

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 January 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

- **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 duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in new reading by the National Assembly on November 29, 2016 – Rejected in new reading by the Senate on February 1, 2017 – Final reading at the National Assembly.
- **Law proposal to reform limitations on criminal prosecution**, n°2931, filed on July 1, 2015 – Adopted in second reading by the National Assembly on January 12, 2017 – Amended in second reading by the Senate on February 7, 2017 – Joint Committee meeting.
- **Draft law which ratifies ordinance n°2015-378 dated April 2, 2015 that transposes directive 2009/138/CE on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)**, n°3005, filed at the National Assembly on July 22, 2015.
- **Draft law which ratifies ordinance n°2015-899 of July 23, 2015 relating to public procurement** – filed before the Senate on October 21, 2015.
- **Draft law for the integration of the principle of substitution to the legal regime of chemical products**, n°3277, filed on November 25, 2015 – Adopted in first reading by the National Assembly on January 14, 2016.
- **Draft law which ratifies ordinance n°2016-131 of February 10, 2016 to reform contract law, the general regime and the proof of obligations**, n°3928, filed at the National Assembly on July 6, 2016.
- **Draft law to accelerate procedures and to stabilise urban planning, construction and development**, n°770, filed on July 6, 2016 –

Adopted in first reading by the Senate on November 2, 2016.

- **Draft law to ratify ordinance n°2016-966 and which includes various provisions relating to health products**, n°12, filed on October 5, 2016 – Agreement in Joint Committee – Text of the Joint Committee adopted by the National Assembly on January 26, 2017 – In debate in public session at the Senate on February 14, 2017.
- **Draft law which ratifies ordinances n°2016-1019 and n°2016-1059 and which aims at adapting some provisions relating to electricity and gas networks and to renewable energies**, n°4122, filed on October 12, 2016 – Agreement in Joint Committee - Text of the Joint Committee in debate on February 9, 2017 by the National Assembly – Then on February 15, 2017 by the Senate.
- **Draft law for the adaptation of the mining code to environmental law**, n°4251, filed on November 23, 2016 – Adopted in first reading at the National Assembly on January 25, 2017.

Enacted laws

- **Ordinance n°2017-124 of February 2, 2017 which amends articles L. 171-7 and L. 171-8 of the Environment Code** – OJ of February 3, 2017.
- **Law n°2017-117 of February 1, 2017 which authorises the Multilateral Competent Authority Agreement on the Exchange of CbC Reports** – OJ of February 2, 2017.
- **Law n°2017-116 of February 1, 2017 which authorises the agreement between the French Republic Government and the Italian Republic Government signed on February 24, 2015 for the undertaking of definitive works of the cross-border section of the new Lyon-Turin rail link** – OJ of February 2, 2017.
- **Law n°2017-115 of February 1, 2017 which authorises the ratification of the agreement on joint procurement of medical countermeasures** – OJ of February 2, 2017.
- **Law n°2017-86 of January 27, 2017 on Equality and citizenship** – OJ of January 28, 2017.
- **Ordinance n°2017-84 of January 26, 2017 relating to French Health Authority** – OJ of January 27, 2017.
- **Ordinance n°2017-80 of January 26, 2017 relating to environmental authorisation** – OJ of January 27, 2017.
- **Ordinance n°2017-55 of January 20, 2017 relating to the general status of independent administrative authorities and public independent authorities** – OJ of January 21, 2017.
- **Organic law n°2017-54 of January 20, 2017 relating to independent administrative authorities and public independent authorities** – OJ of January 21, 2017.
- **Ordinance n°2017-53 of January 19, 2017 relating to various provisions on the individual account of activity, training, health and safety at work for civil servants** – OJ of January 20, 2017.
- **Ordinance n°2017-52 of January 19, 2017 which amends the object of association for the access of rent guarantees and the**

association Foncière Logement – OJ of January 20, 2017.

- **Ordinance n°2017-51 of January 19, 2017 for the harmonisation of legislative provisions relating to prevention programmes** – OJ of January 20, 2017.
- **Ordinance n°2017-50 of January 19, 2017 relating to the acknowledgement of professional qualifications in the health care sector** – OJ of January 20, 2017.
- **Ordinance n°2017-49 of January 19, 2017 relating to perks offered to persons which manufacture or sell products or health services** – OJ of January 20, 2017.
- **Ordinance n°2017-47 of January 19, 2017 which specifies the merger procedure of Public Health facilities and amends the public health code** – OJ of January 20, 2017.
- **Ordinance n°2017-45 of January 19, 2017 relating to access conditions to data covered by medical confidentiality or industrial and commercial secrecy on behalf of the Nuclear safety authority and the French Institute for Radiological Protection and Reactor Safety and pooling of some national health agencies' tasks** – OJ of January 20, 2017.
- **Ordinance n°2017-31 of January 12, 2017 for ensuring consistency of texts with provisions of law n°2016-41 of January 26, 2016 of modernisation of our health system** – OJ of January 13, 2017.
- **Ordinance n°2017-30 of January 12, 2017 relating to equal access of men and women to board of directors and Supervisory Boards of institutions and bodies referred to in articles L. 1142-22, L. 1222-1, L. 1413-1, L. 1418-1, L. 1431-1 and L. 5311-1 of public health code** – OJ of January 13, 2017.
- **Ordinance n°2017-29 of January 12, 2017 relating to conditions for the recognition of legal force of documents which contain personal health data created or copied digitally and for the destruction of documents kept in in any form other than digital** – OJ of January 13, 2017.
- **Ordinance n°2017-27 of January 12, 2017 relating to personal health data hosting** – OJ of January 13, 2017.
- **Ordinance n°2017-9 of January 5, 2017 relating to health security** – OJ of January 6, 2017.

