

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 March 2015.

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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

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Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law 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 25, 2015.
- **Draft law relating to various provisions in connection with criminal procedure for the transposition of EU Law into French Law**, n°482, filed before the Senate on April 23, 2014 – Adopted in first reading at the Senate on November 5, 2014.
- **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. Amended in first reading by the Senate on March 3, 2015.
- **Draft law relating to health**, n°2302, filed on October 15, 2014 – Under examination in public session at the National Assembly from March 31, 2015.
- **Draft law for growth, activity and equal economic opportunities**, n°2447, filed before the National Assembly on December 11, 2014 – Adopted in first reading by the National Assembly on February 19, 2015 - Under examination in public session at the Senate from April 7, 2015.
- **Draft law relating to various provisions on the modernisation of the press sector**, n°2224, filed on September 17, 2014 – Adopted in first reading by the National Assembly on December 17, 2014 and by the Senate on February 5, 2015 - joint parliamentary committee (agreement) – Reading of the text by the joint parliamentary committee on March 25 at the National Assembly and on April 2 at the Senate.

- **Draft law relating to duty of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in first reading by the National Assembly on March 31, 2015.
- **Draft law relating to intelligence**, n°2669, filed on March 19, 2015 – Under examination in public session at the National Assembly from April 13, 2015.

Enacted laws

- **Law n°2015-279 of March 13, 2015 which authorises the treaty between the Government of the French Republic and the Government of Principality of Andorra in order to avoid double taxation and tax evasion for income taxes** – OJ of March 14, 2015.
- **Law n°2015-292 of March 16, 2015 relating to the improvement of the regime of the new community, for strong and lively communities** – OJ of March 17, 2015.
- **Ordinance n°2015-333 of March 26, 2015 relating to various provisions for the simplification and adaptation in the tourism sector** - OJ of March 27, 2015.

1. Banking

France - Consumer information at the time of a revolving credit offer

The decree n°2015-923 dated 16 March 2015 regarding the consumer information at the time of a revolving credit offer at the point of sale or in the course of a distance selling (J.O n°0064 dated 17 March 2015), taken pursuant to article L. 311-8-1 of the French consumer code, supplements the provisions of the French consumer code. The article L. 311-8-1 provides that the consumer, to whom a credit to finance the purchase of specific goods or services for an amount higher than 1,000 euros has been offered, shall have the option to enter into an amortizing loan instead of a revolving credit. The decree dated 16 March 2015 specifies the information that should be included in the offer and that enable the consumer to compare the revolving credit offer and the amortizing loan offer. A model form of comparative paper that shall be submitted to the consumer is attached as appendix to the decree.

The decree n°2015-293 will enter into force on 17 December 2015.

France - Anti-money laundering

The decree n°2015-324 dated 23 March 2015 setting the criteria of cash withdrawal and cash deposit transactions subject to the information obligation provided for in paragraph II of article L. 516-15-1 of the French monetary and financial code (J.O n°0071 dated 25 March 2015) supplements the French monetary and financial code. This decree provides that the establishments authorised to hold payment and deposit accounts shall communicate to TRACFIN information relating to cash withdrawal and cash deposit transactions on a deposit or payment account whose accumulated amounts over one calendar month exceed 10,000 euros.

The decree n°2015-324 will enter into force on 1st January 2016.

France - Usury rate

The notice (*avis*) dated 27 mars 2015 relating to the implementation of articles L. 313-3 of the French consumer code and L.313-5-1 of the French monetary and financial code regarding usury rate (J.O n°0073 dated 27 March 2015) specifies the threshold of usury rate applicable as from 1st April 2015.

2. Capital Markets

France - Update of Questions and Answers Guide on implementation of the EMIR regulation published par ESMA on 31 March 2015

ESMA updated its questions and answers guide on implementation of the EMIR regulation on 31 March 2015.

3. Corporate

France - Unconstitutionality of the dual proceedings both criminal and administrative of insider trading

On 18 March 2015, the Constitutional Court ruled that the French repressive system relating to insider trading is unconstitutional pursuant to the principle according to which one cannot be tried in respect of the same acts.

