

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 July, August and September 2016.

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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For additional information, please speak to your usual contact.

Contact

Bruno Knadjian

Avocat à la Cour, Partner

Hogan Lovells (Paris) LLP
17, Avenue Matignon
CS 60021
75008 Paris
Tél. : +33 1 53 67 47 47
Fax : +33 1 53 67 47 48

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Summary of miscellaneous French draft legislation

- **Draft constitutional law to amend the Environment Chart to specify the scope of the precautionary principle**, filed at the Senate on December 3, 2013 – Adopted in first reading by the Senate on May 27, 2014.
- **Draft law relating to duty of vigilance of mother companies and companies placing orders**, n°2578, filed on February 11, 2015 – Adopted in second reading by the National Assembly on March 23, 2016 – In debate in second reading by the Senate on October 13, 2016.
- **Law proposal to reform limitations on criminal prosecution**, n°2931, filed on July 1, 2015 – Adopted in first reading by the National Assembly on March 10, 2016 – In debate in first reading by the Senate on October 13, 2016.
- **Draft law relating to the cancellation of commercial advertising in public television youth programmes**, n°656, filed at the Senate on July 24, 2015 - Adopted in first reading by the Senate on October 21, 2015 - Amended in first reading by the National Assembly on January 14, 2016 – Filed in second reading at the Senate on January 15, 2016.
- **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 for the enforcement of measures relating to the 21st century justice**, n°661, filed at the Senate on July 31, 2015 – Adopted in new reading by the National Assembly on July 12, 2016 – Amended in new reading by the Senate on September 28, 2016 – Final reading at the National Assembly on October 12, 2016.
- **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 – Filed in first reading at the Senate on January 14, 2016.

- **Draft law relating to the general status of independent administrative authorities and public independent authorities**, n°225, filed on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016 - Amended in first reading before the National Assembly on April 28, 2016 – Amended in second reading by the Senate on June 2, 2016.
- **Draft organic law relating to independent administrative authorities and public independent authorities**, n°226, filed at the Senate on December 7, 2015 – Adopted in first reading by the Senate on February 4, 2016 - Amended in first reading before the National Assembly on April 28, 2016 – Amended in second reading by the Senate on June 2, 2016.
- **The Digital Republic bill**, n°3318, filed on December 9, 2015 – Adopted by the National Assembly in first reading on January 26, 2016 – Adopted in final reading on September 28, 2016.
- **Draft law to reinforce media freedom, independence and pluralism**, n°3465, filed on February 2, 2016 – Adopted in final reading by the National Assembly on October 6, 2016.
- **Draft law to reinforce security in the use of drones by civilians**, n°504, filed on March 25, 2016 – Adopted in first reading by the Senate on May 17, 2016 – Amended in first reading by the National Assembly on September 27, 2016.
- **Law proposal for a better definition of abuse of economic dependence**, n°3571, filed on March 15, 2016 – Adopted in first reading by the National Assembly on April 28, 2016 – Filed in first reading at the Senate on April 28, 2016.
- **Draft law relating to transparency, fight against corruption and modernisation of economic life**, n°3623, filed on March 30, 2016 – Adopted in new reading by the National Assembly on September 29, 2016 – Transmission to the Senate on September 30, 2016.
- **Draft law on Equality and citizenship**, n°3679, filed on April 13, 2016 – Adopted in first reading by the National Assembly on July 6, 2016 – In debate in first reading by the Senate in October 2016.
- **Draft law to supervise corporate compensations**, n°3680, filed on April 13, 2016 – Adopted in first reading by the National Assembly on May 26, 2016.
- **Draft organic law relating to competence of the defender of rights for the whistleblowers protection**, n°3770, filed on May 18, 2016 – Adopted in new reading by the National Assembly on September 29, 2016 – Transmitted to the Senate.
- **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 relating to a rail link between Paris and the Paris Charles de Gaulle airport**, n°3926, filed on July 6, 2016 – Adopted in first reading by the National Assembly on September 27, 2016.
- **Draft law on the modernisation, development and protection of mountain areas**, n°4034, filed on September 14, 2016 – Under examination in first reading by the National Assembly from October 10, 2016.
- **Draft finance law for 2017**, n°4061, filed on September 28, 2016 – Under examination in first reading by the National Assembly from October 18, 2016.

Enacted laws

- **Ordinance n°2016-1255 of September 28, 2016 which modifies the provisions of the general code of ownership by public entities relating to the French overseas departments** – OJ of September 29, 2016.
- **Organic law n°2016-1090 of August 8, 2016 relating to statutory guarantees, ethical obligations and recruitment of judges as well as the High Council of the Judiciary** – OJ of August 9, 2016.
- **Law n°2016-1088 of August 8, 2016 relating to work, modernisation of social dialogue and safeguarding of professional careers** – OJ of August 9, 2016.
- **Law n°2016-1087 of August 8, 2016 relating to the reconquest of biodiversity, nature and landscapes** – OJ of August 9, 2016.
- **Organic law n°2016-1086 of August 8, 2016 relating to the appointment of the chairman of the Board of administration of the French agency for biodiversity** – OJ of August 9, 2016.
- **Ordinance n°2016-1060 of August 3, 2016 to reform procedures to ensure information and participation of the public to the conception of decisions which may have an impact on environment** – OJ of August 5, 2016.
- **Ordinance n°2016-1059 of August 3, 2016 relating to the generation of electricity from other renewable energy sources** – OJ of August 5, 2016.
- **Ordinance n°2016-1058 of August 3, 2016 relating to the modification of rules applicable to the assessment of projects, plans and programs from an environmental perspective** – OJ of August 5, 2016.
- **Ordinance n°2016-1057 of August 3, 2016 relating to the testing of self-driving vehicles through city streets** – OJ of August 5, 2016.
- **Ordinance n°2016-1022 of July 27, 2016 relating to the development of monitoring mechanisms for the funding of businesses set up by the Banque de France** – OJ of July 28, 2016.
- **Ordinance n°2016-1019 of July 27, 2016 relating to Customer Self-Supply of electricity** – OJ of July 28, 2016.
- **Law n°2016-1015 of July 25, 2016 which specifies modalities to implement a reversible deep geological disposal facility for high-level and intermediate-level long-lived waste** – OJ of July 26, 2016.
- **Ordinance n° 2016-985 of July 20, 2016 relating to affordable community housing** – OJ of July 21, 2016.
- **Ordinance n°2016-982 of July 20, 2016 taken pursuant to article 30 of law n°2015-917 of July 28, 2015 which updates military planning for the years 2015 to 2019 with various defence provisions** – OJ of July 21, 2016.
- **Ordinance n°2016-967 of July 15, 2016 relating to the coordination of local health agencies, health security and medical accidents** – OJ of July 16, 2016.
- **Ordinance n°2016-966 of July 15, 2016 for the simplification of procedures implemented by the *Agence nationale de sécurité du médicament et des produits de santé* (the French Agency for the Safety of Health Products)** – OJ of July 16, 2016.
- **Law n°2016-925 of July 7, 2016 relating to freedom of creation, architecture and heritage** – OJ of July 8, 2016.