1. Audiovisual

France - Redefinition of the control missions of the CSA and increased sanction of press offences of a racial or discriminatory nature

Pursuant to Articles 182 and seq. of Law n°2017-86 of 27 January 2017 on equality and citizenship, new criteria related to equality and diversity apply to the control carried out by the Superior Audiovisual Council (CSA) on the audiovisual communication programs. The CSA must in particular make sure that the representation of the French society by these programs is "*exempt from prejudice*", and monitor "*the respect of the dignity of all people*" as well as "*the image of women*" who appear in advertisement programs.

Article 170 of this Law also extends to one year the limitation period of the *contravention* offences of non-public racial or discriminatory provocation, defamation, and insult, and increases the number of offences for which it is possible to ask a preliminary injunction for the interruption of an online communication service in case of a defamation offence against one or more people on the basis of their origin, the fact that they belong to a ethnic group, a nation, a race or a religion, their gender, sexual orientation or gender identity or handicap.

The above Articles came into force on 29 January 2017.

European Law

N/A

2. Banking

France - Legal interest rate

The ministerial decree (*arrêté*) dated 29 December 2016 (*J.O n°0303 dated 30 December 2016*) sets out the legal interest rate for receivables of individual acting for purposes other than professional (4.16%), and for all the other cases (0.90%).

These rates will enter into force on the first semester 2017.

France - Remuneration of funds received by credit institutions

The ministerial decree (*arrêté*) dated 25 January 2017 (*J.O n°0025 dated 29 January 2017*) regarding rates indicated in the **comité de la réglementation bancaire** regulation n°86-13 dated 14 may 1986 about the remuneration of funds received by crédits institutions provides that from 1st February 2017 to 31st July 2017 (without prejudice to provisions provided by article 3 paragraph II sub-paragraph 3° of regulation n°86-13 dated 14 may 1986) the remuneration rates referred to in paragraph 1° to 5° of the above-mentioned article are respectively fixed at:

- 0.75% (rates of "A" saving accounts);
- 0.75% (rates of credit mutuel saving accounts);
- 1.25% (rates of popular savings accounts);
- 0.50% (rates of corporate savings accounts);
- 0.50% (rates of house saving accounts).

France - List of supporting documents required to enforce the right to a bank account towards the *Banque de France*

The ministerial decree (*arrêté*) dated 10 January 2017 (*J.O n°0011, 13 January 2017*) amends the ministerial decree dated 31 July 2015 which establishes the list of supporting documents required to enforce the right to a bank account towards the *Banque de France*. For the purpose of the implementation of the directive 2014/92/UE on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, the ministerial decree complete the list of supporting documents required to enforce the right to a bank account towards the *Banque de France* with a statement confirming the fact that the applicant does not have deposit account opened in its name. Such change regards individuals and private legal entities (companies or associations).

The ministerial decree will enter into force on 23 June 2017.

European Law

N/A

3. Capital markets

France - The AMF sets specifics for its ban on the advertising of certain speculative and high risk financial contracts

Responsibility for this new legal framework is shared by the *AMF* and the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (*DGCCRF*). The scope of the ban is as follows: direct or indirect electronic advertising likely to affect retail investors and covering financial

contracts considered to be speculative and risky.

AMF staff will conduct active monitoring to identify banned advertisements while the *DGCCRF* and the *AMF* may, in accordance with their respective powers, sanction those involved.

France - End of the public consultation on financial professionals' use of tools that simulate future performance

The *AMF* has launched a public consultation on financial professionals' use of tools that simulate future performance when they market savings solutions; this is irrespective of whether they are directly accessible online or made available to advisers in branch networks. The *AMF*'s aim is to modify, if necessary, its policy in light of current practice. The consultation ended on 20 January 2017.

France - Marketing of complex financial instruments to non-professional clientele: the AMF updates its recommendation

Since 15 October 2010, the *AMF*'s recommendation on the marketing of complex financial instruments has aimed to limit such marketing on the basis of predefined criteria. This update of the *AMF*'s recommendation consists in adding some examples about the criteria in order to capture the complexity of the indices on which the performance and/or the reimbursement of the instrument is indexed.