-In order to avoid that any trial for insider trading be impossible and that a new system be put in place, the concerned provisions of the French Monetary and Financial Code will be repealed as at 1st September 2016;

-In any instance where a final decision has been rendered on the same acts and the same persons, the dual proceedings - initiated by the French *Autorité des Marchés Financiers* (AMF) and the prosecutors - are immediately stopped.

France - Recommendations made by an AMF committee, in relation to the transfer of main assets by listed companies

In May 2014, following the sales of SFR by Vivendi and of the Alstom' energy branch to GE, the AMF set up a working group in order to deliberate over measures enabling the participation of the shareholders in the decision of a company to sell its main assets. The report dated 19 February 2015 was open for public consultation until 20 March 2015. The main recommendations are:

-Listed companies are encouraged to consult their shareholders' general meeting before the transfer of its main assets. However, in certain circumstances, this consultation shall not be necessary, particularly for companies which face difficulties and need to make urgent decisions;

-Definition of the criteria necessary to identify whether or not the transfer related to a main asset. Thus, if two of the following ratios are reached, the object of the sale will be qualified as a main asset:

- The turnover of the transferred asset over the consolidated turnover of the selling group;
- The transfer price over the market capitalization of the seller;
- The net value of the asset over the total balance sheet of the seller; and
- The current result before tax of the transferred asset over the seller's one.
- Finally, recommendation of an advisory vote rather than a binding one.

France - Adjustment of the information obligation toward the employees in the event of the transfer of a company introduced by the law called "Hamon"

The parliamentary report requested by the French Prime Minister Manuel Valls in order to measure the effects of the information obligation towards the employees was handed over on 18 March 2015. It contains in particular the following recommendations:

-Suppression of the annulment of the transfer, actual sanction of the non-compliance with of the information obligation which shall be replaced by a

simple civil fine;

-Revision of the perimeter of the concerned transactions. The purpose is to exit the intragroup transfers of the scope of the information obligation;
and

-Adjustment of the methods of information.

4. Employment

France - Implementation of the generation contract ("*Contrat de génération*")

The Decree n°2015-249 dated 3 March 2015 modifying certain provisions relating to the generation contract, applicable as from 4 March 2015, issued pursuant to the Law on training n°2014-288 dated 5 March 2014, aims at encouraging the implementation of a generation contract.

The Decree waives the obligation for companies employing between 50 and 300 employees that are covered by a sectoral collective agreement to communicate to the Labor Administration (the "*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi*") the report on employment of senior employees.

In addition, companies that will hire an apprentice under an indefinite-term employment contract in the context of a generation contract will benefit from the financial support granted under the generation contract.

France - Strengthening of companies' obligations as regards the posting of employees

The Decree n°2015-364 on 31 March 2015 relating to fight against frauds to posting of workers and fight against illegal work, applicable as from 4 March 2015, issued pursuant to the Law n°2014-790 dated 10 July 2014, strengthens the companies' obligations in terms of international posting of workers.

The Decree strengthens the reporting obligations of foreign company that post employees temporarily in France and specifies the obligation for these companies to designate a representative of the company, situated in France, to be the contact of the labor inspection.

In addition, the obligations of the prime contractor who uses the services of a foreign company posting employees in France are strengthened. Prior to the posting of employees, the prime contractor, who has a strict duty of care, must ensure that the foreign company that posts employees in France has complied with the reporting obligations and with the obligation to designate a representative of the company. Moreover, the prime contractor has an injunction and information duty in order to guarantee the respect of the posted employees' rights.

