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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 2017.

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

**The Parliament's plenary works are put on hold until inauguration of the new legislature, at the end of June.**

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#### Enacted laws

- **Law n°2017-399 of March 27, 2017 relating to duty of vigilance of mother companies and companies placing orders** - OJ of March 28, 2017.
- **Law n°2017-348 of March 20, 2017 relating to the fight against monopolisation of farming lands and development of biocontrol** - OJ of March 21, 2017.
- **Law n°2017-347 of March 20, 2017 relating to the extension of the offence to impede voluntary termination of pregnancy** – OJ of March 21, 2017.
- **Ordinance n°2017-303 of March 9, 2017 relating to actions for damages for anticompetitive practices** – OJ of March 10, 2017.
- **Ordinance n°2017-269 of March 2, 2017 relating to various provisions in connection with the French overseas départements' consumer code** – OJ of March 3, 2017.
- **Law n°2017-261 of March 1, 2017 aiming at preserving sport ethics, reinforcing regulation and transparency of professional sport and improving clubs competitiveness** – OJ of March 2, 2017.
- **Law n°2017-258 of February 28, 2017 relating to public safety** – OJ of March 1, 2017.
- **Law n°2017-257 of February 28, 2017 relating to the status of Paris and the metropolitan land use** – OJ of March 1, 2017.

- **Law n°2017-256 of February 28, 2017 relating to the actual programming of French overseas departments' real equality and various provisions in social and economic fields – OJ of March 1, 2017.**
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## **1. Audiovisual**

### **France - Common rules applicable to the Committee on honesty, independence and pluralism of information and programs of the national broadcasting companies**

Taken in application of Article 30-8 of Law n°86-1067 of 30 September 1986 on freedom of communication in its version resulting from Article 11 of Law n°2016-1524 of 14 November 2016 aiming at reinforcing the freedom, independence and pluralism of Medias, Decree n°2017-363 of 21 March 2017 amending the specifications of the national broadcasting companies France Télévision, Radio France and the Company in charge of the external audiovisual affairs of France sets out the common rules applicable to the Committee on honesty, independence and pluralism of information and programs established in each of these national broadcasting companies.

This Decree notably provides that the members of the Committee are nominated by the Management Board of the company at stake for a renewable three-year mandate, and that the Committee meets at least once every civil semester.

This Decree entered into force on 23 March 2017.

### **France - Modification of the regime of contribution to the production of audiovisual works applicable to some editors of audiovisual services**

Decree n°2017-373 of 21 March 2017 amending the regime of contribution to the production of audiovisual works applicable to editors of terrestrial television broadcast services and on-demand audiovisual media services makes the regime of contribution resulting from Decree n°2010-747 of 2 July 2010 and of Decree n°2010-1379 of 12 November 2010 more flexible.

This Decree aims at taking into account the evolution of the relationships between the editors of television services and the organizations representing audiovisual producers.

Article 2 of this Decree notably introduces the possibility for the Superior Audiovisual Council to reduce the independent part of the contribution of an editor of television services which is dedicated to patrimonial works in exchange of undertakings in support of the reinforcement of the independence of production.

This Decree entered into force on 24 March 2017.

### **France - Common principles on labels and public service contracts in the field of live performing arts and plastic arts**

Taken in application of Article 5 of Law n°2016-925 of 7 July 2016 on freedom of creation, architecture, and cultural heritage, Decree n°2017 432 of 28 March 2017 on labels and public service contracts in the field of live performing arts and plastic arts defines the common principles applicable to all the labels which can be awarded, by the ministry of culture, to organizations which request it and whose artistic and cultural project is of general interest for artistic creation in the fields of live performing or plastic arts.

This Decree notably sets out the list of the labels for which the specifications will be defined in an administrative order, and defines the organizations which can qualify for the label, the awarding procedure of a label, and the obligations related to this award. It also contains specific provisions for the "Fonds Régional d'art contemporain" label.

This Decree will enter into force on 1<sup>st</sup> July 2017.

### **France - Conditions of compensation of the costs borne by electronic communications operators for the services performed upon request from the HADOPI**

See the Telecoms section.

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## 2. Capital Markets

### **France - The French financial market authority and France's accounting standards authority (AMF) issue a reminder of their expectations for the valuation of real estate assets**

In a press release dated 31 March 2017 the AMF and ANC remind that the collective investment undertakings and any investment vehicles that publish the value of units or shares are subject to obligations regarding the assessment of real estate assets.

Such bodies need to use a rigorous and objective valuation methodology and to supply all necessary information to the investors.