France - The AMF consults on the conditions for implementing redemption gates on open-end funds

Following the entry into force of the law on Transparency, Anti-Corruption and Economic Modernization, which was adopted by France's National Assembly on 8 November 2016, the ability to introduce gates, or restrictions on redemptions of shares or units, currently available to funds of alternative investment funds, professional investment funds and real estate collective investment undertakings (OPCIs), will be extended to other open-ended funds.

The *AMF* has therefore held a public consultation on the terms for implementing gates in UCITS and AIFs from 1 to 30 December 2016.

France - ESMA published new Q&A on alternative performance measures guidelines for listed issuers

The European Securities and Markets Authority (ESMA) has published a new Questions and Answers (Q&A) document, comprising six questions, on the implementation of its Guidelines on the Alternative Performance Measures for listed issuers

European Law

N/A

4. Commercial Law

France

N/A

European Law

N/A

5. Competition

France

N/A

European Law

N/A

6. Consumer Law

France

N/A

European Law

N/A

7. Corporate

France - Gender parity into the Board of Directors

Since 1st January 2017, pursuant to [article L225-18-1 of the Commercial Code](#), listed companies and, as from the next shareholders meeting held to decide on appointments, companies that exceed a certain threshold of employees, turnover or total balance sheet, the boards of directors and supervisory boards shall include a minimum of 40% of men and women members of the board.

Any appointment made in violation of the parity rules shall be void. However, decisions of the board remain valid.

These provisions shall apply to any appointment as from 1st January 2017.

France - Adaptation of the *AMF* general Regulation regarding the buy-back of shares to the European Market Abuse Regulation

[Order of 14 September 2016 approving amendments to the general regulation of the French stock exchange authority \(*Autorité des marchés financiers, AMF*\)](#) amends the general regulation as required by the entry into force, on 3rd July 2016, of the [European regulation n°596/2014 of 16 April 2014 on market abuses](#).

[Order of 14 September 2016](#) implements a number of amendments regarding in particular, the buy-back of shares, rules applicable to certain professional journalist providing analysis, and whistleblowers.

Regarding in particular the buy-back of shares and the accepted market practices, issuers shall comply with the Market Abuse Regulation in order to benefit from the "safe harbor" presumption of legitimacy for the buy-back of shares. Regarding the transactions made on regulated markets, the use of derivatives do not benefit from the safe harbor. Furthermore, in order to benefit from such safe harbor, issuers shall publish and declare each transaction within 7 days of its conclusion. Transactions are also subject to the requirement of proper and effective disclosure and shall be made available on the issuer's website for 5 years.

The amended general Regulation of the *AMF* came into force on 18th December 2016.

France - Publication of the *AMF* general Regulation with regard to the buy-back of shares

Following the entry into force on 3rd July 2016, of the [European regulation n°596/2014 of 16 April 2014 on market abuses](#), the French stock exchange authority (*Autorité des marchés financiers, AMF*) updated its general Regulation relating to the operations made by listed companies on their own shares and to stabilization measures, and therefore published:

- [position-recommendation DOC-2017-04](#), providing Guidance regarding the operations made by listed companies on their own shares and the stabilization measures; and
- [instruction DOC-2017-03](#) relating to reporting methods of the transactions concluded as part of the intervention of listed companies on their own shares and the stabilization measures.

The Guidance provides for *AMF* requirements applying to listed companies in relation to the buy-back of shares and stabilization measures. The Guidance provides for the main conditions under which the listed companies, whose shares are admitted to trading on a regulated market (such as "Euronext" Paris or "le Marché libre"), may make transactions on their own shares.

The Instruction completes these provisions and provides for the forms and methods for filing with the *AMF* the notifications required in relation to the buy-back of shares.

These provisions shall apply as from 2nd February 2017.

European Law

N/A

8. Data Protection & IT

France - Personal Health Data hosting

Ordinance n°[2017-27](#), published in the OJ of January 13, 2017, replaces the approval process applicable to persons hosting health data by a certification process and modifies, to this end, Article L1111-8 of the public health code.

Each person hosting health data collected during prevention, diagnosis and care activities or social follow-up, on behalf of either a person who produced or collected these data or either patients themselves, must have a certificate of conformity provided by certification entities accredited by the French accreditation instance or the national body for accreditation of another Member State of the European Union. However, if it stores data in the context of an electronic archiving service, the person hosting health data must be approved by the minister in charge of Culture. The conditions of the approval and of the delivery of the certificate abovementioned will be further detailed by decree.

Furthermore, the Ordinance notably maintains the prohibition for a person hosting health data to use the data for other purposes than the hosting service, as well as the obligation to return data at the end of the contract.

The Ordinance will come into force on a date set by decree and at the latest on January 1, 2019.

France - The probative force of documents containing personal health data created or reproduced in a digital form is specified

The Ordinance n°[2017-29](#), published in the OJ of January 13, 2017, inserts a new section in the public health code on the conditions of the probative force of documents containing personal health data, that are created or reproduced in a digital form, and the destruction conditions of such documents kept in another form than the digital form.

