
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 May 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.

Enacted laws

- **Ordinance n°2017-970 of May 10, 2017 to promote the development of bond issues** - OJ of May 11, 2017.
 - **Ordinance n°2017-762 of May 4, 2017 to amend the legislative part of the Code of Cinema and Motion Picture** - OJ of May 5, 2017.
 - **Ordinance n°2017-748 of May 4, 2017 regarding the security agent** - OJ of May 5, 2017.
 - **Ordinance n°2017-747 of May 4, 2017 adopting various measures facilitating adoption of decisions and shareholder participation in companies** - OJ of May 5, 2017.
 - **Ordinance n°2017-734 of May 4, 2017 to amend provisions regarding mutualist organisations** – OJ of May 5, 2017.
 - **Ordinance n°2017-717 of May 3, 2017 du 3 mai 2017 for the creation of the public body Paris La Défense** - – OJ of May 4, 2017.
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1. Audiovisual

France - Reform of the Code of Cinema and Motion Picture

Enacted in accordance with an authorization provided at Article 93 of [Law n°2016-925 of 7 July 2016](#), [Order n°2017-762 of 4 May 2017 amending the legislative part of the Code of Cinema and Motion Picture](#) lightens, simplifies, and modernizes said Code.

The Order notably improves the regime regulating the activity of movie theatres operators, by simplifying for example the system of approval of cinematographic spectacles organizations.

It also reforms the legal framework around offers of cinema access giving a right to multiple entrances in a number which is not defined in advance,

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named "*unlimited offers*".

Finally, Articles 28 to 41 of the Order significantly amend Book IV of the Code of Cinema and Motion Picture in order to reform the conditions and procedures of control of the obligations set out by this code and the administrative sanctions susceptible of being inflicted in case of non-compliance.

This Order came into force on 6 May 2017, with the exception of the 1° of Article 2 and of Article 21 which will come into force on 1 January 2018.

2. Banking

France - Security Agent

The **decree n°2017-748 dated 4 May 2017** ([J.O n°0106 du 5 May 2017](#)) **regarding the security agent** creates a new regime for the security agent, thus substituting to the previous one as provided in article 2328-1 of the French *Code civil*. Thus, the scope of intervention of the security agent will now extend to any security or guarantee and its method of appointment will be made more flexible. It is now possible to name the security agent, not only in the act which creates the obligation, but also when a subsequent syndication occurs or even in a separate act. The security agent will also now hold securities and guarantees in its name and be authorized to exercise any action to defend the interests of the creditors and claim any obligations without having to be holding a special mandate. The decree also creates a special purposes assets, intended to gather all of the rights and assets acquired by the security agent in the exercise of its mission.

These provisions will come into force on 1st October 2017.

France - Request for approval of the rules applicable to a regulated market, a multilateral trading system or an organized trading system

The **Decree n°2017-733 dated 4 May 2017** ([J.O n°0106 dated 5 May 2017](#)) **regarding the approval of the rules applicable to a regulated market, a multilateral trading system or an organized trading system** complements Law n°2013-1005 dated 12 November 2013, which provides that a silence kept by the administration for a period superior to two months regarding a request for approval is deemed to mean acceptance. The decree provides that the silence of the administration constitute refusal:

- on the expiry of a period of 3 months for requests regarding initial approvals of the rules of a regulated market, a multilateral trading system or an organized system of negotiation; and
- on the expiry of a period of 1 month, for requests regarding the change of the rules of a regulated market, a multilateral system of negotiation or an organized system of negotiation.

These provisions will come into force on 3 January 2018.

