruction phase or methods of hearings.

France - Publication of ARCEP Decision n°2014-532 with respect to 3G and 4G Services on board aircraft

The ARCEP decision ([Decision n°2014-532 dated May 6, 2014](#)) sets the conditions for using 3G and 4G services inside French airspace. As a result, the use of the following systems on board aircraft is now authorised at altitudes of more than 3,000 metres above the ground: 2G and 4G systems in the 1800 MHz band, 3G systems in the 2100 MHz band. All airlines will therefore have the option of offering these in-flight services, and will be free to set their own prices.

European Law - Presentation to the European Commission of the report on how to use the Ultra High Frequency (UHF) spectrum most effectively

Pascal Lamy – former member of the European Commission and honorary President of the Notre Europe think tank – gave the European Commission a report on how to use the Ultra High Frequency (UHF) spectrum (the 700 Megahertz (MHz) band) in the coming decades ([rapport sur l'utilisation optimale de la bande UHF](#)). Pascal Lamy has proposed a "2020-2030-2025" formula with the aim of enabling Europe to fulfil [Digital Agenda for Europe](#) broadband targets in three steps, while giving broadcasting a clear path to invest and develop further: The 700 MHz band (694-790 MHz) is currently used by terrestrial broadcasting networks and wireless microphones) should be dedicated to wireless broadband across Europe by 2020 (+/- two years); Regulatory security and stability for terrestrial broadcasters in the remaining UHF spectrum below 700 MHz to be safeguarded until 2030; a review by 2025 to assess technology and market developments.

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