The relevant documents are those containing personal health data, produced, received or kept by, without this list being exhaustive, a healthcare professional, a health institution or service, or by any professional or organization contributing to the prevention or care, in the context of their activities related to prevention, diagnosis, care, handicapped compensation or social and medical follow-up.

The Ordinance indicates that:

- The digital copy of such a document will have the same probative force as the paper-based original document if it satisfies reliability conditions provided in paragraph 2 of Article 1379 of the civil code (identical reproduction of the form and content of the original document, and integrity of the document ensured). In this case, the original document may be destroyed before the end of the legal retention period or of the period necessary to the purposes of the data collection.
- Such a document created in digital form will have the same probative force as a paper based document if it is established and kept in the conditions provided for in Article 1366 of the civil code (identification of the person who created it, and creation and retention in conditions ensuring its integrity).

France – Use of CCTV to sanction some of the offenses to the traffic code

The Decree n°2016-1955 dated of December 28, 2017, published in the OJ of December 30, 2017, modifies provisions of the traffic code in order to extend the scope of offenses that may be detected through an "automatic sanction control" and CCTV means.

European Law

N/A

9. Employment

France - Fight against discrimination: publication of the Statute "equality citizenship"

Statute n°2017-86 dated 27 January 2017 on equality and citizenship, J.O n°0024 dated 28 January 2017 introduces a new non-discrimination training obligation when hiring, which has to take place at least once every five years.

This obligation applies to employees engaged in hiring missions in companies employing at least 300 employees and in hiring companies (*new Article L. 1131-2 of the Labour Code*).

France - Social Security disputes: appointment of a Court of Appeal with national jurisdiction to deal with disputes concerning the insurance of occupational accidents

Decree n°2017-13 dated 5 January 2017, J.O n°0006 dated 7 January 2017, adopted in application of section 12 of Law n°2016-1547 dated 18 November 2016 on the modernization of justice in the twenty-first century appoints the Court of Appeal of Amiens to hear disputes relating to the pricing framework of the insurance of occupational accidents in place of the National Court of the incapacity and the pricing framework of insurance of occupational accidents.

The text will enter into force on 1st January 2019.

France - Restructuration of professional branches: 9 national collective bargaining agreements will see their territorial and professional scope included in the one of another collective agreement

Law n°2014-288 dated 5 March 2014 on vocational training, employment and social democracy, J.O n°0055 dated 6 March 2014 has started a process of restructuring the branches in order to reduce their number.

Law n°2016-1088 dated 8 August 2016 on employment, modernization of social dialogue and career security, J.O n°0184 dated 9 August 2016 ("Loi Travail") amended the process to be followed in order to speed up this restructuring and to have only 200 occupational branches by August 2019.

Among these measures, the law empowers the Minister of Labour to initiate a merging process of the scope of collective agreement.

Ministerial ruling dated 5 January 2017, J.O n°0010 dated 12 January 2017 relating to the merger of collective bargaining agreements gives an initial list of the collective agreements concerned by the merger procedure. 9 collective agreements have their territorial and professional scope included in the ones of another collective agreement.

However, the stipulations of the merged collective bargaining agreements remain in force for a maximum period of five years from the effective date of the merger, i.e. until January 13, 2022 included.

This deadline is supposed to allow unions to enter into negotiations in order to replace the conventional provisions applicable before the merger. Should unions fail to reach an agreement within this period of time, the provisions of the merged collective bargaining agreement will be removed in favor of those of the other collective bargaining agreement.

France - Religious practice within companies: practical guidelines have been issued by the Ministry of Labour.

The Ministry of Labour has published on its website [practical guidance on religious practice within companies](#).

In the form of questions and answers, illustrated with concrete examples, this practical guidance aims at addressing different issues raised by the expression of religious convictions by employees within their companies (refusal to carry out tasks, wearing religious signs, fasting, specific leave requests ...).

It also clarifies the possibility of providing within internal rules ("*règlement intérieur*") a clause relating to religious neutrality, this possibility being introduced by the *Loi Travail*.

European Law

N/A

10. Energy

France

N/A

European Law

N/A

11. Environment

France - Creation of the Environmental Authorization

Following Law n°2015-990 dated 6 August 2015, Ordinance n°2017-80 and Decree n° 2017-81 both dated 26 January 2017 and both published in the Official Journal on 27 January 2017 have created a new environmental authorization mechanism (the so-called "autorisation environnementale"). Such mechanism was inserted in the articles L. 181-1 and seq. of the Environmental Code.

It applies to (i) installations, structures, works or activities subject to water legislation and to (ii) Classified Installations for the Protection of the Environment (ICPE) if they fall under the authorization regime.

The environmental authorization is issued by the Prefect under the conditions specified in the previous-mentioned Decree n°2017-81.

