

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 November 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.

If you would like to consult this newsletter from past months, please click [here](#).

Please send an e-mail to [communicationparis@hoganlovells.com](mailto:communicationparis@hoganlovells.com) if you wish to subscribe to this publication.

For additional information, please speak to your usual contact.

#### Contact

**Bruno Knadjian**

Avocat à la Cour

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 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 new reading before the National Assembly on October 30, 2014.
- **Draft law relating to the limitation of the use of biometric technology**, n°361, filed at the Senate on February 12, 2014 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law relating to biodiversity**, n°1847, filed before the National Assembly on March 26, 2014.
- **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 – Adopted in first reading at the Senate on November 5, 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 and then amended in first reading before the Senate on November 5, 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. Adopted in first reading by the National Assembly on September 18, 2014 and by the Senate on October 16, 2014 – Joint commission.
- **Draft law relating to energy transition towards green growth**, n°2188, filed on July 30, 2014. Adopted in first reading by the National Assembly on October 14, 2014.

- **Draft finance act for 2015**, n°2234, filed on October 1, 2014 – Adopted in first reading before the National Assembly on November 18, 2014.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 before the National Assembly.
- **Draft law on the financing of Social Security for 2015**, n°2252, filed on October 8, 2014 before the National Assembly – Adopted in final reading by the National Assembly on December 1, 2014. The law has been referred to the Constitutional Council.
- **Draft Public Finance Planning Act for 2014 – 2019**, n°2236, filed on October 1, 2014 – Adopted in first reading by the National Assembly on October 21, 2014 then amended in first reading by the Senate on November 6, 2014.
- **Draft law relating to various provisions in connection with literary and artistic works property and cultural heritage for the transposition of EU Law into French Law**, n°2319, filed on October 22, 2014 – Adopted in first reading at the National Assembly on November 20, 2014.
- **Draft amending finance law for 2014**, n°2353, filed on November 12, 2014 – Under examination in first reading at the National Assembly at the beginning of December .

---

#### Enacted laws

- **France and China in order to avoid double taxation and prevent tax evasion and fraud relating to income tax** – OJ of November 27, 2014.
- **Organic law n°2014-1392 of November 24, 2014 relating to the enforcement of article 68 of the Constitution** – OJ of November 25, 2014.
- **Law n°2014-1353 of November 13, 2014 which reinforces the provisions relating to the fight against terrorism** – OJ of November 14, 2014.
- **Ordinance n°2014-1348 of November 12, 2014 which amends the provisions of the intellectual property code relating to publishing contracts** – OJ of November 13, 2014.
- **Ordinance n°2014-1345 of November 6, 2014 relating to the legislative part of the expropriation code in the public interest** – OJ of November 11, 2014.
- **Ordinance n°2014-1335 of November 6, 2014 relating to the adaptation and the entry into force of provisions of the general code of territorial collectivities, the general tax code and other legislative provisions applicable to the city of Lyons** – OJ of November 7, 2014.
- **Ordinance n°2014-1332 of November 6, 2014 relating to various provisions for the transposition of the legislation to the mechanism of single surveillance of credit institutions** – OJ of November 7, 2014.
- **Ordinance n°2014-1330 of November 6, 2014 relating to the right of users to refer a matter to the administration electronically** - OJ of November 7, 2014.
- **Ordinance n°2014-1329 of November 6, 2014 relating to remote deliberations of collegial administrative authorities** - OJ of November 7, 2014.
- **Ordinance n°2014-1328 of November 6, 2014 relating to the communication of notices** - OJ of November 7, 2014.

---

## 1. Banking

### France - Single Supervisory Mechanism

The order (*ordonnance*) n°2014-1332 dated 6 November 2014 setting forth various provisions modifying French legislation to comply with the credit institutions Single Supervisory Mechanism ("**SSM**") ([J.O n°0258 du 7 November 2014](#)) amends the French monetary and financial code in order to organise a close coordination between the European Central Bank ("**ECB**") and the French Prudential Control Authority (*Autorité de Contrôle Prudentiel et de Résolution*) as part of the implementation of the SSM.

The order (*ordonnance*) n°2014-1332 entered into force on 8 November 2014.

### France - French Financial Stability Board

The decree n°2014-1310 dated 31 October 2014 regarding the French Financial Stability Board (*Haut Conseil de Stabilité Financière*) ("**HCSF**") ([J.O n°0255 dated 4 November 2014](#)) amends the French monetary and financial code in order to specify HCSF's organisation. This decree addresses, *inter alia*, the articulation between HCSF's organisation and the European regulations that provide a process of notification and consultation of the European institutions.