1. Audiovisual

France

N/A

European Law

N/A

2. Banking

France - New codification of the regulatory part of the French *Code de la consommation*

The decree (*décret*) n°2016-884 dated 29 June 2016 ([OJ n°0151 dated 30 June 2016](#)) operates a new codification of the regulatory part (*partie réglementaire*) of the French *Code de la consommation* and following to the codification of the legislative part by an order (*ordonnance*) dated 14 April 2016. Notably, are interested regulatory provisions applicable to consumer credits (article R. 312-1 and following) and those applicable to property lending (article R. 313-1 and following).

This decree entered into force on 1st July 2016, subject to the provisions of article 11, which provides for delayed enforcement dates.

France - The *Banque de France* is responsible for monitoring companies' financing

The order (*ordonnance*) n°2016-1022 dated 27 July 2016 ([OJ n°0174 dated 28 July 2016](#)) provides that the *Banque de France* is responsible for monitoring companies' financing.

This order entered into force on 28 July 2016.

France - Access to the bank accounts database

The ministerial decree (*arrêté*) dated 25 July 2016 ([OJ n°0180 dated 4 August 2016](#)) authorised notaries public responsible for listing the estate assets, to request information managed by the french bank accounts database (*fichier des comptes bancaires et assimilés* – the "FICOBA"). Furthermore, this ministerial decree regulates the access to the FICOBA by rights holders of the bank account holder and by public accountants working within public establishments.

The ministerial decree entered into force on 5 August 2016.

France - Credit institution's equity investments outside of the European Economic Area

A ministerial decree (*arrêté*) dated 4 August 2016 ([OJ n°0186 dated 11 August 2016](#)) specified the conditions in which credits institutions may take up and hold shareholding interests in financial subsidiaries or similar entities whose head offices are located outside of the European Economic Area. Such equity investments are, in some cases, subject to a prior notice to the ACPR or to the approval of the ACPR.

This ministerial decree entered into force on 12 August 2016.

France - Opening by credit institutions of branches outside the European Economic Area

A ministerial decree (*arrêté*) dated 4 August 2016 ([OJ n°0186 dated 11 August 2016](#)) specified the conditions in which a credit institution may open or establish branches in States which are not a member of the European Economic Area. The establishment of such branches will be authorised by the ACPR if the authority has no doubts concerning the adequacy of the administrative structures of the hosting state or the financial situation of the

credit institution and if the project will not constitute an obstacle to the monitoring of the credit institution.

The ministerial decree (*arrêté*) entered into force on 12 August 2016.

France - New standard agreement for home savings plans

The Ministerial Decree (*arrêté*) dated 29 August 2016 ([OJ n°0202 dated 31 August 2016](#)) approves a standard agreement relating to home savings plans entered between credit institutions, financing companies selling home savings products and the *Société de gestion des financements et de la garantie de l'accession à la propriété* (SGFGAS).

This ministerial decree entered into force on 1st September 2016.

European Law - Money laundering or terrorist financing

The Commission Delegated Regulation (EU) 2016/1675 ([JOUE, L254/1 dated 20 September 2016](#)) dated 14 July 2016 supplements Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. This regulation identifies high-risk third countries with strategic deficiencies. Are listed as such, among others countries, Afghanistan, Iraq, Iran, Uganda and Bosnia-Herzegovina.

The Commission Delegated Regulation 2016/1675 entered into force on 23 September 2016.

European Law - Global systemically important institutions

The Commission Delegated Regulation dated 17 May 2016 ([JOUE, L240/1 dated 8 September 2016](#)) specifies the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions. Such criteria are, among others, the size of the group, the complexity of the group, the pursuit of cross border activities and the substitutability of the services.

This Delegated Regulation entered into force on 9 September 2016.

European Law - Minimum reserves

The regulation (EU) 2016/1705 of the European Central Bank dated 9 September 2016 ([JOUE, L 257 dated 23 September 2016](#)) amended Regulation (EC) n°1745/2003 (ECB/2003/9) on the application of minimum reserves. The regulation specifies the conditions for the exclusion of interbank liabilities from the reserve base.

This regulation will enter into force on 14 December 2016.

3. Capital markets

France - Euronext Paris – amendments to book ii of the rules of operation of Euronext Paris

Further to a decision dated 20 September 2016, the rules of operation of the Euronext Paris regulated market contained in Book II have been amended to comply with the new regime on the exercise of subscription rights set out in decree 2015-545 dated 18 May 2015, which states in article P 2.3.1 that unless an exemption is granted by Euronext Paris, a subscription right is exercised from the second trading day preceding the opening of the subscription period.

France - Union of capital markets – AMF proposals

In a report entitled "Cross-border fund distribution in Europe: identifying the barriers to entry and improving investor confidence" dated September

2016, the AMF made three proposals to revitalise cross border marketing. In that respect, Europe must promote open architecture fund distribution and the convergence of marketing rules. To that end, the AMF wishes to open a Europe-wide debate on these new consumer practices, the AMF wishes to protect the saver from misleading advertising and to monitor marketing closely by giving, for example, authority to service providers acting in free provision of services towards the savers.