This environmental authorization replaces various authorizations, when the project requires them: authorization to derogate from the prohibitions of destruction of protected species under the Code of the Environment, authorization of clearing under the Forest Code, authorization to operate a facility producing electricity under the Energy Code, in particular.

The provisions of Ordinance n°2017-80 and of Decree n°2017-81 will come into force on 1 March 2017.

European Law

N/A

12. Insolvency Proceedings

France

N/A

European Law

N/A

13. Insurance

France - ACPR – Removal of the status of independent administrative authority

The Law n 2017-55 of 20 January 2017 on the general status of independent administrative authorities and independent public authorities amends Article L. 612-1 of the French Monetary and Financial Code by removing the classification of the French insurance supervision authority (*Autorité de contrôle prudentiel et de résolution* – "ACPR") as an independent administrative authority. The modified Article L. 612-1 entered into force on 22 January 2017.

France - Court of appeal: litigation regarding the pricing of insurance for work accidents

The Decree n 2017-13 of 5 January 2017 designating a specialised court of appeal for litigation regarding the pricing of insurance for work accidents has been published in the Official Journal of the French Republic on 7 January 2017 (the "Decree"). The Decree designates the Court of Appeal of Amiens as the national specialised court of appeal for litigation regarding the pricing of insurance for work accidents. The Decree will enter into force on 1 January 2019.

France - FICOVIE – Accreditation of the officers of the High Authority for the transparency of the public life

The Decree n 2017-19 of 9 January 2017 on the terms of designation and accreditation of the officers of the High Authority for the transparency of the public life authorised to consult the file of capitalisation and life insurance contracts ("**FICOVIE**") has been published in the Official Journal of the French Republic on 11 January 2017 (the "**Decree**"). The Decree specifies modalities of the Law n 2016-1691 of 9 December 2016 that creates the right of direct access to the FICOVIE file for the officers of the High Authority for the transparency of the public life. The Decree provides that the accreditation is personal and granted by the president of the High Authority for the transparency of the public life.

France - ACPR – Recommendation on the commercialisation of unit-linked insurance contracts composed of complex financial instruments

The Recommendation n 2016-R-04 on the commercialisation of unit-linked insurance contracts composed of complex financial instruments has been published in the Official Register of the ACPR on 9 January 2017. This recommendation (i) reminds the responsibility of insurance entities and

insurance intermediaries regarding the information and advice given to the policy holder/adherent regarding the financial instruments used as unit of account and (ii) draws the insurance entities and intermediaries' attention on the objective criteria of risks of bad commercialisation of this kind of life-insurance contracts. This Recommendation replaces the recommendation n 2010-R-01.

European Law - EU-U.S. Covered Agreement – Prudential measures regarding insurance and reinsurance

On 13 January 2017, the European Union ("EU") and the United States ("U.S.") have agreed a covered agreement on prudential measures regarding insurance and reinsurance. The covered agreement covers three areas of prudential insurance oversight, (i) reinsurance, (ii) group supervision and (iii) the exchange of information between insurance supervisors. Key aspects of the covered agreement are meant to provide (i) EU-based (re)insurers with relief from U.S. collateral requirements, (ii) U.S.-based (re)insurers with relief from EU local presence requirements, and (iii) to free U.S. insurance groups operating in the EU from capital, solvency, reporting, and governance requirements provided for under the EU "Solvency II" Directive and applicable implementing legislation.

14. Intellectual Property

France - Launch of the electronic Soleau envelope by the INPI

By way of Decision n°2016-273 of 13 December 2016 on the conditions of filing, extension and return of electronic Soleau envelopes, the Director General of the National Institute of Industrial Property ("INPI") established a procedure enabling the filing of Soleau envelopes in electronic form subject to the payment of a fee.

This tool, which gives a certified date to a work or to a document by filing the same with the INPI, was until then exclusively available in a material form. The electronic Soleau envelope now enables the applicant to provide documents in a dematerialized form, via a specific online platform where they will be kept for an initial period of five years (renewable once) or ten years, depending on the applicant's choice. The documents are returned at any time upon request of the applicant, and, in any event, at the expiry of said period.

This Decision came into force on 15 December 2016.

France - Application to the HADOPI of the measures provided by the law on the general status of independent administrative authorities and independent public authorities

Law n°2017-55 of 20 January 2017 on the general status of independent administrative authorities and independent public authorities aims notably at coordinating the status of such authorities including the High Authority for the Diffusion of Art Works and the Protection of Rights on the Internet (HADOPI).

Article 47 of this Law provides notably for the partial renewal of the college of the HADOPI every three years according to conditions which must be set out by a decree of Conseil d'Etat.

This Law came into force on 22 January 2017.

France - Publication of the WIPO Performances and Phonograms, and Copyright Treaties

Decree n°2017-79 of 25 January 2017 publishes the World Intellectual Property Organization's (WIPO) Performances and Phonograms and Copyright Treaties which were adopted in Geneva on 20 December 1996, ratified in France by Law n°2008-573 and 2008-574 of 19 June 2008 and came into force on 14 March 2010.