France - Decryption of https flows by the employer

[Please refer to the New Technologies section.](#)

5. Insurance

France - Life insurance – Publication of the Decree Ficovie

The Decree n°2015-362 of 30 March 2015 concerning the reporting requirements of insurance companies and assimilated organisms (the "**Decree**") has been published in the Official Journal of the French Republic on 31 March 2015. This Decree aims to implement the provisions of 2013 Amending Finance Law n°2013-1279 of 29 December 2013 in relation to the file of life insurance and capitalization contracts ("**Ficovie**"). **As such, insurance undertakings and assimilated organisms will now have to declare to the tax authority the underwriting and the termination of life insurance contracts.** Annual reporting requirements regarding the premiums paid, the surrender value and the amount of the guaranteed capital are also provided. Finally, the Decree also defines the content and the modalities of these new reporting requirements. The provisions of the

Decree, which amend annex II of the General Tax Code (Code Général des Impôts), will come into force on 1st January 2016.

France - Solvency II – Publication of the ordinance implementing the directive

Ordinance n°2015-378 of 2 April 2015 implementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (the "Ordinance") has been published in the Official Journal of the French Republic on 3 April 2015. As a result, the Insurance Code, as well as the Monetary and Financial Code, the Mutuality Code and the Social Security Code are amended in order to implement in French law the new legal framework resulting from Solvency II as regards insurance and reinsurance activities. Subject to the entry into force as from the publication date of the Ordinance of certain transitional provisions, notably in relation to the powers of the French insurance supervisory authority (Autorité de Contrôle Prudentiel et de Résolution), the Ordinance will enter into force on 1st January 2016. The Ordinance will be supplemented by regulatory provisions expected to be adopted in the coming months.

European Law - Solvency II – Adoption of new implementing Regulations

The European Commission adopted two series of Implementing Regulations on the basis of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance ("**Solvency II**"). Three Regulations dated 19 March 2015 define the implementing technical standards with regard to (i) the procedure concerning the approval of an internal model by the undertakings subject to the requirements of Solvency II (Implementing Regulation (EU) 2015/460), (ii) the process to reach a joint decision on the application to use a group internal model (Implementing Regulation (EU) 2015/461) and finally in particular with regard to (iii) the procedures to be followed for granting and withdrawing supervisory approval to establish special purpose vehicles (Implementing Regulation (EU) 2015/462). Three other Regulations were likewise adopted on 24 March 2015 concerning (i) the supervisory approval procedure to use undertaking-specific parameters (Implementing Regulation (EU) 2015/498), (ii) the use of ancillary own-fund items (Implementing Regulation (EU) 2015/499) as well as concerning the application of a matching adjustment (Implementing Regulation (EU) 2015/500). All of these Regulations have already entered into force.

6. Intellectual Property

France - Simplification of the legal deposit procedure for publishers

Decree n°2015-318 of 19 March 2015 amended the regulatory part of the Heritage Code related to the obligation of legal deposit which binds publishers of printed, graphic and photograph documents.

This Decree reduces the number of copies to be deposited by these publishers to the national Library of France ("Bibliothèque nationale de France"). It thus harmonizes the number of copies for the legal deposit with regard to publishers, printers and importers.

This Decree entered into force on 22 March 2015.

France - Cigarettes plain packaging voted by Members of Parliament

On 3 April 2015, the French National Assembly ("Assemblée Nationale") adopted one of the main measures of the Bill relating to the modernization of our health system: the plain packaging for cigarettes.

This highly controversial provision aims toward the standardization of packing, packaging and additional wrappers of cigarettes and rolling tobacco, on the one hand, and cigarette paper and paper for rolling cigarettes, on the other hand. A decree by the French Council of State ("Conseil d'Etat") shall specify the requirements relating to the shape, size, texture and color and the way trademarks and trade names shall be mentioned.

This provision, which entry into force is planned on 20 May 2016, implements article 24 of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014. However, it will have to be reviewed by the Senate beforehand.

7. New technologies

France - Delisting of "sensitive" websites

Decree n°2015-125 of 4 March 2015 implementing Article 6-1 of the Law on Confidence in the Digital Economy allows administrative authorities to request operators of search engines and online directories to delist child pornography websites and websites inciting or condoning acts of terrorism within 48 hours. The Decree entered into force on 6 March 2015.