France - AMF- ACPR – Simplification of licensing procedures

In order to anticipate the exit of the United Kingdom from the European Union, the AMF and the ACPR have set up licensing procedures that can be accelerated and simplified under certain conditions for British institutions wishing to relocate to French territory.

The AMF launched a "2WeekTicket" which is a fast track pre-approval process for management companies and FinTech companies supervised by the FCA, provided certain conditions are met. The "2WeekTicket" is a pre-authorisation indicating that the AMF has not identified any major obstacle for the company to do business in France. Once the pre-authorisation is granted, the company will benefit from the advice of a dedicated English-speaking AMF coach who will accompany the company in order to assist with the domiciliation of the company in France.

The ACPR launched a simplified and speeded up licensing procedure for foreign companies using European passport and wishing to set up an insurance company, an investment company, a payment institution or an electronic money institution in France provided the existing activities are already supervised by the competent authority in the home country. In such case, the documents already available in English (such as forms which have been submitted to the supervisory authorities in the home country and papers concerning a branch whose business will be taken over by the subsidiary firm) will be used by the ACPR.

France - AMF – Launch of a public consultation on the new rules for the funding of research by investment firms under MiFID II

The AMF launched a public consultation from 12 September 2016 until 28 October 2016 on the new rules for the funding of research by investment firms providing investment advice on an independent basis or portfolio management under MiFID II.

European Law

N/A

4. Commercial Law

France

N/A

European Law

N/A

5. Competition

France - Law of June 3 2016: the French Competition Authority may increase antitrust fines to help compensate victims of criminal offences

Law n°2016-731 of June 3 2016 reinforcing the fight against organized crime (published in the OJ of June 4th 2016) introduces a new article L.464-5-1 in the French Commercial Code. This article gives the French Competition Authority the ability to increase fines by 10% in order to finance compensations granted to victims of criminal offences. This increase is also possible for criminal fines, customs fines and fines set by the French

Prudential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de résolution*), the French Financial Markets Authority (*Autorité des marchés financiers*) and the French Online Gambling Regulatory Authority (*Autorité de régulation des jeux en ligne*).

European Law

N/A

6. Consumer Law

France

N/A

European Law

N/A

7. Corporate

France - Amendment of the general regulation of the AMF following the entry into force of the European Market abuse Regulation

The 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 3 July 2016, of the European regulation n°596/2014 of 16 April 2014 on market abuses.

This Order deletes Book VI of the general regulation of the AMF on market abuses, and adjusts provisions of Book II as regards publication of insider information.

Furthermore, the Order raises the threshold triggering the obligation for the persons carrying out management duties for an issuer to declare transactions concluded on such issuer's securities to EUR 20,000 within a calendar year.

These provisions came into force on 24 September 2016.

France - New information to be provided for in the management report

Decree n°2016-1138 of 19 August 2016 implementing Article L. 225-102-1 of the French Commercial Code on environmental information to be provided in companies' management report amended the list of environmental information to be provided for in the management report pursuant to Article R. 225-105-1 of the French Commercial Code in accordance with the fifth paragraph of Article L.225-102-1 of the French Commercial Code.

Article 37 of Law n°2016-1088 of 8 August 2016 on labour, modernization of the social dialogue and securing the professional careers amends Article L.225-102-1 of the Commercial Code and requires the indication, in the management report, of the collective agreements entered into by the company and their impact on the company's economic performance and on the working conditions of the employees.

Such requirements apply to companies the securities of which are admitted to trading on a regulated market and to companies the total of the balance sheet or net turnover of which exceeds EUR 100 million and the number of employees of which exceeds 500 permanent employees for the financial year.

Such provisions apply to financial years beginning on or after 1 January 2016.

France - Entry into force of the reform in contract law, general regime of obligations and proof of obligations

The Ordinance n°2016-131 of 10 February 2016 reforming contract law, general regime of obligations and proof of obligations came into force on 1st October 2016 and shall apply to contracts entered into from this date.

The Ordinance amends several provisions of the French Civil Code relating to the contract formation and the effects of the contract (please see Commercial updates of February 2016).

European Law - Market Abuse Regulation: publication of the Implementing Regulation with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures

Regulation (UE) n°596/2016 of 16 April 2014 on market abuse laid down rules relating to buy-back programmes and stabilisation measures. Implementing Regulation (UE) n°2016/1052 of 8 March 2016, published on 30 June 2016, provides for technical standards, in particular as regard the disclosure and reporting obligations of the issuer implementing buy-back programmes or stabilisation measures.

These provisions came into force on 3 July 2016.

8. Data Protection & IT

France - Provisions of the Bill for a Digital Republic impacting the personal data

The Bill for a Digital Republic was adopted by the National Assembly on 20 July 2016 and by the Senate on 28 September 2016.

This text has a strong policy of data openness and circulation, whether these data are public or private. This text notably provides for:

- The right of data recovery and portability for consumers. Concretely, service providers of electronic communications must set up a free feature enabling to recover and transfer to another provider all files uploaded by a consumer and data related thereto;
- The information of data subjects of the retention period of their personal data;
- The right for minors to be forgotten: this innovation is to erase personal data provided online by minors through the supply of information services and that may harm them before or during their majority. In case of non-erasure or lack of response by the data controller, the data subject may submit his/her request to the CNIL;
- The digital death: each individual may, during his/her lifetime, express his/her wishes about the conditions of conservation and communication of his/her data after his/her death or request that this data be deleted. This person will be able to issue general guidelines or specific guidelines and revoke or amend them at any time. Moreover, in the absence of guidelines or if not otherwise provided in these guidelines, the heirs of the relevant person will be able to exercise those rights after his/her death to the extent necessary for (i) the organization of the deceased person's estate or (ii) the consideration by the data controller of his/her death;
- A reinforcement of the CNIL's powers of sanction: the CNIL will be able to issue a fine of up to 3 million euros. Until the entry into force of the General Data Protection Regulation (the "GDPR") on 25 May 2018, only one sanction regime would be applicable to any personal data breach (the Bill for a Digital Republic's one). As of the entry into force of the GDPR, sanctions issued by the CNIL in the GDPR's scope of application will be issued according to the above-mentioned GDPR. Outside such scope, the sanction regime of the Bill for a Digital Republic shall apply.