France - Lifting of sanctions imposed by the French Financial Markets Authority (AMF)

The **decree n°2017-865 dated 9 May 2017** ([J.O n°0109 dated 10 May 2017](#)) **regarding to the lifting of sanctions imposed by the French Financial Markets Authority (AMF)** specifies the conditions of admissibility of the request for lifting the sanctions on the one hand, and sets on other hand the procedure to follow to enable the lifting the sanctions of its sanction by the applicant. The conditions of admissibility of the request are the expiration of a minimum period of ten years, the complete acquittal of the pecuniary sanction imposed in addition to the ban on exercise, the absence of new penalties or sanctions imposed to the applicant and the impossibility of appeal against the decision having uttered the prohibition to exercise.

The decree came into force on 11 May 2017.

France - Bond issuance

The **order n°2017-970 dated 10 May 2017** ([J.O n°0110 dated 11 May 2017](#)) **to promote the development of bond issuance** modernizes and repeals certain provisions to promote the development of bond issuance governed by French law. The decree clarifies the status of the bondholders' representative, which might be designated in the subscription agreement, by the General Assembly or, failing that, by a decision of justice at the

request of any interested party. It is also clear that the bondholders' representative may delegate its powers to a third party. Regarding bonds' financing of subsidiaries in groups of companies, subsidiaries have the possibility to proceed directly to a bond issuance without having to go through the procedure of verification of assets and liabilities.

The order came into force on 12 May 2017.

3. Competition

France - Adoption of a circular relating to State aids

On April 26th, 2017, Prime Minister Bernard Cazeneuve adopted a new circular relating to State aids.

The circular provides guidelines on EU State aid rules for civil servants working on public funding projects. The circular sets out the notion of state aid, the criteria of compatibility of the aid with European law, procedural rules as well as the judicial review by the European Commission and French judges. The circular aims at reinforcing the expertise of Ministries, State services and territorial authorities as regards State aids.

France - New decree creating an appellate procedure to the Paris Court of Appeals against decisions of the French Competition Authority refusing legal privilege

On May 7th 2017 was published the decree n°2017-823 which creates an independent appellate procedure to the Court of Appeal of Paris against decisions of the FCA refusing legal privilege or lifting the protection previously granted. So far, such decisions could only be challenged in the context of an appeal on the substance of the FCA's final decision. The FCA's decision must be appealed within ten days of its notification. The First President of the Court of Appeal of Paris must rule within one month. The President's ruling can be appealed to the Supreme Court within ten days of its notification.

European Union - Amendment to block exemption regulation in favour of certain State aids to port and airport infrastructures, to culture and to EU outermost regions

On May 17th, 2017, the European Commission amended the General Block Exemption Regulation of June 17th, 2014.

Certain aids to port and airport infrastructures will be exempted from the obligation of prior notification to the European Commission. Furthermore, the notification thresholds applicable to aids for cultural and sports infrastructures will be raised. Finally, the Regulation will facilitate compensation by public authorities to companies for the additional costs they face when operating in the EU's outermost regions.

The initiative aims at facilitating public investments in the context of the Commission's Regulatory Fitness and Performance of EU Legislation (REFIT).

4. Corporate

France - Adoption of decisions and shareholders participation in companies

Ordinance n°2017-747 of May 4, 2017 adopting various measures facilitating adoption of decisions and shareholder participation in companies, adopted under the provisions of article 141 of law n°2016-1691 of December 9, 2016 regarding transparency, fight against corruption and modernization of the economic life, also called "Sapin II Law", providing various measures aiming to improve the functioning of commercial companies, came into force on May 6, 2017.

In particular, the Ordinance:

- allows shareholders of a limited liability company (*société à responsabilité limitée*) holding the twentieth of the shares to have items or draft resolutions added on the agenda of a shareholders' meeting (article L.223-27 of the French Commercial Code);
- allows non-listed joint stock companies (*sociétés anonymes*) to provide in their articles of association that shareholders' meetings are held only

by videoconference or by conference call (new article [L.225-103-1 of the French Commercial Code](#));

- simplifies the formalities applicable to related-party agreements and rules applicable to the adoption of approval clauses in the articles of association of simplified joint stock companies (*sociétés par actions simplifiées*) (articles [L.227-10](#) and [L.227-19 of the French Commercial Code](#)).