### **France - AMF - The AMF launches a public consultation on its policy to strengthen the framework for French ETFs**

On March 4, 2017 the AMF launched a public consultation to amend its framework for French ETFs. This Consultation will end on 24 May, 2017.

The propositions consists in widen the options available to French ETFs, for repaying in-kind redemption requests or to suspend subscription and redemption in the event of significant valuation or liquidity problems.

### **France - ESMA - The ESMA published updated Q&A on CFDs and other speculative products**

ESMA has updated on 31 March 2017 its Q&A document on the application of the Markets in Financial Instruments Directive (MiFID) to the marketing and sale of financial contracts for difference (CFDs).

This Q&A includes ten sections. It provides clarification on numerous points including passporting and the cross-border provision of services by investment firms, and the assessment of the use of third parties by investment firms. It also gives examples of poor practices in respect of the use of third parties by investment firms.

### **France - Legal reform of the French bond regime**

In accordance with the "Sapin II act", adopted on 09 December 2016 the French government is entitled to amend by way of a decree the French legal regime pertaining to bonds. In order to make the system more attractive, the reform provides to simplify the requirements relating to the issuance of bonds. It also introduces a more flexible regime during the life of the bond transaction. These new rules are expected to be adopted prior to the next French election scheduled on April 23, 2017.

### **France - ESMA - ESMA Published two sets of guidelines under CSDR**

On 23 March 2017, ESMA published guidelines detailing the rules and the procedures that a central depository (CDS) must follow when dealing with the insolvency of one or more of its participants.

Such guidelines will enter into force two months after the publication of their translations.

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## 3. Competition

### **France - Implementation of the Damages EU Directive into French law**

The [directive 2014/104/UE](#) of 26 November 2014 on rules governing actions for damages under national law for infringements of national and European competition law provisions has been transposed into French law by a [law](#) and a [Ministerial decree](#) of 9 March 2017. The objective of the directive is to harmonize rules on compensation for victims of competition law infringements, as well as to facilitate the award of damages. In France, the new rules aim at simplifying proof of the prejudice and, in certain conditions, allowing the production, before the judge, of evidence gathered by the European Commission or the French Competition Authority. Several measures also seek to promote "consensual dispute resolution", by encouraging companies to favour alternative dispute resolution mechanisms, while protecting the victim's right to compensation before the judge in case discussions fail.

### **European Union - Fight against anticompetitive practices 2.0: European Commission encourages individual whistleblowers**

The European Commission has launched a new anonymous whistleblower tool for cartels and other anti-competitive practices. Available on the [Commission's website](#), this new tool allows individuals to anonymously supply information regarding anti-competitive behaviour through an independent agency and an encrypted messaging system to the Commission. The system is run by a specialised external service provider, which acts as an intermediary relaying only the content of received messages without forwarding any metadata that could be used to identify the individual

providing the information.

The Commission is hoping that this initiative will increase the likelihood of detection of anti-competitive practices, as well as the quality of the provided information. Other competition authorities, such as the FCO in Germany and the CMA in the UK, have already introduced similar anonymous whistleblowing systems, which have encouraged whistleblowing by individuals.

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#### 4. Corporate

##### France - Say on pay: publication of the decree implementing the *ex-ante* vote

Law n°2016-1691 of December 9<sup>th</sup> 2016, also called "Sapin II Law", created Article L.225-37-2 in the French Commercial Code, regulating the remuneration of directors in listed companies. Decree n°2017-340 of March 16<sup>th</sup>, 2016 created Articles R.225-29-1 and R.225-56-1 within the same Code and precises the elements composing of the remuneration and benefits of any kind granted to the directors and which must be subject to a resolution of a shareholders' general meeting.

This Decree lists the elements that the report on the company's remuneration policy must include. Such report must in particular cover: attendance fees, annual fixed compensation, annual and multiannual variable compensation, allocation of stock options and free shares, special compensation, and compensation, indemnities or benefits payable or likely to be payable when starting the corporate office or in connection with the corporate office.

This Decree came into force on March 18<sup>th</sup>, 2017.

##### France - New information to be included in the management report

The following provisions shall apply for the financial years ended from December 31<sup>st</sup>, 2016.

##### New information regarding corporate and environmental matters

Pursuant to Article R. 225-105-1 of the French commercial Code as amended by Decree n°2016-1138 of August 19<sup>th</sup>, 2016 on environmental information to be provided in companies' management report, listed or non-listed companies, having a total balance sheet or a turnover exceeding EUR 100 million and a number of employees exceeding 500 must include in their management report:

- A "circular economy" section including commitments to fight against wasting food and information on waste management and recycling; and
- Information relating to climate change disclosing the relevant items of greenhouse gases emission generated by the company's activities.