France - Issuance of a formal notice by the CNIL to Microsoft

By a decision dated 30 June 2016, the CNIL served a formal notice to Microsoft, requiring the latter to stop collecting data and monitoring the navigation of Windows 10 users without their consent.

The CNIL has identified the following issues:

- Microsoft was collecting data enabling the company to monitor all the applications downloaded and installed on the system by a user and

the time spent on each of them. The CNIL has considered this as excessive in light of the purpose of the processing, which was to identify system anomalies and resolve them;

- There was no limited number of PIN entry attempts, which did not ensure the security and confidentiality of users' data;
- Microsoft did not obtain users' consent before sending them targeted advertising;
- Users were neither informed about nor able to oppose the use of advertising cookies;
- The persistence of international transfers of personal data to the US based on the Safe Harbor which was struck down by the European Court of Justice on 6 October 2015;
- Users were not informed about the purposes of the processing nor about the transfer of their personal data.

European Law - Directive concerning measures for a high common level of security of network and information systems across the Union of the 6 July 2016

This Directive entered into force on 19 July 2016 and Member States have until 9 May 2018 to transpose it into their national law.

This Directive is to establish measures to ensure a common high level of security of network and information systems across the European Union to improve the functioning of the internal market. To do so, the directive provides in particular for:

- The strengthening of national cybersecurity capabilities. The Member State shall, in particular, acquire competent national authorities on cybersecurity, computer security incident response teams, and national cybersecurity strategies teams;
- The establishment of a framework for voluntary cooperation between Member States of the European Union by creating:
 - A "cooperation group" of Member States about the political aspects of cybersecurity;
 - A "European network of the computer security incident response teams and national cybersecurity strategies teams" of Member States. This will aim to facilitate the sharing of technical information about risks and vulnerabilities;
- Strengthening, by each Member State, of cybersecurity "essential service operators" in the functioning of the economy and society through:
 - The definition of national cybersecurity rules which they will have to comply with;
 - The requirement for operators to report incidents affecting the continuity of essential services;
- The establishment of common European rules on cybersecurity digital service providers in the areas of cloud computing, search engines and online marketplaces.

9. Employment

France - The El-Khomri Act publication in the Official Journal

Law n°2016-1088 dated August 8, 2016 regarding employment, social dialogue modernisation and careers paths securing, also known as "*El-Khomri Act*" or "*Labour Act*" has been published in the Official Journal dated August 9, 2016, after the majority of its provisions were validated by French Constitutional Council (Decision n°2016-736 DC, dated August 4, 2016).

The provisions of the The *El-Khomri Act* which constitutional validity were not challenged have not been examined *proprio motu* by the French Constitutional Council. Therefore their constitutionality could be challenged through priority preliminary ruling procedure (*question prioritaire de constitutionnalité*).

- Key measures already introduced by law n°2016-1088
The *El-Khomri Act* introduces the rewriting procedure of French Labour Code provisions, within a two years delay, aiming at the establishment of a new architecture with collective negotiation established as a new paradigm.
To do this, expert committees in charge of French Labour Code rewriting, shall determine for all current legal provisions, which fall under public order, which fall under collective negotiation and which are supplementary provisions.
In parallel, the *El-Khomri Act* has already modified several topics, in particular:
 - French Labour Code provisions regarding working time and paid leave;
 - applicable rules regarding collective negotiation, by generalizing company majority agreement principle (company or establishment

agreement shall now on be signed with trade unions which received more than 50% of the expressed votes – or be approved by a majority of employees);

- redundancy criteria, by completing the list of economic rationales justifying a termination and by providing for a list of factors which significant changes shall characterize a company economic difficulties;
 - applicable rules for incapacity and occupational diseases recognition.
- Scheduled coming into effect

The *El-Khomri Act* provides for 134 decrees which majority should be published by the end of 2016.

European Law

N/A

10. Energy

France - Civil liability in the nuclear field

Ministerial order dated 19 August 2016, published in the Official Journal on 24 August 2016, sets out the list of the nuclear installations which are eligible for qualification as "reduced risk" and benefit as a result from the reduced threshold of civil liability provided in Article L.597-28 of the Environmental Code (which is equal, subject to certain reservations, to €70 million for the same nuclear accident).

This ministerial order was adopted in application of the Decree n°2016-333 dated 21 March 2016.

European Law

N/A

11. Environment

France - Biodiversity

Law n°2016-1087 dated 8 August 2016 on the Reclaiming of Biodiversity, Nature and Landscapes, published in the Official Journal on 9 August 2016 contains many provisions relating to biodiversity.

In particular, this Law introduces in the Civil Code the concept of "ecological damage" (*dommage écologique*), by establishing the principle that any person who is liable for an ecological damage shall pay compensation for such damage.

Such compensation is possible in case of a "substantial impact on the elements or functions of the ecosystems or on the collective benefits for humans resulting from the environment" ("atteinte non négligeable aux éléments ou aux fonctions des écosystèmes ou aux bénéfices collectifs tirés par l'homme de l'environnement"). The provisions relating to the "ecological damage" are codified in Articles 1246 à 1252 of the Civil Code. Law n°2016-1087 also amended certain provisions of the Environmental Code, particularly those relating to financial guarantees under the regulation on Classified Facilities for the Protection of the Environment.

European Law

N/A

12. Insolvency Proceedings

France

N/A

European Law

N/A

13. Insurance

France - New information obligations imposed on comparison websites

The [decree n°2016-505 of the 22 April 2016](#) relating to the information obligation of comparison websites entered into force on 1st July 2016 ("**Decree**"). The decree provides that each comparison website must specify, in a specific section: (i) the criteria used to classify the offers, (ii) existence or not of capitalistic links or a contractual relationship between referenced professionals and the comparison website, (iii) existence or not of a remuneration of the website by referenced professionals, (iv) details about price's components, (v) the variation of commercial guarantees of compared products, (vi) the comprehensive nature or not of the compared offers and (vii) the frequency and method used to update the compared offers.