These Treaties have been transposed by European Directive n°2001/29 of 22 May 2001, which has already been transposed in France by Law n°2006-961 of 1 August 2006. This Law introduced for example in France a legal regime for technical protection measures aiming at preventing or

limiting the uses of a work, other than a software, of a performance, a phonogram, a videogram, or a program that have not been authorized by the owner of author's rights or related right.

The publication of these Treaties makes them effective against private individuals and more generally enforceable in the internal legal order in France.

France - Publication of the Council of Europe's Convention on counterfeiting of medical products

Decree n°2017-77 of 25 January 2017 publishes the Council of Europe's Convention on counterfeiting of medical products and similar crimes involving threats to public health which was signed in Moscow on 28 October 2011, ratified in France by law n°2016-701 of 30 May 2016 and came into force on 1 January 2017.

This Convention, which aims at setting out a European legislative framework to "*prevent and combat threats to public health*" has already been mentioned in a previous article ([see Legislative and Regulatory Newsletter – May 2016](#)).

The publication of this Convention makes it effective against private individuals and more generally enforceable in the internal legal order in France.

France - Validation of the decrees and orders on plain packaging for cigarettes and other tobacco products by the Conseil d'Etat

In its [Decision n°399117 of 23 December 2016](#), the *Conseil d'Etat* rejected the claims for cancellation of Decrees n°2016-334 of 21 March 2016 and n°2016-117 of 11 August 2016 and of the Orders of 21 March 2016 and 22 August 2016 specifying the conditions of implementation of plain packaging for cigarettes and some other tobacco products pursuant to Law n°2016-41 of 20 January 2016 ([see Legislative and Regulatory Newsletter – January 2016](#)).

The *Conseil d'Etat* has notably ruled that the above texts, which prohibit manufacturers from putting their figurative or semi-figurative trademarks on said packaging and let them free to use their word trademarks, are compliant with the trademark owners' property rights and do not contradict France's international commitments on intellectual property.

European Law

N/A

15. Life Sciences

France - Stricter rules governing the relationships between the industry and healthcare professionals

On 19 January 2017, by the [Ordinance n°2017-49](#), major modifications were adopted in France to the regulations on interactions between the industry and healthcare professionals (and other stakeholders). These new regulations, a.k.a. "anti-benefits regulations", will entail major changes in the industry's compliance procedures relating to payments and other transfers of value to those stakeholders.

The new rules are still subject to several implementing regulations, but they will become effective at the latest on 1 July 2018.

This Ordinance was the topic of a [newsflash](#) dated 23 January 2017.

France - France ratifies the Medicrime Convention

By a [Decree n°2017-77](#) dated 25 January 2017, France has ratified the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (the [Medicrime Convention](#)).

It is the first binding international instrument sanctioning the manufacturing of counterfeit medical products, the trafficking in counterfeit medical

products, the unauthorized manufacturing or supplying of medicinal products and the placing on the market of medical devices which do not comply with conformity requirements.

The Convention provides a framework for national and international cooperation between sanitary, police and customs authorities, in order to prevent and fight criminality with the help of public and private sectors, seeking effective prosecution of offenders, as well as the protection of victims and witnesses.

The Convention entered into force on 1 January 2016. To date, it is signed by 26 states, including France, and ratified by 9 states: Albania, Armenia, Belgium, Spain, France, Hungary, Moldova, Ukraine and Guinea.

European Law

N/A

16. Procedures

France

N/A

European Law

N/A

17. Product regulation

France

N/A

European Law

N/A

18. Profession and ethics of the profession

France

N/A

European Law

N/A

19. Public law

France - Non-Discrimination and performance of public contracts

Law n°2017-86 dated 27 January 2017, published in the O.J dated 28 January 2017, relating to equality and citizenship, contains various provisions relating to public procurement. Article 213 of the Law amends Ordinance n°2015-899, dated 23 July 2015 on public procurement, and introduces a

new criterion relating to the fight against discrimination to the existing list of measures to be taken into account by contractors while performing a public contract (i.e. economics, innovation, environmental, social and employment measures).

France - Adoption of the statute for independent administrative and public authorities

Organic Law n°2017-54 and Law n°2017-55 dated 20 January 2017, published in the OJ dated 21 January 2017, determine the statute for Independent Administrative Authorities (IAA) and Independent Public Authorities (IPA). The Organic Law gives the Parliament authority to create a new IAA or and IPA. The number of these independent authorities is settled to 26 and a list of these authorities is attached to the Law. The Law also defines the applicable rules to the inner organization of IAA and IPA, including mechanisms regarding the duration of their members' mandates, ethic rules and monitoring procedures. The Law requires the IAA and IPA to submit an annual activity report to the Government and Parliament.

