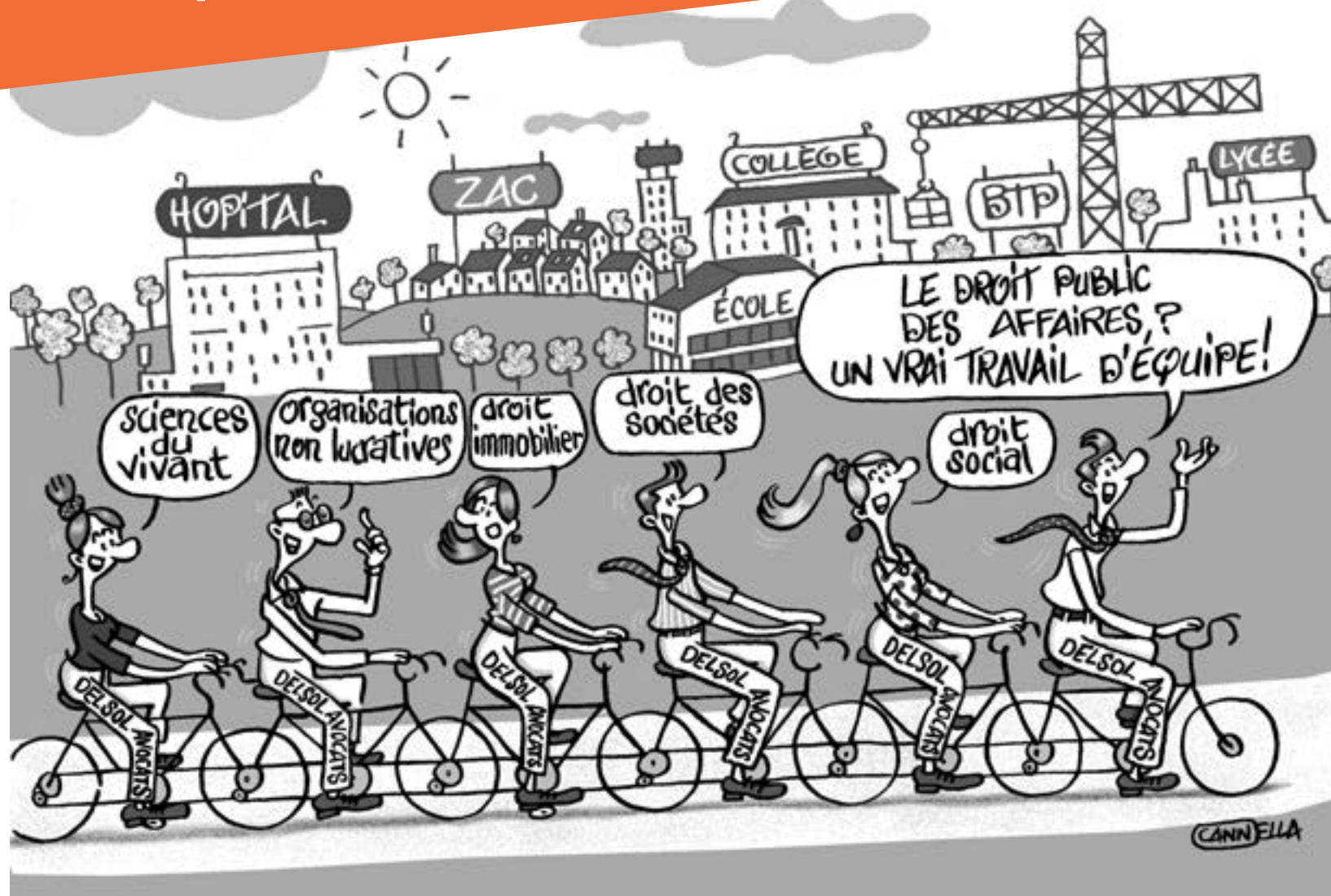


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DELSOL AVOCATS
LA QUALITÉ DE LA RELATION

#14 June 2016

The DELSOL Avocats
newsletter



The countdown has begun

Little has been heard on the subject as yet, but France's civil law is set to undergo an historic reform this year.