France - Unclaimed life insurance policies: precision as to information obligations of insurers

The [Order published in the Official Journal on 9 July 2016](#) specifies the information concerning unclaimed life insurance policies that must be published on the insurer website, or on a durable medium within ninety (90) calendar days from 1st January of each year: (i) the number of contracts investigated during the year, (ii) the number of insured who reached the age of 100 years and who are still alive, (iii) the number of no follow-up contracts and their amount, (iv) a record relating to unclaimed life insurance policies covering the past five (5) years.

France - Publication of instructions by the ACPR

On 29 June 2016, the French insurance supervision authority (*Autorité de contrôle prudentiel et de résolution* – "**ACPR**") has published in its official register six (6) instructions relating to the prudential documents' communication: (i) the [instruction n°2016-I-15](#) (entities not covered by Directive 2009/138/CE ("**Solvency II**")) and [instruction n°2016-I-16](#) (entities covered by Solvency II) list the specific prudential data that must be communicated on an annual basis to the ACPR; (ii) [instruction n°2016-I-17](#) (entities not covered by Solvency II) and [instruction n°2016-I-18](#) (entities covered by Solvency II) define the reporting format that entities must comply with in their communication to the ACPR, (iii) [instruction 2016-I-19](#) and [instruction n°2016-I-20](#) applying only to entities covered by Solvency II, define the ACPR's position in relation to two (2) options provided by the implementing regulation (EU) n 2015/2450 in terms of reporting status matters. These instructions entered into force on the day of their publication.

European Law - Solvency II: European Commission Implementing Regulation (EU) 2016/1376

On 18 August 2016, the [Implementing Regulation \(EU\) 2016/1376](#) (the "**Regulation**") was published in the Official Journal of the European Union. The Regulation lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June until 29 September 2016 in accordance with Solvency II. The Regulation enters into force on the day following its publication in the Official Journal and applies from 30 June 2016.

European Law - Solvency II: Implementing Regulation with regard to the transitional measure for the equity risk sub-module

On 10 September 2016, the European Commission published the [Implementing Regulation \(EU\) 2016/1630](#) ("**Regulation**") which specifies

procedures for the appropriate identification and documentations of equities as set out in Solvency II. In order to allow for the application of the transitional measure, the insurers should be in a position to show to the ACPR that the purchase of the equities subject to that transactional measure occurred on or before 1st January 2016. The Regulation sets out the procedures to be followed for the application of the transactional measures.

European Law - PRIIPs: the European Parliament's rejection of the Delegated Regulation on RTS

On 14 September 2016, the European Parliament has rejected the Delegated Regulation of the European Commission on 30 June 2016 ("**Regulation**") supplementing Regulation (EU) n°1286/2014 for packaged retail and insurance-based investment products ("**PRIIPs Regulation**"). The Regulation lays down regulatory technical standards ("**RTS**") with regard to the presentation, content, review and revision of key information documents ("**KID**") and the conditions for fulfilling the requirement to provide such documents. In the light of this rejection, the Member States concerned call on the European Commission to consider postponing the application date by twelve (12) months of the PRIIPs Regulation.

This rejection follows the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") which had voted on 1st September 2016 a resolution objecting the Regulation as containing flaws which would provide misleading information to investors.

Simultaneously, the European Commission adopted a Delegated Regulation dated 14 July 2016 supplementing the PRIIPs Regulation. The Delegated Regulation aims at specifying in particular the rules relating to supervisory measures on product intervention by the national authorities and the European Insurance and Occupational Pensions Authority ("**EIOPA**").

European Law - Solvency II: EIOPA's technical advice on the identification and calibration of infrastructure corporates

On 30 June 2016, the EIOPA published a Technical Advice on the identification and calibration of infrastructure corporates ("**TA**"). The EIOPA recommends introducing a new asset class of infrastructure corporate equities and for corporates that have a lower risk profile, the EIOPA proposes to reduce the risk charges for equity investments. The TA has been submitted to the European Commission and an amendment to the Solvency II Delegated Regulation on the basis of this TA is expected.

14. Intellectual Property

France - Limitation on the patentability of the living

The Law n°2016-1087 of 8 August 2016 for the recapture of the biodiversity, the nature and the landscapes modifies Article L. 611-19 of the Intellectual Property Code (CPI) whereby "*are not patentable (...) the products exclusively obtained by mainly biological processes for the obtainment of plants and animals (namely processes that exclusively use natural phenomenon such as the cross or the selection), including elements constituting those products and the genetic information that they contain*".

This Law also adds a new paragraph to the Article L. 613-2-3 of the CPI that now provides that "*the protection granted by a patent regarding a biological matter endowed, because of the invention, with determined properties does not extend to the biological matters endowed with those determined properties, obtained independently from the patented biological matter and by an essentially biological process, nor to the biological matters obtained from the latters, by reproduction or by multiplication*".

Thus, this Law enriches the list of non-protectable elements by a patent right in France, in opposition to the decisions G2/12 and G2/13 said "Broccoli II" and "Tomato II" by the European Patent Office, according to which products issued from essentially biological processes (plants, fruits) are not excluded from patentability, even though they are obtained by such a non-patentable method.

This Law authorizes moreover the ratification of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. Finally, new Article L. 421-18 of the Environmental Code provides that when the use of genetic resources and traditional knowledge associated conducts to a patent application, the applicant must inform the French National Institute of the Industrial Property (INPI) of this use, which, after examination of the patent application, must transmit the information to the authority responsible for verifying the legality of the access to the resources at issue by the user.

The above evoked dispositions of this Law entered into force on 10 August 2016.

France - Adoption of the Law "Liberté de Création, Architecture et Patrimoine" (Liberty of Creation, Architecture and Heritage)

The Law n°2016-925 of 7 July 2016 regarding the liberty of creation, the architecture and the Heritage modifies the IPC.