European Law

N/A

20. Real Estate

France - Surcharge of the Housing tax on unoccupied secondary residences in Paris

On 30 January 2017, the Paris Council ("Conseil de Paris") decided to increase the housing surtax from 20% to 60% on unoccupied secondary residences in Paris, pursuant to the new article 1407 ter of the General Tax Code which enables all municipalities to adjust their share of the housing tax contribution owed in relation to furnished housings when not recognized as main residence. A secondary residence is a residence which is occupied less than eight months per year, for week-ends, leisure activities or holidays. This surcharge applies to the payment of the housing tax for 2017.

People possessing secondary residences for a professional purpose can make a claim to the tax services in order to benefit from tax rebates.

France - New requirements for the Global Technique Diagnostic within co-ownerships

Pursuant to article 58 of Law n°2015-366 (the so-called "Loi Alur"), Decree n°2016-1965 dated 28 December 2017 published in the Official Journal on 30 December 2016 describes the modalities and conditions under which the report named "Global Technic Diagnostic" shall be prepared.

As a reminder, this report is mandatory for (i) buildings built more than ten years ago and held in co-ownership or (ii) buildings undergoing an insalubrity procedure. It aims to ensure that all co-owners are well informed on the general situation of the premises and should serve as a basis for future works. It comprises in particular an energy performance diagnostic of the common areas and equipment, a full audit of the common areas and equipment's state as well as improvement recommendations regarding the technical and financial management of the premises.

The previous-mentioned Decree specifies the skills required from the person carrying out the Global Technical Report.

Decree n°2016-1965 came into force on 1st January 2017.

France - New consumers' information requirements for professionals intervening in real-estate transactions

Following Law n°2015-366 dated 24 March 2014 (the so-called "Loi Alur"), a new Ministerial Order dated 10 January 2017 was published in the Official Journal on 18 January 2017. This Ministerial Order replaces the Order dated 29 June 1990 relating to the publication of prices by the professionals who intervene in real estate transactions. It reinforces the display and advertising requirements regarding real estate advertisement.

Professionals (especially real estate agencies) linking landlords and tenants and/or buyer and sellers, are now required to clearly display the prices they are charging, and to indicate who should bear these costs, for each management service. This requirement also applies for all property management services ("services se rapportant à la gestion immobilière") for which they are mandated. The Ministerial Order also describes other obligations which are incumbent on professionals, especially in terms of display conditions.

It will come into force on 1st April 2017.

France - New requirements for Electric vehicles' and Bicycle parking spaces concerning the Construction of new buildings

A new Decree was published in the Official Journal on 16 July 2016, pursuant to article 41 of the Transition Energy Law of 17 August 2015. It came into force on the 1 January 2017.

This Decree requires that owners provide a certain number of parking spaces equipped with charging points for Electric or Hybrid vehicles as well as a bicycle storage room whilst building premises for industrial or commercial purposes or premises that will be used to welcome a public service or a cinema. This Decree applies to all building permit requests filed after 1st January 2017.

The infrastructures' compliance with this regulation is verified during the Compliance with Construction rules (CRC) process. Any breach of these rules can lead to criminal charges.

European Law

N/A

21. Tax

France – Tax litigation: clarification regarding the statute of limitation

Article 10 of the Decree n 2016-1480 dated 2 November 2016 repealed the general rule applicable under French administrative law whereby claims can be brought before French administrative Courts only upon issuance of an explicit decision by the French administration. Therefore, the statute of limitations may now run as from an implicit decision from the French administration.

However, this new rule will not impact tax litigation considering that, following a recent decision from the French Administrative Supreme Court (CE, 7 December 2016, n 384309), the French Tax Authorities (the "FTA") have updated their general guidelines confirming that, for tax litigation purposes, the statute of limitations starts to run as from the notification by the FTA of an explicit decision to the taxpayer (Article R. 199-1 of the French Tax Procedure Code; BOI-CTX-PREA-10-80-20161227, n 75 and BOI-CTX-ADM-10-20-20-20161227, n 25).

France - Property traders' tax regime: evidencing profit making intent

In principle, gains resulting from the sale of real estate assets by property traders are subject to French individual income tax as industrial and commercial profits (*and not as real estate income*) provided that the trading activity is carried out by the property traders on a regular basis with the intent of making a profit (Article 35 of the French Tax Code – the "FTC").

In this respect the FTA used to presume the profit making intent when evidence was given that the trading activity was carried out on a regular basis.

The FTA updated their guidelines and removed this presumption (BOI-BIC-CHAMP-20-10-10-20170104, n 50).

France - Concealment of income: removal of administrative tolerances

In principle, when a taxpayer tries to hide the existence of a business from the FTA ("*activités occultes*"), the FTA benefits from extended statute of limitations (*i.e., the statute of limitations then runs until the closing date of the tenth tax year following the one for which French tax is due*). Besides, a 80% penalty may apply on any tax reassessments notified by the FTA to the taxpayer.