##### Information regarding payment delays

Pursuant to Article L. 441-6-1 of the French commercial Code amended by Law n°2015-990 of August 6<sup>th</sup>, 2015, companies whose accounts are certified by a statutory auditor must communicate, in the context of their management report for the financial years starting as from July 1<sup>st</sup>, 2016, certain information relating to payment terms of their suppliers and customers, provided in Article D. 441-4 of the Commercial Code.

Two alternative templates of summary tables were published by an Order of April 6<sup>th</sup>, 2016 and updated by Decree n°2017-350 of March 20<sup>th</sup>, 2017 and an Order of March 20<sup>th</sup>, 2017, which take into account the possibility to indicate amounts excluding taxes or including all taxes. The exclusion of certain disputed or non-recorded invoices must be identified and the excluding taxes or including all taxes nature must be indicated by the company.

##### Information on inter-company loans

Pursuant to Article L. 232-1 of the French commercial Code, joint stock companies and limited liability companies having a statutory auditor, which provide a loan in conformity to Law n°2015-990 of August 6<sup>th</sup>, 2015, to micro-enterprise, SMEs and mid-cap companies with whom they have economic links, must report the relevant amount in the management report, according to Decree n°2016-501 of April 22<sup>nd</sup>, 2016 on inter-company loans.

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## 5. Data protection & IT

### France – Implementation of a portal reporting undesirable health events

A ministerial Order dated 27 February 2017, published in the OJ of 7 March 2017, introduces an automated processing of personal data entitled "*portal reporting undesirable health events*" implemented by the French Agency of shared health information systems ("*Agence des systèmes d'information partagés de santé*").

The purpose of this processing is notably to "*promote and collect reports of undesirable health events by making available to the public and professionals an information service on vigilances, declarations and in general on health security and surveillance*".

The Order specifies the categories of personal data that are recorded in the processing as well as the modalities of their transmission and retention.

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## 6. Employment

### France – Due diligence of the parent companies and the contracting companies

Law n°2017-399 dated March 27, 2017, published in the Official Journal dated March 28, 2017, requires French companies hiring more than 5,000 employees in France or 10,000 employees worldwide, including their subsidiaries, to develop, publish and implement a vigilance plan.

This vigilance plan consists of a set of measures aiming at identifying risks and preventing violations of human rights and fundamental freedoms that may result from the activities of the parent company, the companies it controls and their suppliers and subcontractors with whom it has established commercial relations in France and abroad.

This plan shall include risk mapping, regular assessment procedures, risk mitigation actions, alert mechanisms and a follow-up mechanism.

In the event of non-compliance, the company may be compelled by the judge to comply with its obligations under penalty. It is also exposed to have its extra-contractual liability incurred if a misconduct which led to damage can be demonstrated.

The Constitutional Council nullified the provisions providing for the possibility of imposing fines for recalcitrant companies (DC n°2017-750 dated March 23, 2017).

### France – Labor Act: Q&A and fact sheets on occupational health

Ministry of Labor published on March 20, 2017, 5 Questions & Answers relating to occupational health, presenting the new legal regimes resulting from law n°2016-1088 dated August 8, 2016 regarding employment, the modernization of the dialogue Social security and the securing of career paths, also known as the "*Labor Act*" or "*El-Khomri Act*".

In addition, two fact sheets on the monitoring of the health status of employees and on the recognition of incapacity summarize the provisions of the "Health at work" section of the *Labor Act*.

### France – Eligibility of driving licence to the Personal Training Account

Decree n°2017-273 dated March 2, 2017 implementing Law n°2017-86 dated January 27, 2017 on equality and citizenship was published in the Official Journal dated March 3, 2017.

As of March 15, 2017, the hours allocated to the Personal Training Account can be mobilized for financing the preparation of the traffic regulations examination and the practical driving test for category B vehicles, under three conditions:

- obtaining the driving license contributes to the performance of a professional project;
  - the Personal Training Account holder does not have his driving license suspended or is not prohibited to apply for one; and
  - the driving school shall be approved by the administration and declared as a training organization.
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## 7. Insurance

### France - Mandatory portfolio transfer of insurance contracts

The [Decree n°2017-293 of 6 March 2017](#) relating to insurance portfolio transfer procedures has been published in the Official Journal of the French Republic on 8 March 2017 ("**Decree**"). The Decree sets out the modalities of information of foreign supervisory authorities in cases where the mandatory portfolio transfer concerns an insurance undertaking operating, under the freedom of services, in other Member States of the European Union. The Decree also details the list of documents and information that the undertaking subject to the mandatory portfolio transfer procedure is required to provide to potential candidates to the acquisition of the portfolio during the tender period. The Decree entered into force on 9 March 2017.