The decree n°2014-1310 entered into force on 5 November 2014.

### France - Transposition of the "CRD IV package" and financing companies

Decrees n°2014-1315 and n°2014-1316 dated 3 November 2014 setting forth various provisions modifying French legislation to comply with the European Union financial rules and relating to financing companies and seven ministerial orders dated 3 November 2014 ([J.O n°0256 dated 5 November 2014 \(7-15\)](#)) transpose the "CRD IV package" and adopts regulatory rules regarding the financing companies. These acts cover, *inter alia*, the corporate governance of credit institutions and financing companies.

These various decrees and ministerial orders entered into force on 6 November 2014.

### European Law - Supervisory fees

Article 30 of the regulation (EU) n°1024/2013 establishing a single supervisory mechanism provides for the levying of an annual supervisory by the ECB on credit institutions.

Pursuant to this article 30, the regulation (EU) n°1163/2014 dated 22 October 2014 on supervisory fees ([JOUE L 311/23 dated 31 October 2014](#)) lays down the arrangements, methodology and criteria for calculating the annual supervisory fees and the procedure for the collection by the ECB of the annual supervisory fees.

The regulation (EU) n°1163/2014 entered into force 1<sup>st</sup> November 2014.

---

## 2. Capital Markets

### France - Shortening of the settlement / delivery period to D+2

As of 6 October 2014, a shortening of the settlement / delivery period from 3 to 2 days. Such shortening is a consequence of the European regulation of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories. (source: "*Dictionnaire permanent, épargne et produits financiers*")

---

### 3. Corporate

#### France - AMF: Update of the insider control and investigation charters

In a statement published on 21 November 2014, the AMF indicates that the charters given to every person encountered in the course of an investigation or insider control by the AMF are updated in order to take into account the entry into force of the Law no 2013-672 of 26 July 2013 of separation and regulation of banking activities

The main amendments to the charter of the investigation from the law of separation and regulation of banking activities cover the following topics:

- remote hearing terms or explanations collection that can now be done on site;
- the use of a digital identity loan;
- the ability of the AMF to conduct home visits in the offense of the research framework against property may constitute breaches of its General Regulation; and
- the existence of administrative obstacles of default which now offers the AMF the opportunity to pursue and punish behavior obstructing the AMF investigation services.

#### European Law - Directive 2014/95/UE regarding the publication of non-financial information and relating to the diversity of significant public interest entities

Directive 2014/95/UE of 22 October 2014 amending Directive 2013/34/EU of 26 June 2013 on the publication of non-financial information and information relating to diversity by some large companies was published in the Official Journal of the European Union on 15 November 2014.

The new provisions apply to public interest entities with an average of 500 employees at the closing date of their balance sheet.

The member states will have to transpose the Directive no later than 6 December 2016. The date of entry into force of the new rules is scheduled for 1 January 2017.

As from 1 January 2017, these companies will have notably to publish annually a statement containing information on their policies, risks and results regarding environmental and social aspects relating to personnel, respect for human rights and fight against corruption issues.

---

### 4. Employment

#### France - Adoption of the Social Security Financing Act 2015

The 2015 Social Security Financing Act has been adopted on December 1<sup>st</sup>, 2014 by the National Assembly. The parliamentarians confirmed notably the suppression of the profit-sharing bonus (*Prime de partage des profits - Article 19*) and raised from 30% to 45% the rate of contribution due by employers for the "supplementary pension schemes" exceeding eight annual ceilings of social security (*Plafond Annuel de Sécurité Sociale - Article 17*). The Constitutional Council will have to give its opinion on this text.

#### France - Determination of the content of complementary health insurance schemes benefiting from fiscal and social aids

The Decree n°2014-1045 published in the Official Journal on 19<sup>th</sup> November 2014 provides for the rules conditioning the benefit from social and fiscal aids for complementary health insurance schemes qualified as "responsible contracts" ("*contrats responsables*"). This Decree comes into force as of April 1<sup>st</sup>, 2015 except for the collective and mandatory contracts (*contrats collectifs et obligatoires*) currently applied. The Decree will come into force for the collective and mandatory contracts currently applied as of the date they will be modified and at the latest on December 31<sup>st</sup>, 2017.