Besides the symbolic inscription of the liberty of creation amongst the fundamental liberties, this law:

- Reinforces performers' rights in their relations with phonograms producers: it guarantees, in particular, a minimal remuneration in return of the authorization of fixation of the performer's performance and imposes to distinguish each of the rights transferred and to define the scope, the destination, the place and the length of the exploitation of those rights in a cession agreement of the artist-performer's rights to the benefit of a producer of phonograms;
- Extends the remuneration for private copying to the online video recorders and thus permits to an artist to be paid by the editor or the distributor of a television or a radio service proposing to a user to record a program broadcasted on television or radio, if the demand of the copy is made before the broadcast of the said program or during it, for the remaining party;
- Applies the regime of the legal license to the radio services broadcasted on the Internet or web-radios; and
- Creates a mandatory remuneration for photographs and plastic artists whose works are reproduced by search engine and Internet referencing services.

The above evoked dispositions of this Law have entered into force on 9 July 2016.

European Law - Simplification of the procedure before the Community Plant Variety Office

The Commission Implementing Regulation (EU) 2016/1448 of 1st September 2016 amends Regulation (CE) n°874/2009 of 17 December 2009 establishing the implementing rules for the application of Council Regulation (CE) n°2100/94 of 27 July 1994 regarding proceedings before the Community Plant Variety Office.

The Regulation pursues to limit the administrative burden and make the management of the procedure more efficient. It provides, in particular:

- The use of electronic means, for the application receipt, exchanges between the Office and the examination offices or the transmission of the certificate of community protection of the plant variety;
- The possibility to handle several actions throughout the same procedure or joint procedures; and
- The nomination of only one counsel for parties acting in common.

For the sake of resources optimization, the Regulation also aims to reduce the translating costs by allowing the parties to the procedure to use only one of the European Union official languages and by limiting the translation of voluminous documents to certain extracts and summaries.

The dispositions of this Regulation entered into force on 22 September 2016.

European Law - Reform of the European rules regarding copyright and related rights

On 14 September 2016, the European Commission published various legislative proposals aiming at modernizing the European Union rules regarding copyright and related rights in order to encourage the rise and diffusion of the European culture:

- A Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market which creates, in particular:
 - An exception to the copyright and to the right on a database, benefiting to research organisms for reproductions and extractions made in the context of an exploitation within works or other datas ("text and data mining") to which they have legal access as part of their scientifically research studies; and
 - The creation of a right to reproduce and a right to communicate to the public, benefiting to the press publishers for the digital use

of their press publications, which would expire 20 years from the 1st January of the year following the date of publication of such article;

- A Proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programs aiming at allowing broadcasting organizations to obtain more easily the authorizations they need to transmit online programs in other European Union Member States. Instead of having to individually negotiate with every copyright or related right holder in order to offer packages of channels originated from other Union Member States, they will be able to get the licenses from collective management organizations representing right holders, being said that even when the holder would have not expressly transferred the management of his rights to a collective management organization, such organization shall be deemed to be mandated to manage these rights on behalf of that right holder.
 - A Proposal for a Directive and a Proposal for a Regulation to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, entered into force on 30 September 2016. Such Proposal for a Directive allows, in particular, some public establishments and nonprofit entities providing education and information access to persons who are blind, visually impaired or otherwise print disabled, to make the necessary changes for the realization of version of a work that would be accessible for the latter and to reproduce, distribute and making available these versions, without the authorization of the copyright or related right holder. The Proposal for a Regulation also facilitates the cross-border exchange of such versions between authorized entities or beneficiaries.
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15. Life Sciences

France

N/A

European Law

N/A

16. Procedures

France - Civil procedure

- No stamp on appeal for labour matters

The circular of 5 July 2016 related to appeals filed after 1 August 2016 in labour matters specifies that the €225 revenue stamp provided for in article 1635 bis P of the French Tax Code, for appeal proceedings with mandatory representation, will not be chargeable for appeals filed after 1 August 2016 in labour matters. As there is no obligation to retain counsel, appeals in labour matters are beyond the scope of the mandatory payment of the stamp duty. This exemption applies whatever the mode of representation chosen by the parties.

- Health-related class actions

Publication in the French Official Journal of the decree n°2016-1249 of 26 September 2016 specifying the modalities of the implementation of health-related class actions. The decree specifies the composition of the mediation committee that the judge can associate with the mediator and also specifies the legal professionals to whom the association carrying out the class action can resort in order to assist it. The decree further specifies the rules to follow for both the civil and administrative proceedings, given the particularity of the action, notably in terms of the individual evaluation of personal injuries.

France - Criminal procedure

- Extension of the state of emergency

The Act extending the State of Emergency Act n°55-385 of 3 April 1955 and on the strengthening of counter-terrorism (OJ n°0169 of 22 July 2016)

extends state of emergency for a further 6 months and adds various criminal provisions. It introduces a new procedure for seizing computer data during administrative searches: data shall be seized if search reveals the person's conduct constitutes a threat to security and public order. The government will not use these data unless it is authorized by the administrative court's President. It ensures the ability to retain persons found during a search by the officer of the judicial police for up to 4 hours, but only if their behavior is a threat to security and public order. The Act enables the implementation of video surveillance in order to control cells of people subject to detention warrants "*whose evasion or suicide would have a significant impact on public order*". Further, it removes the two years limitation for the renewal of the prohibitions on leaving the territory, it allows the prefect to authorize search of vehicles and luggage in areas subjected to state of emergency, it relaxes municipal police's requirements to bear weapons and finally it provides that when they return on the national territory, the jihadists' house arrest may last up to three months.

- Adaptation of the French criminal procedure to the European Union law

Two circulars of the Minister of Justice dated 11 August 2016 n°[JUSD1623116C](#) and n°[JUSD1623097C](#), published on the Ministry of Justice official bulletin of 29 August 2016 present the provisions resulting from the law n° 2015-993 of 17 August 2015, conforming the criminal procedure to the European Union law. The law of 17 August 2015 was designed to reach consensus in case of existence of several proceedings under way towards a same party, for the same facts, by several member States. The circular specifies les general dispositiosn retated to the exchange of information between judicial authorities. The second circula presents the decisions related to the control measures as an alternative to temporary detention, particularty in case of a new proceeding and in case of non-compliance with the obligations laid down in a probation sentencing or with parole conditions.