### France - Pricing rules in respect of work accidents and occupational diseases of the general social security regime

The [Decree n°2017-337 of 14 March 2017](#) modifying the pricing rules in respect of work accidents and occupational diseases of the general social security regime has been published in the Official Journal of the French Republic on 16 March 2017 ("**Decree**"). The Decree amends the Social Security Code and introduces a flat-rate top-up of the applicable contribution rate for companies employing at least ten (10) employees subject to the collective pricing. This flat-rate top-up is applicable beyond a certain frequency of work accidents arisen during the last three (3) years. Furthermore, the Decree modifies the fraction of individual and collective rates used in the calculation of net rates applicable to companies under the mixed pricing. The Decree entered into force on 17 March 2017.

### France - Insurance contracts' pricing applicable to individuals covered by Article 4 of the Evin Law

The [Decree n°2017-372 of 21 March 2017](#) relating to the application of Article 4 of the [Law n°89-1009 of 31 December 1989](#) ("**Evin Law**"), reinforcing guarantees offered to insureds against certain risks, has been published in the Official Journal of the French Republic on 23 March 2017 ("**Decree**"). Article 4 of the Evin Law imposes to insurance undertakings to organize the modalities to maintain cover under supplemental health insurance at a regulated price, for former employees that were beneficiaries of a collective guarantee. The Decree modifies the pricing by organizing a progressive cap of prices, staggered over a three (3) year period. The Decree enters into force for contracts underwritten or adhesions occurring from 1<sup>st</sup> July 2017.

### France - Professional indemnity insurance obligation imposed to crowdfunding platform

The [Decree n°2017-245 of 27 February 2017](#) relating to the professional indemnity insurance obligation to crowdfunding intermediaries who only offer funding in the form of donations, has been published in the Official Journal of the French Republic on 28 February 2017 ("**Decree**"). The Decree provides that crowdfunding platforms are obliged to underwrite professional indemnity insurance, as a result of the crowdfunding intermediary status, for an amount of 100,000 euros per claims and 200,000 euros per insurance period. Furthermore, the amount of guarantee for each insurance year must allow to cover at least two (2) claims in the same insurance year. The Decree entered into force on 1<sup>st</sup> March 2017.

### European Law - Solvency II – Technical document modifying the methodology to calculate the risk-free interest rate term structure

On 7 March 2017, the EIOPA has published a [technical document](#) modifying the methodology to calculate the risk-free interest rate term structure. The Union legislator entrusted EIOPA to lay down and publish technical information on risk-free interest rates with the purpose to allow for the consistent calculation of technical provisions by insurance and reinsurance undertakings under Article 77e(1) of the Solvency II Directive.

### European Law - PRIIPs – European Commission adopts Delegated Regulation on proposed amendments to RTS

On 8 March, the European Commission adopted a [Delegated Regulation](#) ("**Delegated Regulation**") with related [annexes](#), supplementing the [Regulation on key information documents for packaged retail and insurance-based investment products](#) ("**PRIIPs**"). The Delegated Regulation lays down regulatory technical standards ("**RTS**") with regard to the presentation, content and review of key information documents ("**KIDs**").

The RTS were first adopted by the Commission in a delegated regulation in June 2016, however; in September 2016, the European Parliament objected to the delegated regulation. The RTS maintain until 31 December 2019, the possibility to use the KID for UCITS in relation to products presenting multiple investment options. The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. For the record, the date of entry into application of the PRIIPs regulation has been postponed until 1<sup>st</sup>

January 2018.

### **European Law - EIOPA – Technical advice on the Solvency II Delegated Regulation**

On 28 February 2017, the European Commission published a call for [technical advice](#) it has sent to the EIOPA on the review of specific items in the [Solvency II Delegated Regulation \(EU\) 2015/35](#) as regards unjustified constraints to financing. The call for advice aims at the removing of barriers to investments in unrated bonds and loans and in unlisted equity, in order to improve insurers' ability to invest in private equity placement. EIOPA has until 28 February 2018 to deliver its technical advice.