France - Suppression of declaration obligations for foreign investments in France

Some foreign investments had to comply with an administrative declaration obligation or with a statistical reporting obligation with the Treasury and Economic Policy Directorate General (*Direction Générale du Trésor*).

[Decree n°2017-932 of May 10, 2017 adopting various simplification measures for companies](#), repeals the declaration obligations for foreign investments set out in articles [R.152-4](#) and [R.152-5 of the French Monetary and Financial code](#). Nevertheless, completion of operations subject to prior authorisation for foreign investments in France governed by provisions of articles [R.153-1](#) and following of the French Monetary and Financial code shall remain subject to a declaration obligation in accordance with the new provisions of [article R.153-13 of the French Monetary and Financial code](#).

These provisions came into force on May 12, 2017.

France - Adoption of the bond issuance regime

[Please refer to the Banking section](#).

European Law - Directive regarding identification of listed companies shareholders

[Directive 2017/828 of May 17, 2017 amending Directive 2007/36/CE as regards the encouragement of long-term shareholders engagement](#) was published in the Official Journal of the European Union on May 20, 2017.

The Directive regards the exercise of certain shareholder rights attached to voting shares in relation to general meetings of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.

The Directive sets rules regarding transparency of institutional investors, assets manager and voting advisors in investment strategy and in right to vote on remuneration policy.

In particular, the Directive provides that companies may be entitled to identify their shareholders and to obtain information on their identity with the central securities depository or with any other intermediaries having such information. Member States must ensure that intermediaries facilitate the exercise of shareholders' rights and their engagement within the company, in particular the right to participate to general meetings and the right to vote.

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by June 10, 2019 at the latest.

5. Data protection & IT

France – Extension of access to the pharmaceutical file to the doctor of a healthcare institution

A [Decree n°2017-878](#) dated 9th May 2017, taken pursuant to the [law n°2016-41](#) on the modernization of our healthcare system of 26th January 2016, and published in the O.J. n°0109 of 10th May 2017, extends to physicians the possibility to consult the pharmaceutical file of a patient of a healthcare institution, under the same conditions existing for pharmacists. This pharmaceutical file includes data relating to the identification of the patient and the pharmaceutical products which have been prescribed to him (medications, biological products and products for medical use) in a dispensing pharmacy or an internal pharmacy of a healthcare institution or military hospital.

In addition, the decree establishes retention periods which vary depending on the type of data in question:

- The data relating to the identification of the beneficiary (last name, first name, date of birth and gender) are accessible throughout the

existence period of the file;

- The health data relating to the prescription of medications, products and objects for medical use are accessible for a period of 4 months from their entry into the file (by exception, 21 years for vaccinations and 3 years for biological medications) and are kept for an additional 32 months by the data host provider in order to inform patients in the event of a health alert.

At the end of these periods, the data will be destroyed.

The text also provides the patient with the possibility to refuse the creation of a pharmaceutical file by notifying it to the National Council of the Order of Pharmacists. The patient may later reconsider this refusal.

France – Simplification of preliminary formalities concerning certain processes of health data

The CNIL decided to simplify the prior formalities concerning the health data processing benefiting from the exceptions of article 8 II of the French data protection Act, by subjecting them to the declaration process rather than the authorization process. For example, would only require a declaration the following health data processing: shared medical record files, telemedicine or educational therapeutic devices. However, the authorization regime will still apply to any data processing which does not benefit from exceptions of abovementioned article 8 II but which would be justified by a public interest. Moreover, this simplification does not impact the authorization requests relating to research in the domain of health and evaluation of practices or health care activities or prevention.

6. Employment

France – Prohibition of "vaping" in the workplace

The January 26, 2016 Law, known as the modernization of our healthcare system, laid down a principle prohibiting the use of e-cigarettes ("vaping") in enclosed and covered workplaces for collective use (Article L. 3513-6 of the French Public Health Code).