France - Intelligence bill

On 19 March 2015, the French data protection authority (CNIL) issued an opinion related to the intelligence bill which sets the legal frame for the activities of the intelligence services. The CNIL noted for example that the bill does not provide for any control of the use of the collected data and suggests that it should be made responsible for controlling the legality of the intelligence files. The French Telecommunications Regulatory Authority has also issued an opinion related to the intelligence bill ([please refer to the Telecoms section](#)).

France - Formalities regarding BCRs

The CNIL announced on 24 March 2015 that the formalities regarding the implementation of BCRs (Binding Corporate Rules allowing intra-group transfers of personal data to countries located outside the European Union) will be simplified. From now, the CNIL will grant a single decision specific to each group of companies that have adopted BCRs and this decision will cover every transfer outside the European Union implemented within the group. The entities concerned will simply need to undertake to comply with the terms of this decision by means of an online form and to keep a record of a number of information relating to the transfers which have been implemented.

France - Https flows

The https protocol allows for the encryption of communication channels protecting the confidentiality of exchanges as part of online services. In an article issued on 31 March 2015, the CNIL recalled that decryption of https flows by an employer in order to analyse the content of the flows and secure its IT system must comply with the French data protection law and has issued recommendations in this respect. The CNIL recommends in particular that employees are fully informed of the recourse to decryption practices.

8. Real Estate

France - The co-ownership trustee standard contract and the special services:

The [Decree n°2015-342](#) dated 26 March 2015 published in the Official Journal on 28 March 2015, pursuant to the Law n°2014-366 dated 24 March 2014 ("Loi ALUR"), defines the co-ownership agent standard contract provided under the modified Article 18-1 A Law No. 65-557 of 10 July 1965 stating the rules changed the condominium of built buildings which the parties must comply with. Such contract is applicable to the contracts signed or renewed from 1st July 2015. In addition, the decree establishes the exhaustive list of specific services that may be subject to an additional remuneration.

9. Tax

France - Corporate income tax

3% contribution on dividend distribution: infringement procedure against France

On 27 February 2015, the European Commission has launched an infringement procedure against France ([procedure n°20134329](#)) with respect to

the 3% contribution on dividend distribution (*Article 235 ter ZCA of the French Tax Code*).

In the event, the 3% contribution is declared incompatible with EU law, the French state may have to refund the 3% contribution paid by corporate taxpayers with respect to tax years 2013 and 2014. In this respect, such corporate taxpayers may file a refund claim before the French tax Authorities until 31 December 2015.

SIIC: distribution requirements

Previously, in case of merger of French listed real estate investment companies (**SIIC**), the absorbing company was subject to a 50% distribution requirement with respect to the capital gains realized on the redemption of shares of the absorbed company.

The French tax authorities (**FTA**) updated their guidelines as regards the increase of the distribution requirement, from 50% to 60% of the capital gains realized on the redemption of shares of the absorbed company (*BOI-IS-CHAMP-30-20-40-20150304* and *BOI-IS-FUS-10-20-20-20150304*).

Registration duties on the sale of French real estate companies

The FTA updated their guidelines as regards registration duties due upon disposal of shares of French real estate companies (*BOI-ENR-DMTOM-40-10-20-20150304*). As from 31 December 2014, such registration duties are based on the greater of (i) the purchase price of such shares, or (ii) the fair market value, if higher.

As a reminder, such registration duties were previously assessed on the fair market value of the real estate assets owned by the a French real estate company, decreased by any liabilities related to the acquisition of such assets.

VAT: removal of the tax on shows with respect to sporting events

Previously, entrance fees charged by sporting events organizers were exempt from French value added tax (**VAT**) but subject to the special tax on shows (*impôt sur les spectacles - Article 1559 of the French Tax Code*).

The Finance Act for 2015 repealed the special tax on shows with respect to sporting events. Therefore, from 1 January 2015, entrance fees charged by sporting events organizers are subject to VAT at the reduced rate of 5.5% (*BOI-TVA-CHAMP-30-10-10-20150304*; *BOI-TVA-LIQ-30-20-40-20150304*). Henceforth, the tax on shows only applies to gambling circles and gambling houses.