### **European Law - FinTech – European Commission's consultation**

On 23 March 2017, the European Commission published a [consultation on technology and its impact on the European financial services sector \("FinTech"\)](#). In order to help European FinTech sector operate freely across the EU and to be competitive, the Commission intends to focus on three core principles (i) technology-neutrality to ensure innovation and a level-playing field, (ii) proportionality so that the rules are suitable for different business models, size and activities of the regulated entities and (iii) improved integrity to ensure transparency, privacy and security for consumers. The Commission invites all interested parties to respond to the FinTech consultation by 15 June 2017.

### **European Law - EIOPA – Consultation Paper on the proposal for guidelines under the Insurance Distribution Directive**

On 2 February 2017, the EIOPA published a [Consultation Paper](#) on the proposal for Guidelines under the [Directive \(EU\) 2016/97 on insurance distribution](#), on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved. The Consultation is open until 28 April 2017.

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## **8. Intellectual Property**

### **France - Approval conditions of collective management organizations for the collection of resale rights and of the remuneration for private copying**

Taken in application of Articles L. 123-7 and L. 311-6 of the Intellectual Property Code amended by Articles 18 and 31 of Law n°2016-925 of 7 July 2016 on freedom of creation, architecture, and cultural heritage, [Decree n°2017-284 of 2 March 2017](#) sets out the conditions under which a collective management organization can be approved by an Order from the Ministry of Culture for the performance of some missions provided by this Law.

Article 1 of this Decree defines the approval conditions of a collective management organization for the management of resale rights after the death of the author in the absence of a known beneficiary or in case of vacancy or escheat. This mechanism, introduced in Article L. 123-7 of the Intellectual Property Code by Law of 7 July 2016, allows the allocation of the collected sums to the financing of the supplementary pension scheme of authors of graphic and plastic arts.

Article 1 of the Decree also defines the approval conditions of an organization for the collection of the remuneration for private copying on behalf of the beneficiaries pursuant to Article L. 311-6 of the Intellectual Property Code.

The provisions of this Decree entered into force on 6 March 2017.

### **France - Conditions of appointment and remuneration of the Mediator of Music and of organization of the conciliation procedure**

Taken in application of Article L. 214-6 of the Intellectual Property Code created by Article 14 of Law n°2016-925 of 7 July 2016 on freedom of creation, architecture, and cultural heritage, [Decree n°2017-338 of 15 March 2017 on the Mediator of Music](#) sets out the conditions in which the Mediator of Music is appointed and can be requested, as well as the details of the conciliation procedure.

This Decree creates, to this end, [Articles R. 214-8 to R. 214-18 of the Intellectual property Code](#), which notably provide that the Mediator of Music is appointed by decree and that the procedure can be initiated by any means able to certify the date of initiation, for a duration of three months renewable once.

[Decree n°2017-345 of 17 March 2017 on the conditions of remuneration of the Mediator of Music](#) provides that the Mediator of Music can receive a remuneration the amount of which is fixed by an administrative order.



The provisions of these Decrees entered into force on 17 and 19 March 2017.

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## 9. Life sciences

### France - The new French sunshine regulations now in force

A ministerial Order dated 22 March 2017 completes and brings into force the new French sunshine regulations governing interactions between companies and stakeholders in the healthcare sector.

The Order provides details on the information relating to agreements, to the fees paid and other benefits granted that healthcare companies have to disclose, as well as the modalities for doing so.

The Order supplements the Decree n°2016-1939 dated 28 December 2016, issued pursuant to the Law dated 26 January 2016 on the modernization of the French healthcare system.

***That Order is the topic of a Newsflash dated 29 March 2017.***

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## 10. Procedure

### France - Proceedings before the Supreme Court

Publication in the Official Journal of the decree n°2017-396 of 24 March 2017 implementing several provisions relating to the Supreme Court, and notably on the organization of the proceedings before the Supreme Court.

The decree clarifies applicable rules when the Supreme Court chooses to overrule a Court of appeal judgment without then referring to another Court of appeal to rule on the merits, especially when the Supreme Court intends to rule itself on the merits.

### France - Circular relating to the implementation of "restorative justice"

The Minister of Justice addressed to judges a circular dated 15 March 2017 aiming to determine the practical framework of "restorative justice". The Minister thus requires judges and practitioners to clarify the articulation between criminal justice and restorative justice", detail the legal framework and determine the principles and conditions for implementing such an action.

As a reminder, the "restorative justice" measure was introduced in the Criminal Procedure Code (CPC) by the 15 August 2014 Act relating to the individualization of sentences (article 10-1 of the CPC). This practice intends to restore the social relationship by fostering dialogue between victims and offenders.