The practical arrangements for the prohibition are set out in the 2017-633 April 25, 2017 Decree (Official Journal April 27): the workplaces concerned are premises for workstations, used for collective use, with the exception of premises which accommodate the public. Moreover, the employer has no possibility of setting up a site reserved for "vaping" and must also implement an apparent signal recalling the prohibition.

In the event of a breach, employees and the employer are liable to criminal penalties (contraventions of 2nd and 3rd class).

France – Social dialogue authority in franchise networks

The 2016-1088 August 8, 2016 Law about work, modernization of social dialogue and the securing of career paths (so-called "Labor Law") has set up, in the networks of operators bound by a franchise agreement and employing at least 300 employees in France, a social dialogue authority informed of the franchisor's decisions which will have an impact on the working conditions of the network's employees.

The social dialogue authority is the result of a collective agreement. The negotiation is chaired by the franchisor and involves staff representatives of franchisees. This agreement must provide for the composition and functioning of the social dialogue authority.

In the absence of an agreement, the 2017-773 May 4, 2017 Decree (Official Journal May 6) determines the rules of composition and operation of the social dialogue authority.

France – Class action

In line with the 2016-1547 November 18, 2016 Law about the modernization of justice for the 21st century, the 2017-888 May 6, 2017 Decree (Official Journal May 10) defines the proceedings applicable to class actions.

It includes, in particular, provisions specific to class actions relating to discrimination committed by an employer.

France – Secondment and fight against fraud

The 2017-825 May 5, 2017 Law (Official Journal May 7) issued under the Labor Law intends to fight against illegal international services.

The content of secondment statements is supplemented. Indeed the French Labor Code requires the service provider established abroad to post an administrative declaration before each secondment. For its part, the principal or contracting authority is required to transmit a subsidiary declaration

in the event of default by the foreign employer. The Decree specifies the list of entries to be included in these various declarations.

The principal has an obligation to be vigilant with regard to the entire subcontracting chain. The Decree specifies that any breach of this vigilance obligation may lead to the suspension of the provision of services in addition to the existing administrative fine.

The contracting authority also has an obligation to report any occupational accident of a seconded employee. Any breach of this declarative obligation now results in the payment of an administrative fine rather than a criminal fine.

France – Social responsibility of electronic connection platforms

The electronic connection platforms (i.e. *Uber* or *Blablacar*) will endorse, from January 1, 2018, a social responsibility. The principles of this social responsibility have been laid down by the Labor Law.

The 2017-774 May 4, 2016 Decree (Official Journal May 6) sets the turnover threshold (13% of the annual social security ceiling, i.e. € 5,099.64 in 2017), triggering the platform liability to its freelance workers (in particular, the payment of occupational accidents and diseases and training contributions paid by the freelance workers, as well as the accompanying costs for the validation of the workers' experience).

France – Proceedings details relating to Labor Courts

The 2017-1008 May 10, 2017 Decree (Official Journal May 11) made under the 2015-990 August 6 2015 Law about growth, activity and equal economic opportunities makes certain adjustments to the Labor Court proceedings, in particular by defining the revocation of the closing order, submitting the transactions to the approval of the Conciliation and Guidance Board, determining proceedings before the Labor Court to challenge medical evidence justifying the occupational doctor's advice.

As regards the appeal proceeding, the trade union advocate can now send the pleadings to the Clerk's Office by registered letter with acknowledgment of receipt. Notifications between lawyers and trade union defenders can be made by registered letter with acknowledgment of receipt or by notification.

France – New rules for challenging the opinion of the occupational doctor

The Labor Law has redefined the appeal proceedings against the occupational doctor's opinions: notice of aptitude or physical incapacity, proposals, conclusions or indications formulated by the occupational doctor.