France - Administrative procedure

- The farewell of the French Supreme Administrative Court to its subsections

[Decree n°2016-899 of 1 July 2016 amending the code of administrative justice](#) endorses an evolution of certain rules of the French Supreme Administrative Court (OJ n°0153 of 2 July 2016). Parts of it are actually terminological changes. Indeed, litigation divisions of the French Supreme Administrative Court changed their name from Subsections to Chambers; the Subsection secretaries become Chief Clerks of Chambers. The decree also enables the administrative section to meet in a restricted formation of 3 members when its president considers that the matters written down on the agenda do not raise any particular difficulties. Finally it modifies some terms of office: the Chamber President and the State Counselors, responsible for assessor duties are appointed for a term of 4 years renewable for 3 years term; the exercise of the function of public rapporteurs is now limited to 7 years.

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 - Architecture and public procurement (please refer to the Intellectual Property section)

Law n°2016-925 dated 7 July 2016, published in the O.J dated 8 July 2016 relating to creative freedom, architecture and cultural heritage, includes provisions relating to public procurement, and in particular to missions relating to project management services. Among the conditions for implementing a global public contract, the Law sets out an obligation relating to the identification of a project management team, which shall be responsible for the design of the structure and the monitoring of its implementation. Regarding the award of project management services contracts for the construction of buildings, the Law promotes the use of architecture design contests.

France - Promoting the production of electricity from renewables

Ordinance n°2016-1059 dated 3 August 2016 relating to the production of electricity from renewable energies and Decree n°2016-1129 dated 17 August 2016 relating to the competitive dialogue procedure for power plants, respectively published in the O.J. dated 5 August and 19 August 2016, are aimed at promoting the development of electricity production from renewable energies. In particular, Ordinance provides that administrative authorities may use a different competition procedure than the regular invitation to tender, which is called "competitive dialogue", in cases where electricity production capacities do not meet the objectives of the national multi-annual programming of energy.

European Law

N/A

20. Real Estate

France - Reports on the condition of indoor electricity and gas facilities for housing lease

Two decrees n°2016-1104 and n°2016-1105 dated 11 August 2016 published in the Official Journal on 13 August 2016 respectively describe the technical requirements of the gas diagnostic and electricity diagnostic that the Landlord of a housing lease shall carry out under certain conditions. Such decrees define, in particular, the scope of application of those diagnostics (which shall cover the private surface areas of the premises which must be the main residence of the tenant, and its outbuildings), their content, their validity (6 years) and the procedure for implementation (through a professional consultant).

These two decrees were adopted in application of the Law n°2014-366 dated 24 March 2014 ("Loi ALUR"), which introduced a new legal obligation of information of the tenant by the landlord as regards gas and electricity, consisting in appending the previous-mentioned gas and electricity diagnostics to housing leases (whether furnished or not).

The provisions of these two decrees apply:

- For housings located in a collective building whose building permit was issued before 1 January 1975, to all lease agreements concluded as from 1 July 2017.
- In all other cases, to all lease agreements concluded as from 1 January 2018.

France - Registration of co-owners entity

Decree n°2016-1167 dated 26 August 2016 published in the Official Journal on 28 August 2016 describes the registration procedures applicable to co-owner entities ("syndicat de copropriétaires"), the conditions of access and consultation of the register dedicated to co-ownership and the content of the co-owners entities registration file.

This Decree was adopted in application of the Law n°2014-366 dated 24 March 2014 ("Loi ALUR"), which established under articles L.711-1 to L.711-7 of the Construction and Housing Code a national register for co-owners entities applicable to properties with housing use in whole or in part,

and the obligation for them to proceed with such registration as from:

- 31 December 2016, for co-owners entities with more than 200 co-ownership units,
- 31 December 2017, for co-owners entities with more than 50 co-ownership units,
- 31 December 2018, for all other co-owners entities.

The provisions of the Decree n°2016-1167 are codified in Articles R. 711-1 to R.711-21 of the Construction and Housing Code.

European Law

N/A

21. Tax

France - Corporate taxation

- Interest deduction limitation rules: updated rates

The French Tax Authorities (the "FTA") updated the maximum interest rate which is deductible for tax purposes for the accounting period ending between 30 June 2016 and 29 September 2016 under the provisions of Article 39, 1-3° of the French Tax Code.

The reference rate on deductible interest expenses ranges between 2.13%, 2.12% and 2.12% for the accounting periods respectively ending between 30 June and 30 July 2016, between 31 July and 30 August 2016 and between 31 August and 29 September 2016 (BOI-BIC-CHG-50-50-30-20160803, n°40).

- New corporate incentive for investments in innovative SMEs

The Amended Finance Act for 2013 introduced an incentive for corporate investments in innovative SMEs (under Article 217 octies of the French Tax Code). Because of its potential effects on EU state aid rules, this new incentive was subject to the approval of the European Commission which was finally given on 14 July 2016.

As a reminder, this incentive enables entities subject to French corporation tax to deduct over a five-year period their minority investment in innovative SMEs (*either directly or through certain capital investment vehicles*).

The Decree n°2016-1187 dated 31 August 2016 provides that such incentive will apply for investments made within ten years as from 3 September 2016.

France - Taxation of Investors and Managers

- FTA's first guidelines with respect to the reform of the ISF-PME tax reduction

The FTA updated their guidelines further to the compliance upgrade with EU Law of the wealth tax reduction granted to individuals investing in SMEs ("**ISF-PME tax reduction**") provided by Article 885-0 V bis of the French Tax Code further to its modification by the Amended Finance Act for 2015.

As a reminder, the Amended Finance Act for 2015 notably restricted the application of the ISF-PME tax reduction to investments made in SMEs founded for less than seven years (*with certain exceptions*).