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## 11. Public Law

### France - Execution of lease agreements by the State on behalf of public health institutions

Decree n°2017-317 dated 10 March 2017, published in the OJ dated 12 March 2017, relating to the execution of the lease agreements stated in article L.6148-7-1 of the Public Health Code, specifies the conditions under which the State may enter into a lease agreement on behalf of public health institutions or health cooperation structures.

The Decree completes the Public Health Code by adding two articles relating to the role of the regional health agency in (i) conducting preliminary studies on any project in relation to the realization, modification or renovation of buildings by a public health institution, and (ii) in the negotiation and execution of lease agreements by the State, on behalf of public health institutions.

### France - Allocation of charges for the reinstatement of existing transport facilities during the construction of new transport infrastructures

Decree n°2017-299 dated 8 March 2017, published in the OJ dated 10 March 2017, implementing Law n°2014-774 dated 7 July 2014, specifies the conditions for the allocation of responsibilities and financial charges in relation to the modification and displacement of existing engineering



structures (such as bridges, tunnels, wharfs, etc.) rendered necessary by the construction of a new transport infrastructure.

The Decree supplements the Public Domain Code with two articles providing, in particular, for the content of the agreement to be entered into between the public entity which owns the re-established existing road or transport infrastructure and the new infrastructure manager in order to allocate the expenses relating to the supervision, maintenance, repair and renewal of these roads or works.

#### **France - Powers of the *Conseil d'Etat* in relation to declarations of public Utility**

Decree n°2017-424 dated 28 March 2017, published in the OJ dated 30 March 2017, relating to the powers of the *Conseil d'Etat*, maintains the competence of the *Conseil d'Etat* (the highest administrative court) ruling in first and second instance for disputes over Declarations of Public Utility (DPU) – the last act of the expropriation procedure taken after a public enquiry - in relation with projects whose first DPU was released before the publication of Decree n°2010-164 dated 22 February 2010 on administrative courts, and whose scope extends beyond the jurisdiction of one administrative court.

#### **France - Organization of the Canal Seine-North-Europe company**

Decree n°2017-427 dated 29 March 2017, published in the OJ dated 30 March 2017, relating to the Canal Seine-Nord-Europe company (CSNE), sets out the organization of CSNE, a public institution created by order n°2016-489 dated 21 April 2016, whose main mandate is to build the water infrastructure connecting Seine and Oise basins to the widegauge network between Compiègne and Aubencheul-le-Lac. The Decree specifies in particular the time schedule for the construction and management of this infrastructure, in particular as regards transfers between Voies Navigables de France and CSNE.

#### **France - Rules relating to the financing of SNCF Réseau development projects**

Decrees n°2017-442 and n°2017-443 dated 30 March 2017, published in the O.J dated 31 March 2017, relate respectively to SNCF Réseau's (the French railway infrastructure manager) missions and articles of association and its investment financing rules. The first decree introduces formal changes to the decree n°97-444 dated 5 May 1997 relating to the missions and articles of association of SNCF-Réseau. The second decree defines the conditions for applying the "golden rule" which has been introduced in article L. 2111-10-1 of the Transports Code by the law dated 4 August 2014 reforming the railway sector. The purpose of this law was, *inter alia*, to prevent the participation of SNCF-Réseau into the development of new railway infrastructures in the event of excessive indebtedness. The Decree specifies in particular the methods for calculating SNCF-Réseau's net financial debt and the scope of use of this ratio.

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## **12. Real Estate**

### **France - New legal standard for the decent housing: the minimal energy performance**

The decree n°2017-312 of March 9<sup>th</sup>, 2017, published to the Gazette on March 11<sup>th</sup>, 2017 and modifying the decree n°2002-120 of January 30<sup>th</sup>, 2002 concerning the standards for the decent housing, and set the new characteristics of the decent housing.

The French law "Energy transition for the green growth" n°2015-992 of August 17<sup>th</sup>, 2015 as added the energy performance as decent housing standard. The implementation decree of this law defined the criteria of "minimal energy performance" required for a decent housing from 2018 in two steps:

- from January 1<sup>st</sup>, 2018: the accommodation must be protected against "the infiltrations of unwanted air". It means that external doors, windows, as well as walls facing the outside or not warmed premises must have a sufficient airtightness. The opening of rooms facing not warmed secondary premises must have doors or windows and trapdoor chimney.
- from July 1<sup>st</sup>, 2018: the accommodation must have a sufficient ventilation: the openings and ventilation systems of the housing must have to be in good condition and allow an air renewal, as well as an evacuation of the humidity adapted to a normal activity and to the functioning of equipments.