Previously, the occupational doctor's opinions could be appealed as a whole to the Labor Inspector within a period of two months. Since January 1, 2017 only the medical elements justifying the opinion and / or the proposals of the occupational doctor may be challenged by the employer or the employee by means of a referral, within 15 days, of the Labor Court (on emergency proceedings), appointing a medical expert to the Court of Appeal.

The 2017-1008 May 10, 2017 Decree (Official Journal May 11) provides that from now on, the Labor Court rules on emergency proceedings and on the merits, by an order having the force of *res judicata*.

In addition, the occupational doctor may be heard by the medical expert designated to decide on the medical opinion. A provision on the medical expert's remuneration must also be recorded.

France – Flat-rate contribution to the workers' secondment in France

The 2017-751 May 3, 2017 Decree (Official Journal May 5) provides for a contribution to offset the costs of setting up the dematerialized system for declaring and controlling the workers' secondment, as provided for by the Labor Law.

The Decree determines the details of this contribution's payment implementation and sets its amount at the rate of €40 per seconded employee.

France – Methods of counting and declaring headcount, collection and calculation of contributions

The 2017-858 May 9, 2017 Decree (Official Journal May 10) simplifies and harmonizes the proceedings for counting the headcount of companies in the context of the generalization of the nominative social declaration.

It simplifies the rules for calculating the annual social security ceiling and clarifies the rules for the recovery of the transport payment.

It gradually lowers the threshold for the single-site payment obligation for multi-establishment businesses.

Finally, it specifies the perimeter of the declarations that the employers make to the nominative social declaration.

7. Insurance

France - Loan insurance – Information of prospects incurring higher risks because of their health condition or disability

The order dated 10 May 2017 establishes the information document for prospects incurring higher risks because of their health condition or disability. This information document specifies (i) the conditions and deadlines for the "right to be forgotten" and the eligibility criteria for benefitting of an absence of a surcharge rate or for not being subject to an exclusion of guaranty as well as (ii) the modalities for consulting the reference table set by Article L. 1141-5 of the French Public Health Code. The Order entered into force on 12 May 2017.

France - Modalities of amendment of group life insurance and capitalization contracts

The decree n°2017-868 of 9 May 2017 relating to modalities of amendment of group life insurance and capitalization contracts has been published in the Official Journal of the French Republic on 10 May 2017 ("**Decree**"). This Decree modifies the provisions of Article R. 141-6 of the French Insurance Code by listing the essential provisions of group insurance contracts for which only the General Meeting of the underwriting association has the right to authorise amendments pursuant to Article L. 141-7 of the French Insurance Code. The Decree entered into force on 11 May 2017.

France - Motor liability insurance – Amendments to the compensation limits by the guarantee fund

The order dated 2 May 2017 relating to compensation limits for motor liability insurance has been published in the Official Journal of the French Republic on 5 May 2017 ("**Order**"). The Order modifies the minimum amount of guaranty for property damages as well as the compensation limits of property damage by the mandatory third party liability insurance guarantee fund (*Fonds de Garantie des Assurances obligatoires* - "**FGAO**"). The Order entered into force on 6 May 2017.

France - Crop insurance – Specifications and support rate

The order dated 2 May 2017 establishes the specifications for insurance undertakings to be authorised to sell insurance contracts eligible to the aid for crop insurance for 2017. The specifications are published in the Official bulletin of the Ministry for agriculture, agri-food and forest.

The order dated 9 May 2017 defines the support rate of insurance premiums and contributions eligible to the aid for crop insurance against climate risks for 2017.

France – Terrorism – Reform of the Guarantee fund for victims of terrorism and other offences (FGTI)

The decree n° 2017-643 of 27 April 2017 relating to the Guarantee fund for victims of terrorism and other offences ("**FGTI**") has been published in the Official Journal of the French Republic on 28 April 2017 ("**Decree**"). This Decree (i) sets the possibility for the FGTI to receive donations, legacies and to benefit from sums recovered from persons or organisms liable to pay compensation, (ii) strengthens the Board of directors' competences by the creation of specialised committees and (iii) sets out the compensation procedure for victims of terrorism. The Decree entered into force on 29 April 2017.