Order n° 2016-131 of 10 February 2016, reforming contract law, the general regime and proof of obligations, was published in the Official Journal on 11 February 2016. If a law ratifying the order is passed before 11 August this year, it will come into force on 1 October 2016.

Within a short space of time, France's Civil Code, which dates from 1804, will see some significant modifications. There are clear benefits to be derived from this reform, in particular in bringing the code up to date with the times. It goes without saying that contracts today are no longer negotiated or drawn up as they were in the early 19th century.

One academic came up with a neat description: "The section on contract law: the art of redoing without undoing". We remain very firmly in the civil law tradition. A good many business lawyers appreciate the value of this in their contract negotiations. Effectively, we have the law at our backs. Its public policy provisions apply irrespective of circumstances. Its supplementary provisions apply in the absence of any agreement to the contrary.

Thinking about it, all business life is contractual. A law firm such as ours, with eight specialist departments, sees the truth of this every day, in every sector of activity.

Whether the reform codifies or contradicts existing jurisprudence, there are two or three points worth noting.

The scope of public policy, for example, will be extended: to subscription contract clauses considered unreasonable, deemed null and void; to the general duty of information during negotiations, potentially invalidating the contract.

New supplementary provisions will be introduced, including confidentiality of pre-contract negotiations and the notion of frustration of purpose as grounds for renegotiation or even resolution of the contract.

We are ready and waiting for these new articles to enter the Civil Code, and in particular to assist our clients in adapting their contracts accordingly.

Amaury NARDONE
Chairman of the
Board of Directors



Public business law: in the throes of change



By Renaud-Jean CHAUSSADE
partner and head of the «Public Law» department

The term "public business law" refers to the very clear distinction drawn in France between private and public law. Private law governs the relations between private individuals, whereas public law governs the organisation of public bodies and their relations with society.

But does public business law relate more to public law, representing the State's

intervention in the economy? Or is it more closely related to private law, given the importance of the economy in every branch of public law? The answer, clearly, is that it is positioned midway between the two.

Under the impact of globalisation and the digital revolution, the massive transformation under way in the legal and institutional environment for both business and for public authorities is beginning to overstep the summa divisio between public and private law.

Because it is in close contact with business life, public business law offers a response to the new demands of an open, digital world. It is no longer a matter of imposing the dogma of public power, but instead offering a new set of rules that is both more effective and more attractive, and through which the general interest can be better served.

There are a number of trends to support this finding, including moves towards evaluating the impact of public initiatives, public bodies becoming subject to the rules of competition, the role of the State as an economic regulator, decentralisation policies, new public procurement and ownership functions or the many forms of public-private partnership.

DELSOL Avocats accordingly adopts a cross-disciplinary approach to public business law, operating in synergy with the firm's other departments and developing joint initiatives, in particular with the Non-Profit Organisations, Company Law-Mergers & Acquisitions, Real Estate Law, Social Law and Life Sciences Departments.

The emergence of new concerns (health, energy, environment, research, solidarity) also means that the Public Law Department is becoming regularly involved in issues that cut across and complement the firm's other

areas of speciality, such as the development of digital tools for health (telemedicine), sourcing funding for the sectors of the future (support for innovation), reinforcing the social and solidarity economy (new social services), the new public service paradigm (take-over of staff) or the construction sector (secured planning permission).

In this branch of the law, as in any other, the firm is making every effort to anticipate major legal developments and the changes these will entail for its clients. It applies the same entrepreneurial approach to economic actors, whether private or public, with the same objective: to assist, support, defend and advise decision-makers in their actions.



Not-for-profit
organisations

Laurent BUTSTRAËN, partner in the «Non-Profit Organisations» department
Renaud-Jean CHAUSSADE, partner in the «Public Law» department

Social impact bonds, pioneered in the UK, were introduced into France by the Ministry responsible for the social and solidarity economy: on 16 March this year, the Ministry issued a call for projects to identify “new financing solutions for innovative prevention initiatives”.

The principle of the social impact bond, an instrument designed to provide financing for social programmes, is that a private investor lends money to the public sector for the duration of the programme being financed. If the outcomes stipulated in

Social impact bonds, a new tool for public sector intervention?

the project specifications are achieved, the capital invested is repaid from the public purse, plus interest in remuneration of the risk incurred. The investor covers the carrying costs over the programme’s duration.