---

## 5. Insurance

### France - Corporate Governance – Decree on reputation and skills of the directors of insurance and financial companies

The Decree 2014-1357 of 13 November 2014 on control of the reputation and the skills of directors and members of collegiate bodies in insurance companies, credit institutions, financing companies, investment institutions other than asset management company, financial holding companies, mixed financial holding companies and parent companies of financing companies, specifies the requirements relating to the control of reputation and skills of the directors or members of collegiate bodies of insurance companies notably. The Decree in particular specifies that insurance companies have a fifteen (15) days period to notify the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**") of the appointment and/or renewal of certain managing persons. The Decree also specifies the criteria used by the ACPR when exercising its control (experience of the person in the area of insurance and financial market markets, the governance of the company, etc.). In relation to insurance companies, these rules will be implemented in the French Monetary and Financial Code (Articles R. 612-29-3 and the following) and in the French Insurance Code (Article R. 322-1-66). The Decree will enter into force on 1<sup>st</sup> January 2015.

---

## 6. Intellectual Property

### France - Amendment of the provisions on publishing contracts in the digital era

Order n°2014-1348 of 12 November 2014, which entered into force on 1<sup>st</sup> December 2014, amends certain provisions of the French Intellectual Property Code regarding publishing contracts and introduces some new ones. These amendments, which were made possible by law n°2014-779 of 8 July 2014, were adopted after a framework agreement was signed on 21 March 2013 between the Permanent Counsel of Writers ("*Conseil permanent des écrivains*") and the National Publishing Union ("*Syndicat national de l'édition*") relating to publishing contracts in the sector of books in the digital era.

The provisions concerning publishing contracts are now organized in two sub-sections, the first of which contains the general provisions on publishing contracts and the second the specific provisions applicable to book publishing. The second sub-section is itself divided into two parts, one relating to traditional publishing and digital publishing, the other devoted to digital publishing only.

The definition of a publishing contract is extended and now not only covers the "*manufacture of copies*" but also the "*realization in a digital form*".

As regards book publishing, authors' rights relating to traditional publishing and authors' rights relating to digital publishing will have to be included in separate parts of the assignment contract, under nullity of the assignment. This will mean an additional and separate remuneration for the author, where the digital rights are assigned. The publishing contracts entered into before 1<sup>st</sup> December 2014 will comply with this new obligation of separate parts, when these contracts will be amended.

Finally, regarding the specific provisions applicable to digital book publishing, a reassessment, by the parties, of the economic conditions of the assignment of digital rights, has been introduced.

### France - Approval by the Council of State ("*Conseil d'Etat*") of the scales relating to the remuneration for private copying established by the Commission Copie Privée: a first!

The Council of State (the French highest administrative court) rendered, on 19 November 2014, two decisions approving the remuneration scales established by decisions n°14 of 9 February 2012 and n°15 of 14 December 2012 of the French Committee provided for by Article L. 311-5 of the French Intellectual Property Code, known as the "*Commission Copie Privée*".

To recall, decisions n°11 and 13 of the Commission Copie Privée were respectively cancelled on 17 June 2011 and 25 June 2014 by the Council of State because professional uses were included in the scope of application of the royalty fee.

Much awaited by rights holders and members of the industry alike, the two new decisions approved the scale established for multimedia touch screen tablet computers (decision n°14) and for all recording mediums subject to the royalty fee such as multimedia mobile devices, external hard drives, smartphones, touch screen tablet computers and decoder-recording devices (decision n°15). Pursuant to Article L. 311-4 of the French Intellectual Property Code, the amount of the royalty fee is determined by taking into account the type of medium at stake, its recording duration and capacity and its use. The Council of State approves in particular the circumstances in which decision n°15 was adopted on 14 December 2012, after the resignation of five of its six members from the industry. The Council of State also approves the calculation method used. In this regard, in its ruling confirming the legality of decision No. 15, it considers that the sales price of the medium must not be taken into account when determining the amount of the remuneration.

---

## **7. New technologies**

### **France - CNIL: the "Insurance Compliance Pack"**

On 12 November 2014, the French data protection authority (the *Commission Nationale Informatique et Libertés* - CNIL) presented its "Insurance Compliance Pack" aimed at professionals in the insurance sector in order to provide them with simple tools to identify risks in the data protection field associated with their activity and to put themselves in compliance in a simplified fashion. In this respect, the pack includes several simplified norms (signature of insurance contracts, management of insurance clients) as well as general authorizations (processing of the "social security" number, fight against fraud, etc.).

### **France - The Council of State ("Conseil d'Etat") approves the scales relating to the remuneration for private copying**

Please refer to the Intellectual Property section.