European Law - PRIIP KID – Corrigendum to the Delegated Regulation

On 11 May 2017, a corrigendum to the text of the Commission Delegated Regulation n°2017/653 of 8 March 2017 (the "**Delegated Regulation**") has been published in the Official Journal of the European Union. This corrigendum amends formula to calculate the Value at risk-equivalent volatility (VEV) for Categories 2 and 3 packaged retail and insurance-based investment products ("**PRIIP**") that appear in Annex II to the Delegated Regulation.

European Law - PRIIPs – Anti-Money Laundering – List of high-risk third countries

On 17 May 2017, the European Parliament announced that it had adopted a resolution objecting to a revised proposed Commission Delegated Regulation amending Commission Delegated Regulation n°2016/1675 of 14 July 2016 supplementing Directive n° 2015/849 of 20 May 2016, known as the Fourth Money Laundering Directive, by identifying high-risk third countries with strategic deficiencies. The revision aimed at deleting Guyana

from the list of high-risk third countries with strategic deficiencies and adding Ethiopia.

8. Intellectual Property

France - Partial cancellation of the provisions on the manufacture, presentation and sale of tobacco products and related products

By way of Decision n°401536 of 10 May 2017, the Conseil d'Etat partially cancelled the provisions of Order n°2016-623 of 19 May 2016 transposing Directive 2014/40/EU concerning the manufacture, presentation and sale of tobacco and related products.

The Decision cancels the Order of 19 May 2016 in that it refers to a Decree to determine "*the main categories of elements or items contributing to the promotion of a tobacco product*", on the ground that Directive 2014/40/EU fixes these categories in a limitative way.

It also cancels Article 2 of the Order which provides that the administrative order approving the retail prices of tobacco products mentions the trademark and trade name of tobacco products, provided that the latter do not fall under one of the new prohibitions set out by the Order. The Conseil d'Etat ruled that such control, which may lead to prohibit the use of trademarks which are owned by manufacturers, touches upon the fundamental principles of the regime of property and can therefore not be instituted by the Order without any other framework and without a definition of the essential conditions of the control.

Finally, the *Conseil d'Etat* submits three preliminary questions to the Court of Justice of the European Union related to the interpretation of Article 13 of Directive 2014/40/EU, in order notably to determine to which extent and in which conditions the prohibitions set out by this Article can apply to a trademark which has already acquired a reputation which has made it inseparable from the product that it designates (see Legislative and Regulatory Newsletter – March 2016).

The Decision rejects the remaining cancellation claims.

France - Reform of the regime of value-creation for agricultural, forest or food products and sea products

Decree n°2017-775 of 4 May 2017 on the creation of value for agricultural, forest or food products and sea products simplifies the regime of value-creation for said products and makes it consistent with the evolution of the European Union law.

It notably enables for red labels to set out by administrative order common conditions of production for several products.

This Decree came into force on 6 May 2017, with the exception of the provisions related to the process of certification of products compliance, which will come into force on 1 November 2017.

France - Definition of the war materials and dual-use items for which the filing of a patent implies an obligation of administrative declaration

In application of Article L. 2332-6 of the Defence Code, Order of 4 May 2017 on the obligation to declare patent applications related to certain goods and materials defines the list of goods and materials submitted to an obligation of administrative declaration as being those listed in Annex of Regulation (EC) No. 428/2009 of 5 May 2009 as well as those appearing on the list mentioned at paragraph 2 of Article L. 2335-2 of the Defence Code (see Legislative and regulatory newsletter – April 2017).

This Order came into force on 8 May 2017.

France - Revision of the rules on collective management organizations managing authors' rights and related rights

Taken in application of Order n°2016-1823 of 22 December 2016 implementing Directive 2014/26/UE of 26 February 2014, Decree n°2017-924 of 6 May 2017 on the collective management of authors' rights and related rights by a collective management organization introduces eight new chapters within Title II of Book III of the regulatory part of the Intellectual Property Code.