The scheme is innovative in that it could represent an attractive solution for the financing of social services that could well find its place in the social funding ecosystem as an adjunct to public financing.

Presented by the ministry as a “win-win-win” form of financing, the social impact bond has received a generally favourable but cautious welcome, in particular from the council for non-profit organisations (*Haut Conseil à la Vie Associative*). In an opinion issued on 2 March 2016, the council raised a number of questions, including the ensuing financial risk, possible restriction

of the field covered (geared towards services providing measurable results) and, consequently, whether it would not be wise to trial the scheme prior to any implementation.

At this stage, there is no question of social impact bonds replacing the public sector, which must remain in charge of financing essential activities in the social sector, but they certainly have a role to play in an area of social innovation that lies between classic government funding, public procurement and the regulation of state aid. Considerable attention will need to be paid to the legal framing of such a partnership, however, to ensure that the dividing line with public contracting or service concession is not crossed.

Interview with Patrick Valverde, President of the RETIS network



Patrick VALVERDE,
Director of Toulon Var
Technologies,
President of the RETIS network

Can you tell us more about RETIS and your commitment to innovation?

RETIS is a national network of innovation professionals bringing together incubators, tech-hubs, European Community Business and Innovation Centres, competitiveness clusters and new players such as accelerators. Designed to gather together all those keen to put innovation at the heart of economic development, the network stretches right across France, with over 800 people working in getting on for a hundred support structures. We engage in four strategic activities on behalf of our members: organisation, professionalisation and development of the network, and international aspects.

You have just been re-elected to another three-year term as

President. What objectives have you set for yourself, particularly as regards relations with the public sector?

We need to take the long view in what we do. In recent years, we have reinforced the professionalization skills we offer our members. For one, we have introduced “territory action seminars”, a valuable support tool to help them define their positioning. That work, begun three years ago, is now paying off: we have supported a number of territories in establishing tech-hubs; coincidentally, one of these is Greater Narbonne, in partnership with DELSOL Avocats. We need to press on along this road, as we have come to realise that these interventions are the best way of engaging in dialogue with the public sector. All our actions tend towards a single goal: the virtuous link between the local economic fabric, local authorities and project owners, when everyone pulls together to exploit innovation.

In the light of the legal issues facing RETIS, now and in the future, what support do you get from the firm?

I know DELSOL Avocats very well indeed, since I have been working with the firm for over 25 years! Our needs for support come in many forms. First of all, RETIS and its members need to be skilled in seeking out financing to provide the optimum support to project owners. At national level, we need to keep a close eye on any changes in the regulations

governing public financing, and at European level we need to be familiar with all the different European financing schemes available. Working with DELSOL Avocats gives us food for thought on changing regulations and means that we can keep all our directors informed and up to date with the latest information.

What concrete projects would you like to develop in partnership with the firm?

We already have projects under way! We are currently working on the introduction of a “training for action” module with and for the benefit of directors of the various structures, and organising processes whereby they can share experiences. We would like to see this work leading to a training programme at two levels, for managers and for their teams. We put particular emphasis on training. We think regular training for all our staff and members is essential if we are to achieve what we set out to do and all make progress together. At the same time, we are thinking about drawing up a best practices manual, in the form of a guide interpreting the various European and national texts. It could also form the basis for dialogue with the government, the European Commission and local authorities, to arrive at a shared understanding of the texts, which are often complex and open to different interpretations. It would be our “White Paper”, testimony to our commitment.



Employment
Law - Social
Welfare Law

Camille ROUSSET, partner in the «Social Law-Social Protection» department
Renaud-Jean CHAUSSADE, partner in the «Public Law» department

Take-over of staff, a key issue for dynamic public service management

The choice of how to manage public service is a sovereign decision by the public authority, a decision that, by its very nature, is likely to vary, particularly in the event of a change of government. When an authority decides to contract out a service to a third party or, conversely, to bring an outsourced service back in-house, this will necessarily have an impact on the staff providing the service, which is why the French Labour Code establishes a framework and public orders guaranties.