The purpose of this decree and the legal framework of the new decent housing standard is to limit the losses of heat and to regulate the energy bill of the tenant.

## France - A new index regarding the attractiveness of cities

In 2008, Nicolas Sarkozy initiated the project of the "Big Paris". This project is to transform Paris into a European and worldwide metropolis, and to improve the quality of life for citizen, correcting the territorial inequalities and build to a sustainable city.

The National Federation of the Real estate (FNAIM) led a study on all the municipalities of the Big Paris (except those of Seine-et-Marne) and innovates with the creation of a specific index regarding the attractiveness of the cities of the Big Paris. This one is determined according to twelve criterions (in particular in respect of accommodation, the safety, the transport, balance life personal professional/life, the employment, the education, the culture and sports, the accessibility to equipment).

This index will enable to follow the evolution of the attractiveness of cities according to the Big Paris constructions and developments.

This index could, eventually, influence the real estate market, in particular the investors. It allows to have a better knowledge of the market because the attractiveness of cities has certainly an impact on the evolution of the prices of housing.

## France - The tax on the vacant housing: consideration of french overseas departments

The law n°2017-256 of February 29<sup>th</sup>, 2017 "planning regarding the real equality for Overseas French Citizens and other provisions in the economic and social domain" published to the French legal gazette on March 1<sup>st</sup>, 2017, has modified article 232-I of the French Tax Code and extends the scope of the tax on the vacant housing.

This tax applies now also to housing situated in the municipalities of French overseas departments included in an area of continuous urbanization of more than 50,000 residents where exists a marked imbalance between housing supply and demand, which leads to serious difficulties to access to housing on the whole existing residential park, which are particular evidenced by the high level of rents, the high level of the purchase prices of the old stock housing or the high number of demands for housing in comparison to the number of annual removal into the social rental park.

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## 13. Tax

### France - Transfer pricing: decrease of the threshold above which French companies are subject to tax reporting obligations

The French tax authorities (the "FTA") updated their guidelines in order to draw the consequences of the decrease of the turnover/net asset threshold above which entities established in France must file with the FTA a simplified tax return describing their transfer pricing policy ([BOI-BIC-BASE-80-10-20-20170301](#); [BOI-IS-DECLA-10-10-20-20170301](#) and [BOI-CF-INF-20-10-40-20170301](#)).

This threshold was decreased from EUR 400,000,000 to EUR 50,000,000 by [Article 138 of the Law n°2016-1691 dated 9 December 2016 \(so-called "Sapin II Law"\)](#) which modified [Article 223 quinquies B of the French Tax Code](#) (the "FTC").

### France - VAT: Update of the list of countries exempt from the obligation to appoint a French tax representative

The [Decree dated 28 February 2017](#) updated the [Decree dated 15 May 2013](#) providing the list of non-EU member States with which France has signed a convention providing for administrative mutual assistance with a scope similar to the one provided by the EU Directive 2010/24/UE dated 16 March 2010 and by the European regulation n°904/2010 dated 7 October 2010. It has to be noted that Argentina has been withdrawn from such list while 15 new States have been added.

As a reminder, [Article 289 A of the FTC](#) exempts foreign taxpayers from appointing a tax representative in France for French VAT purposes when they are established in the States included in the above-mentioned list.

### France - Guidelines' updates following the French finance Acts for 2017

#### Decrease of the French corporation tax rate

The FTA updated their guidelines with respect to (i) the progressive decrease of the French corporation tax rate, and (ii) the determination of the amount of the French corporation tax last advance payment due by large companies ([BOI-BIC-PVMV-10-10-30-20170301](#); [BOI-BIC-RICI-10-130-10-20170301](#); [BOI-IS-CHAMP-30-20-30-20170301](#); [BOI-IS-DECLA-20-10-20170301](#); [BOI-IS-DECLA-20-30-20170301](#); [BOI-IS-LIQ-10-20170301](#); [BOI-IS-RICI-30-10-20-10-20170301](#) and [BOI-CF-INF-10-30-20170301](#)).

As a reminder:

- Article 11 of the French finance Act for 2017 provides for the progressive decrease of the French corporation tax rate from 33.1/3% to 28 % for all companies by 2020; and
- Article 12 of the French finance Act for 2017 provides that the basis of the French Corporation Tax used to determine the amount of the last French corporation tax advance payment is increased to (i) 80% (*instead of 75% previously*) for companies with a turnover ranging between EUR 250,000,000 and EUR 1,000,000,000, (ii) 90% (*instead of 85% previously*) for companies with a turnover ranging from EUR 1,000,000,000 and EUR 5,000,000,000, and (iii) 98% (*instead of 95% previously*) for companies with a turnover exceeding EUR 5,000,000,000.