This Decree notably sets out the conditions of granting and management of multi-territorial licenses of online rights in musical works provided at Articles L. 325-1 and following of the Intellectual Property Code.

It also defines the conditions of the control carried out by the Ministry of culture and communication on organizations managing authors' rights and

related rights, the rules of organization and functioning of the Commission of control of these collective management organizations as well as the procedures applicable to the activities and decisions of this Commission.

This Decree came into force on 11 May 2017.

France - Conditions of determination of the minimum wage for professional journalists who are the authors of still images paid on a free-lance basis

Taken in application of Articles L. 132-41 and L. 132-45 of the Intellectual Property Code, Decree n°2017-927 of 9 May 2017 fixing the conditions of determination of the minimum wage of professional journalists who are the authors of still images paid on a free-lance basis defines the conditions of determination of the minimum wage of professional journalists who earn most of their income by exploiting still images and collaborate on a regular basis to the production of a news publication.

This Decree allows the enforcement of Article L. 132-41 of the Intellectual Property Code according to which the assignment of the exploitation rights on the works of these journalists, created in the framework of a news publication, only occurs if these works have been ordered by the news organization at stake.

This Decree came into force on 11 May 2017, and will come into force in Mayotte on 1 January 2018.

An Order of 9 May 2017 sets this minimum wage at 60 euros for one free-lance work.

This Order will come into force on 1 July 2017.

France - Conditions for the declaration and authorization for the use of genetic resources or associated traditional knowledge

Taken in application of Law n°2016-1087 of 8 August 2016, the Decree n°2017-848 of 9 May 2017 on the access to genetic resources and the associated traditional knowledge and to the sharing of the advantages resulting from their use defines the procedures of declaration and authorization for the access to these resources and knowledge.

This Decree notably sets out the procedure for the authorization of access to genetic resources in view of their commercial use, which falls within the attributions of the minister in charge of the environment.

The adoption of this Decree completes the transposition in French law of the Nagoya Protocol of 29 November 2010 and of the Rio Convention on biological diversity of 22 May 1992 (see Legislative and regulatory newsletter – July, August, September 2016).

This Decree will come into force on 1 July 2017, with the exception of Articles D. 412-39 and D. 412-41 of the Environmental Code.

9. Life sciences

European Union - Publication and entry into force of two European Regulations on medical devices and on *in vitro* diagnostic medical devices

Two Regulations of the European Parliament and of the Council of the European Union dated 5 April 2017 and respectively related to medical devices (n°2017/745) and to *in vitro* diagnostic medical devices (n°2017/746) were published in the E.U.O.J. dated 5 May 2017. They intend to modernize the current applicable rules in the European Union.

Those two Regulations mainly aim at strengthening the control and surveillance of the medical devices before and after their placing on the market, improving their transparency and traceability, as well as improving coordination between member States.

Both Regulations entered into force on 26 May 2017. The Regulations on medical devices and *in vitro* medical devices will be applicable, respectively, on 26 May 2020 and 26 May 2022.

10. Public Law

France - Rural Hospitals' Pools & public procurement

Decree n°2017-701 dated 2 May 2017, published in the O.J dated 4 May 2017, on the modalities for implementing the activities and missions of "referent hospitals" within rural hospitals' pools, details in particular the operating rules of rural hospitals pools regarding public procurement. The Decree provides that "referent hospitals" are responsible for the policy, planning, strategy and control of purchases as well as the organization of competitive tenders and the award of public contracts and their modifications (if any), in accordance with Ordinance dated 23 July 2015 on public procurement, in the name and on behalf of each member of the rural hospitals' pool. Each entity member of a rural hospitals' pool remains responsible for the performance of the public contracts awarded in its name.