These guidelines were subject to public consultation from 6 July 2016 to 31 August 2016 (BOI-PAT-ISF-40-30-10-10-20160706; BOI-PAT-ISF-40-30-10-20-20160706; BOI-PAT-ISF-40-30-10-30-20160706; BOI-PAT-ISF-40-30-20-20160706).

- Softening of BSPCE attribution rules

The FTA updated their guidelines with respect to the favourable tax regime applicable to founders' warrants ("**BSCPE**") provided by Article 163 bis G of the French Tax Code as amended by the Law n°2015-990 dated 6 August 2015 (so-called "**Macron Law**") (BOI-RSA-ES-20-40-20160706).

As a reminder, the Macron Law notably allows the issuance of *BSPCE* (i) by companies created in the context of a combination, reorganization,

extension or takeover of existing activities, and (ii) to employees and managers of a subsidiary of the issuing company provided that the issuing company owns at least 75% of the share capital or voting rights of the subsidiary.

France - Tax audit and litigation

- Access to *Ficovie* and *Ficoba* files by police officers and tax and customs inspectors

The French Finance Act for 2016 granted the French judicial police officers ("*officiers de police judiciaire*") and tax and customs inspectors access to the national files of life insurance and capitalization contracts ("*Ficovie*") and bank accounts ("*Ficoba*").

The Decree n°2016-971 dated 15 July 2016 specified the procedure to be respected by such officers in order to access these national files.

- Creation of a R&D Tax Credit's committee

The FTA updated their guidelines with respect to the creation of a committee specialized in disputes related to the French research and development tax credit ("R&D Tax Credit") by the Law n°2015-1786 dated 29 December 2015 (*BOI-BIC-RICI-10-10-60-20160706; BOI-CF-IOR-10-50-20160706 & seq.*).

As a reminder, this committee aims to rule on disputes between the FTA and the taxpayers with respect to the eligibility of certain expenses to the French R&D and Innovative Tax Credits.

The FTA indicated that this committee may be seized with respect to tax reassessment notices received by taxpayers as from 1 July 2016.

European Law - European Anti-Tax Avoidance Directive

The European Council adopted the Anti-Tax Avoidance Directive dated 12 July 2016 (*EU, doc. n°10539/16, FISC 110, ECOFIN 648, July 2016 – "ATAD"*). This Directive introduces:

- a general interest deduction limitation rule providing that financial charges are deductible up to the highest of (i) 30% of the adjusted Earnings before Interest, Taxes, Depreciation and Amortisation ("**EBITDA**") of the lender; and (ii) a EUR 3,000,000 threshold;
- a General Anti-Abuse Rule ("**GAAR**") under which arrangements put in place for the main purpose of obtaining a tax advantage that defeats the object or purpose of applicable tax law are considered as non-genuine arrangements;
- an exit tax mechanism which aims to apply to unrealized capital gains in the event of transfer of assets, tax residence or business (*with deferred taxation under certain conditions*);
- a Controlled Foreign Company ("**CFC**") rule limiting profit shifting to low-tax jurisdictions when the company does not have any genuine economic activity in such low-tax jurisdiction (*by re-attributing non-distributed income of a low-taxed CFC to its parent company*); and
- a hybrid mismatches rule which aims to prevent mismatches between Member States' tax treatment of hybrid instruments/entities.

These new measures will apply as from 1 January 2019 to all EU Member States (*with certain exceptions*).

22. Telecoms

France - Public authorities' power regarding digital data expands due to the state of emergency

The French Parliament adopted the Law n°2016-987 dated July 21, 2016, OJ n°0169 dated July 22, 2016 relating to the state of emergency and laying down measures strengthening the fight against terrorism in order to extend the state of emergency. This law expands public authorities' powers regarding copy of electronic data during searches and strengthens their monitoring power on electronic communication networks.

The first development complies with the decision of the French Supreme Court handed down on February 19, 2016 in which the Court dismissed the provision giving power to administrative authorities to copy data accessed on electronic devices during a search. The French Supreme Court

considered that such copy of data was equivalent to a seizure and that according to the law on the state of emergency, neither this seizing nor the use of the data were authorised by a court.

In order to comply with the decision of the Court, the new Article 11 of Law n°55-385 of April 3, 1955 provides for legal guarantees regarding copy of data. As a consequence, public authorities now have the possibility to copy electronic data found in the scope of a search or to seize the devices on which it is stored if copy is not available during the time of the search.

Regarding the monitoring power of public authorities, whereas the previous law enabled controls targeting individuals previously identified as constituting a terrorist threat, the new provision expands this power to individuals likely to be linked to a threat and to individuals belonging to his/her entourage.

France - The French Sénat adopts the bill for a Digital Republic

On September 28, 2016 the Sénat adopted the bill for a Digital Republic ("the Bill").

This Bill mainly provides for the following evolutions:

- The principle of net neutrality, governed by Regulation (EU) 2015/2120, is defined by the Bill, which also provides for the possibility for the France Telecommunications Regulator ("ARCEP") to issue formal notice against operators in case of non-compliance with this principle. Its power of sanction is also extended, to cover providers of public online communication services, as well as its power of control in the field of traffic management.
- A search power is granted to the ARCEP regarding the professional premises and the means of transport of electronic communication networks operators and of providers of electronic communication services or online public communication services. ARCEP would also be able to request and copy any document necessary for its mission.
- Several provisions relating to the deployment of new networks on the French territory are included such as the gathering of joint associations.
- The status of "fibered area" can be recognized by the ARCEP and a Decree will detail the consequences attached to this new status. In order to facilitate the deployment of fiber, the Bill also provides for some provisions relating to its connection.
- Municipalities which fulfil the necessary requirements can request for their incorporation in a mobile coverage programme by a joint Order of the Ministers in charge of electronic communications and of the territory planning.
- New obligations regarding the telephone network and its maintenance are detailed as well as specific requirements regarding the access by disabled persons to telephone services.

The Bill shall now be enacted by the French President. Following its entry into force the Decrees of application provided by the text will be adopted.

European Law

N/A

23. Transport

France

N/A

European Law

N/A

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