#### **Employment tax credit: rate increase**

The FTA updated their guidelines with respect to the increase of the rate of the French Employment Tax Credit (*Crédit d'Impôt pour la Compétitivité et l'Emploi* – so-called "**CICE**") provided by Article 72 of the French finance Act for 2017 (BOI-BIC-RICI-10-150-20170301; BOI-BIC-RICI-10-150-10-20170301 and BOI-BIC-RICI-10-150-20-20170301).

As a reminder, the French employment tax credit is assessed on the remunerations paid by a company for a given year which do not exceed 2.5 the French minimum wage.

The rate of the French Employment Tax Credit is increased from 6% to 7%. This modification applies to the remuneration paid as from 1 January 2017 (Article 244 quater C of the FTC).

#### **NCST: 50 % tax rate on profits realized on certain financial instruments**

The FTA updated their guidelines with respect to the creation of a specific 50% tax rate applicable to the profits realized as from 1 January 2017 by individuals in relation to transactions on certain financial instruments (*including notably warrants*) when the account holder or the co-contractor is established in or has its tax residence in a Non Cooperative State or territory within the meaning of Article 238-0 A of the FCT (a "**NCST**" – BOI-RPPM-PVBMI-70-20170322; BOI-RPPM-PVBMI-70-20-20170322 and BOI-BNC-SECT-50-10-20170322).

As a reminder, this 50% fixed tax rate has been introduced by Article 36 of the French amending finance Act for 2016 and is codified under Article 150 ter of the FTC.

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## **14. Telecoms**

### **France - Compensation of the Internet service providers**

The Decree dated 9 March 2017 (Decree n°2017-313) allows Internet service providers (ISP) to be compensated for their mission under the "graduated response" system, the system implemented by the French High Authority of Diffusion on the Art Works and Protection of Rights on the Internet ("**Hadopi**"), which aims at reminding the legal framework and limiting illegal downloading of cultural materials.

Under the "graduated response" system, ISP are required to cooperate and have to identify Internet users who commit infractions. However, this mission was not compensated until now.

The Decree, which inserts an Article R. 331-37-1 in the French Intellectual Property Code, allows the compensation of the following additional costs:

- Extra costs arising from the information systems conception and deployment or, if applicable, from their adaptation, necessary to the processing of subscribers identification requests;*
- Extra costs arising from the information systems operation and maintenance necessary to the processing of subscribers identification requests;*
- Extra staff costs arising from the processing of subscribers identification requests.*

The compensation will be assumed by the Hadopi. Applicable pricing relating to the services provided by ISP has been determined by an Order dated 23 March 2017.

## France - Adoption of a law punishing the consultation of terrorist websites

On February 16, 2017 the Law on Public Security (Law n°2017-258) (the "**Law**") has been adopted by the French Parliament. This Law introduces a new infraction punishing the usual consultation of terrorist websites. This new infraction has been subject to several amendments following the censorship of its original version by the French Constitutional Council ("the **Council**").

On December 7, 2016 the French Supreme Court referred a question of constitutionality to the Council relating to article 421-2-5-2 of the Criminal Code. This text was used to punish the usual consultation of online public communication services providing messages, images or representations encouraging terrorism. In its decision dated February 10, 2017 the Council considered this text unconstitutional.

The Council's decision mentions that the French legislation already provides several infractions, other than the one defined in article 421-2-5-2, designed to prevent the commission of acts of terrorism. Moreover, since (i) the text does not require from web users the intent to commit an act of terrorism or the proof that these persons adhere to the ideology expressed on the website and (ii) the exception of "good faith" provided by the text, to legitimate the consultation of the website, is unclear, there is some uncertainty regarding the legality of the consultation of some websites. Therefore, the provisions of article 421-2-5-2 of the Criminal Code constitute an unnecessary, disproportionate, and inadequate restriction to the exercise of the freedom of communication.

Following this decision, a new version of the text taking into account the Council's analysis, has been submitted and adopted by the French Parliament. The new version of the text now punishes the usual consultation, without legitimate reason, of websites providing messages, images or representations directly encouraging to the commission of acts of terrorism or promoting these acts when, to this end, these websites provide images or representations showing the commission of such acts consisting of wilful attacks against human life. This offense is punished by two years' imprisonment and €30,000 fines when there is a demonstration of adhesion to the ideology expressed on the website.

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