France - Project management and global public contracts

Decree n°2017-842 dated 5 May 2017, published in the O.J dated 7 May 2017, relating to the adaptation of the missions of project managers to the new rules relating to global public contracts set out by Ordinance dated 23 July 2015 on public procurement, defines the content of project management activities. The Decree imposes precise obligations on public purchasers, especially regarding the project's design, the early identification of the project management team and the definition of a minimum content for missions relating to project management. The Decree aims at framing suitable conditions for the performance of global public contracts, by ensuring that a fair balance is struck between public contracting authorities, project managers and private operators. The Decree shall apply to public contracts for which a consultation is initiated or for which a notice of competitive public tender shall be sent for publication as from 1 July 2017.

11. Tax

France - Financial expenses: the FTA updated the maximum rate of deductible interest from a tax standpoint

The French Tax Authorities ("FTA") updated their guidelines by modifying the reference rate for the twelve-month periods ending from 31 March 2017 to 29 June 2017 used to calculate the limit of deductible interest in accordance with the provisions of Article 39, 1-3° of French Tax Code (the "FTC").

As a reminder, Article 39, 1-3° of the FTC applies to interest payments made by a company to its shareholders in consideration for the sums they make available to such company.

The rates for this period are respectively 1.93%, 1.91% and 1.89% for fiscal years ended between 31 March 2017 and 29 April 2017, between 30 April 2017 and 30 May 2017 and between 31 May 2017 and 29 June 2017 (BOI-BIC-CHG-50-50-30-20170503, n°40).

France - Financial transaction tax: tax rate increase

The FTA updated their guidelines drawing the consequences of the increase of the rate of the financial transaction tax provided by the Finance Act for 2017 (n°2016-1917 dated 29 December 2016) (BOI-TCA-FIN-10-30-20170503, n°150).

As a reminder, pursuant to Article 235 ter ZD of the FTC, a financial transaction tax applies to the acquisition of securities issued by French companies listed on a regulated market and whose market capitalisation exceeds EUR 1,000,000,000 as of 1 December of the preceding year.

The Finance Act for 2017 increases the rate of the financial transaction tax from 0.2% to 0.3% as of 1 January 2017 (*i.e.*, 50% increase). This is the second increase of the financial transaction tax rate which was initially 0.1% and had been increased to 0.2% by the amending Finance Act for 2012.

France - Exemption of long term capital gains: obligation to hold at least 5% of the voting rights

The FTA updated their guidelines to clarify that shares qualifying for the French participation-exemption tax regime (*i.e.*, corporation tax exemption on dividends) may qualify for the long term capital gains exemption provided by Article 219 of the FTC provided that the seller has held at least 5% of the voting and financial rights of the issuing company for at least two years at the date of the sale (BOI-BIC-PVMV-30-10-20170503 ; BOI-BIC-PVMV-30-30-120-20170503 ; BOI-BIC-PROV-40-10-10-20170503 ; BOI-IS-BASE-10-30-20170503 ; BOI-IS-BASE-20-20-10-10-20170503 and BOI-IS-BASE-35-30-10-20170503).

As a reminder, pursuant to article 91 of the Amending Finance Act for 2016 (n° 2016-1918 dated 29 December 2016), the French participation-exemption tax regime does not require to hold at least 5% of the voting rights of the issuing company anymore.

France - Withholding tax on employment income: publication of implementing regulations

A decree and a ministerial order implementing the withholding tax on employment income have been published by the Government on 9 May 2017. These regulations contain clarifications regarding (i) the tax returns to be filed by the employer liable for the payment of the withholding tax and (ii) practical ways through which the FTA will inform the employers of the withholding tax rates applicable to their employee (Decree n° 2017-866 dated 9 May 2017 and ministerial order dated 9 May 2017).

As a reminder, the withholding tax on employment income, provided by the Finance Act for 2017 (n° 2016-1917 dated 29 December 2016), is expected to be effective as of 1 January 2018 (subject to any modification, withdrawal or postponement in the future French finance acts).

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