France - Taxation of Investors and Managers

Trusts: French reporting obligations

The FTA updated their guidelines in order to (i) expand the scope of the French reporting obligations applicable to foreign trusts, and (ii) increase the tax penalties for non-compliance with such reporting obligations. In this context, trusts which are managed by a French trustee are henceforth subject to French reporting obligations (*BOI-PAT-ISF-30-20-30-20150304*; *BOI-CF-INF-10-40-30-20150304* and *BOI-DJC-TRUST-20150304*).

As a reminder, foreign trusts which are set up (i) by a French settlor, or (ii) for the benefit of French beneficiaries, were already subject to the two following distinct French tax filing requirements:

-a specific return has to be filed with respect to the creation, the modification or the extinction of such foreign trusts; and then

-tax returns have to be filed annually with respect to the assets owned in the trust.

Capital gains on the disposal of shares: new tax treatment

The FTA published their final guidelines as regards the new tax treatment of capital gains realized on the disposal of shares, provided by the

Finance Act for 2014. These guidelines were already subject to public consultation from 14 October and 14 November.

The FTA notably maintained (i) the application of tax rebates for holding period to capital losses, and (ii) the non-application of such tax rebates to capital gains realized before 1 January 2013 and placed under a tax deferral regime (see in particular BOI-IR-BASE-20-20-20150320; BOI-IR-DECLA-20-10-20-20150320; BOI-IR-DOMIC-10-20-20-60-20150320; BOI-RSA-GEO-40-10-30-30-20150320; BOI-RPPM-RCM-10-20-30-20150320 and BOI-RPPM-PVBMI-10-10-10-20150320).

International - France – Andorra tax treaty

The French Parliament has ratified the tax treaty signed between France and Andorra on 2 April 2013 (Law n°2015-279 dated 13 March 2015) for the prevention of double taxation and tax avoidance in respect to income tax.

Inspired by the OECD model convention, the treaty notably provides for a withholding tax at a rate of (i) 5% with respect interest payments, and (ii) ranging from 5% to 15% with respect to dividends. Contrary to most of the tax treaties signed by France, Article 25-1-d authorizes the French state to tax its nationals who reside on the Andorran territory, notwithstanding the other provisions of the treaty.

10. Telecoms

France - Decree on the security of essential operators' information systems

The law n°2013-1168 dated 18 December 2013 also called "Military Planning Act" introduced crucial provisions regarding the security of the essential operators of France.

The Decree n°2015-351, dated 27 March 2015, specifies:

- The conditions under which security rules relating to the protection of essential operators' information systems are fixed;
- The conditions of implementation of the systems that detect events affecting the security of information systems of these operators;
- The procedures for reporting events affecting these information systems;
- The conditions of control of these information systems.

France - ARCEP's opinion on the intelligence bill

On 20 March 2015, the ARCEP published its opinion dated 5 March 2015 related to the intelligence bill which sets the legal framework for the activities of the intelligence services.

Regarding the proposal for implementing automated intelligence information system, the ARCEP:

- Denounces a risk of impact on the availability of networks and on the quality of communication services;
- Suggests that the government determines the conditions under which the monitoring is done in consultation with the operators;
- Underlines that operators will be obliged to notify the government of any significant disruption of their networks or communication services.

The ARCEP underlines the existence of various regimes related to administrative access to connection data and invites the government not to add a new layer of provisions.

Regarding the costs of this new project, the ARCEP invites the government to ensure a fast and homogeneous compensation of the operators.

The French data protection authority (CNIL) has also issued an opinion related to the intelligence bill ([please refer to the New Technologies section](#)).

France - ARCEP's decision reducing data and information collected from the operators

In order to observe, analyse, and foresee changes in the market, the ARCEP collects information from operators on a regular basis.

For the purpose of simplifying and reducing the information collected, the ARCEP adopted two decisions dated 17 Mars 2015, [one relating to electronic communications](#) and [another one relating to the postal sector](#), aiming at reducing the number of indicators collected.

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