In this respect, the FTA used to waive the application of these adverse tax consequences when a taxpayer, although having omitted to file a tax return for the purpose of one given tax, had filed tax returns for the purpose of other taxes regarding the same activity.

The FTA updated their general guidelines and removed this administrative tolerance (BOI-CF-PGR-10-70-20161229 and BOI-CF-INF-10-20-10-20161229).

France - Tax on office premises: publication of the rates for 2016

The French tax authorities have published the rates applicable as from 1 January 2017 to (i) the annual tax on offices, commercial premises and storage surfaces, and (ii) the annual tax on parking surfaces, for the benefit of the Ile-de-France region (BOFIP-IF-AUT-50-20-20170104, n 200; BOI-IF-AUT-140-20170104, n 100, and BOI-ANNX-000463-20170104). The rates applicable in 2017 increased by 2.18% compared to the ones applied with respect to 2016.

As a reminder, the rates of these two taxes are updated on an annual basis (*i.e., on 1 January of each given year*), according to the latest construction cost index published by the French National Institute for Statistics and Economic Studies (INSEE).

European Law

N/A

International - Exchange of country-by-country reports between tax authorities

The [Law n°2017-117](#) dated 1 February 2017 authorises the approbation of the multilateral agreement signed by 31 countries in Paris on 27 January 2016 introducing the automatic sharing of country-by-country reports provided by multinational enterprises ("**MNEs**") between tax authorities.

As a reminder, since 1 January 2016, [Article 223 quinquies C of the FTC](#) imposes on MNEs with a turnover exceeding EUR 750,000,000 to report to the French tax authorities the allocation of their profit country by country as well as some other financial and economic information listed under [Article 46 quater-0 YE of Appendix III to the FTC](#).

These reports will be from now on automatically and confidentially exchanged between local tax authorities of signatory States.

22. Telecoms

France – New tax applicable to services offering audio-visual and cinematographic contents

The Law dated December 29, 2016 amending the finance law for 2016 ([Law n°2016-1918](#)), published in the O.J dated December 30, 2016, provides, in its article 56, a new tax applicable to services enabling access to audio-visual and cinematographic contents.

This tax target operations of (i) provision to the public in France, of on-demand services enabling access by an electronic communication means, in return of payment, to audio-visual and cinematographic works, and (ii) the provision to the public in France, of on-demand services giving or enabling access by an electronic communication mean, free of charge, to audio-visual contents.

Regarding free services, exemptions are provided for services whose audio-visual contents are secondary, or whose main purpose is dedicated to the information or the provision of information relating to cinematographic and audio-visual works, to their broadcast and promotion to the public, in particular through extracts and trailers.

Regarding pay-per-use services, the tax is based on the amount, exclusive of value added tax, of the price paid for the access to audio-visual or cinematographic works. As for free services, the tax is based on the amounts paid by advertisers and sponsors for the broadcast of their advertisements. Nevertheless, standardised deductions from 4% to 66% are provided for free services. Furthermore, the tax base does not encompass the amounts paid by advertisers and sponsors for the broadcast of their advertisements on some catch-up TV services, nor the amounts paid for the payment of a tax, by companies established in France for the provision of the services in another European Member State.

The tax is applicable to companies established in France or outside of the territory. The tax rate is of 2%, or of 10% for pornographic and violent contents. A tax rebate of 100,000€ is applicable to free services.

The revenue from the levy will be assigned to the National Center for the Cinema and Moving Image.

France – Publication of the decree setting the applicable thresholds related to the grant of authorizations for the use of frequencies, numbering resources or codes for experimental purposes

[Article 92 of the law n°2016-1327](#) dated 7 October 2016 for a Digital Republic provides the possibility for the the French Telecommunications Regulator ("**ARCEP**") to grant certain operators with authorizations to use radio frequencies, numbering resources and codes, for experimental purposes and in order to develop an innovative technology or service, from a technical and commercial stand point.

Hence, if stated in the authorization granted by the ARCEP, the authorization holder would not be temporarily subject to all or part of the rights and obligations laid down by the Postal and Electronic Communications Code ("**PECC**") and the Consumption Code, which stem from either the

attribution of these frequencies, or the exercise of the activity of operator of electronic communications or of developer of independent network.

Pursuant to articles [L42-1](#) and [L44](#) of the PECC, the authorizations can only be granted if the turnover of the activity for which the authorization is required, or the number of users of the innovative technology or service remains below a threshold set by decree for the duration of the experiment.

The [Decree n°2017-56 dated 19 January 2017](#) published in the O.J of 21 January 2017 set the thresholds applicable to articles L42-1 and L44 of the PECC as follows:

- € 500,000 of gross turnover carried out each semester for the activity which requires the frequencies should be used for experimental purposes;
- 5,000 users of the innovative technology or service at all times during the experimentation.

These thresholds are specified in the new articles [D406-17-1](#) and [D406-20](#) of the PECC, created by this decree.

European Law

N/A

23. Transport

France

N/A

European Law

N/A

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