### **International - Annual conference of Data protection and Privacy Commissioners**

The 36th Annual Conference of Data Protection and Privacy Commissioners was held in Mauritius from 13 to 16 October 2014. Further to the debates, the Commissioners adopted several resolutions relating to the Internet of Things, Big Data, local and global enforcement as well as the protection of privacy in the digital age.

---

## **8. Public Law**

### **France- Partial implementation of Directive 2014/23/UE on the award of concession contracts**

Decree n°2014-1341 dated 6 November 2014, published in the O.J. dated 8 November 2014, implements into national law some provisions of Directive 2014/23/UE on the award of concession contracts, concerning modification of concession contracts during their term.

The decree defines the rules governing the award of additional works and services to the original concessionnaire, without a new concession award procedure, in cases other than of unforeseeable circumstances. Such additional works or services shall only be accepted if their increase in value does not exceed 50% of the value of the original concession contract. The decree will enter into force on 1 January 2015 and shall apply to concession contracts in progress and those following its entry into force.

---

## **9. Tax**

### **France - Corporate income tax**

#### ***Introduction of the "silence equals consent" principle under French tax law***

Act n°2013-1005 dated 12 November 2013 authorizing the French government to simplify the relationships between citizens and the administration

provides that whenever the administration does not answer to a request within 2 months, the silence of the administration is deemed to equal consent.

The French administration uploaded a list, which is not legally binding, including the procedures which do not fall within any exceptions to the silence equals consent principle provided either (i) by French law, (ii) or by the decrees published in the French *Journal Officiel* on 1 November 2014.

In this respect, the general tax ruling request provided by article L 80 B-1° of the French Tax Procedure Code does not fall within the application of the silence equals consent principle.

#### ***New reporting obligations as regards transfer pricing***

The French Tax Authorities ("**FTA**") updated their guidelines taking into account the annual obligation for entities established in France, with annual turnover or value of assets registered in the balance sheet superior or equal to 400 million euros, to report their transfer pricing policy (article 223 quinquies B of the French Tax Code – "**FTC**").

Entities subject to such reporting obligation must file the tax return n°2257-SD available on the FTA's website (BOI-BIC-BASE-80-10-20; BOI-IS-DECLA-10-10-20).

#### ***Tax audit: failure to report computerized accounts***

The FTA updated their guidelines with respect to the sanction applicable in case of failure to provide computerized accounts in the event of a tax audit (BOI-CF-IOR-60-40-10).

#### ***Financial transaction tax: acquisition of shares***

The FTA updated their guidelines with respect to the application of the financial transaction tax on the acquisition of shares.

In this respect, the FTA specified that (BOI-TCA-FIN-10-10; BOI-TCA-FIN-10-20; BOI-TCA-FIN-10-30):

-the taxpayer subject to the financial transaction tax on the acquisition of shares may apply a theoretical date on which the tax is due for shares acquired as from 1 January 2015; and

-the exemption applicable to intra-group transactions and restructuring operations also benefits to groups the head of which (*or group's members if any*) is a legal person governed by French public law.

#### ***Land planning tax: new rates for 2015***

The order dated 24 October 2014 updated the value per square meters for the purpose of calculation of the French land planning tax (*taxe d'aménagement*) applicable to building permits to be granted in 2015. These values are set out as follows:

-EUR 799 per square meters in the Paris region (*Ile-de-France*) (*EUR 807 in 2014*); and

-EUR 705 per square meters everywhere else (*EUR 712 in 2014*).

#### **France - Taxation of investors and managers**

##### ***Reporting obligation for trustees***

The decree n°2014-1372 dated 17 November 2014 extended the reporting obligations with respect to trusts (article 1649 AB of the FTC) to French tax resident trustees, regardless of the tax residence of the settlors or the beneficiaries or the location of the assets and rights composing the trust.

## International - Tax treaty between France and China

Act n°2014-1402 dated 26 November 2014 authorised the approval of the agreement between China and France for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

---

### Disclaimer

This publication is for information only. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.

So that we can send you this email and other marketing material we believe may interest you, we keep your email address and other information supplied by you on a database. The database is accessible by all Hogan Lovells' offices, which includes offices both inside and outside the European Economic Area (EEA). The level of protection for personal data outside the EEA may not be as comprehensive as within the EEA. To stop receiving email communications from us please [click here](#).

The word "partner" is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

© Hogan Lovells 2014. All rights reserved. Attorney advertising.