“When the activity of a business entity employing employees under private law is taken over by a public authority,” stipulates article L. 1224-3, “it is incumbent upon that public authority to offer such employees a contract under public law, either fixed-term or open-ended depending on the nature of their contract of employment.”

Conversely, “when the activity of a public body employing untenured employees is taken over by a private legal entity,” article L. 1224-3-1 stipulates that “this legal

person or body shall offer such employees a contract governed by this Code”.

This procedure applies to every public sector service. The contract proposed must incorporate the “substantive clauses of the contract by which the agents are governed”, which may raise certain difficulties in transposition.

The obligation to offer transferred staff a new contract is not subject to any deadline, which strongly suggests that the issue of the change of status should be addressed prior to the transfer, in order to avoid any confusion or blockage. Nevertheless, if the proposed contract is not accepted, the subsequent dismissal is automatic and justified. In order to ensure the long-term future of the business, close legal oversight of the procedure and appropriate communication will prove key factors in the success of the operation.

Public ss law

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Real-Estate

Nathalie PEYRON, partner in the «Real Estate Law» department
Renaud-Jean CHAUSSE, partner in the «Public Law» department

Given the increasing frequency of malicious appeals against planning permission, coupled with the constraints of preparing and presenting the application, obtaining planning permission has become something of an obstacle course. Professionals have long been sounding the alarm over the risk of paralysing the construction industry: secured planning permission has become a necessity.

And yet the authorities continue to turn a blind eye to the problem. The order of 18 July 2013 sought to improve matters by offering

DELSOL Avocats supports the creation and implementation of the Grand Paris Express endowment fund by Société du Grand Paris, BETC and La Française



Not-for-profit
organisations

Lionel DEVIC, partner in the «Non-Profit Organisations» Department

Interview with Michel Brunet, President of HTCC

Michel Brunet, you are the President of Hermitage-Tournonais Community of Communes (HTCC), a public inter-municipality cooperation agency spanning two banks of the Rhône in the Drôme and Ardèche departments, within the Auvergne-Rhône-Alpes region. You have also been Mayor of Mercurol as from 2001, and served as President of the Pays de l'Hermitage Community of Communes from 2007 until 2014, when you became President of HTCC, formed by the merger between the Hermitage and Tournonais communities.



Can you tell us more about how HTCC works? What is the scope of its powers?

As you say, HTCC is the result of merging two Communities of Communes, Pays de l'Hermitage and Pays du Tournonais, which had functioned separately up to the date of the merger on 1 January 2014. HTCC is now made up of 25 municipalities (communes) with a total population of 44,000. Geographically, 12 of these

communes lie in the Drôme department and 13 in Ardèche, and the population is distributed fairly evenly.

The main aim of the new structure is to develop a territorial policy tailored to the Hermitage-Tournonais catchment area, ensuring that the territory speaks with a single voice to regional and national authorities. In addition to the powers exercised by each municipal authority prior to the merger, HTCC is also involved in multiple areas: economic development, employment and social initiatives, territorial planning, the development of new services for locals (particularly child-care services) and new infrastructure that the previous communities would have been unable to fund alone.

What are your most significant achievements, particularly in the economic field?

Our most significant initiatives involve the creation, development and management of economic activity zones. This is a cornerstone of our economic development policy, designed not only to boost employment and the development of economic activity in our territory, but also to increase the resources of the Community of Communes. We are currently in the process of developing a 17-hectare zone,

for example. In addition, our Economy department is tasked with reaching out to businesses and working with them to address their needs, present and future. We are skilled at listening to project owners and helping them bring their projects to fruition.

We have decided to upgrade our offering in two particular types of activity zone. First, we have the zones of strategic importance to our development, with a very real appeal to project owners in terms of location. We are lucky enough to be positioned on a key North-South axis, with direct access to the A7 motorway and the TGV high-speed rail link, which makes us an ideal location for bigger businesses with projects of significant scope. Second are the activity zones focusing on local development. We are working on structures for the more peripheral parts of the territory, by creating economic activity zones aimed at small traders (craftmen, shopkeepers) and maintaining social bonds through local businesses, which also provide jobs. So our economic base is fairly strong and growing. And that is borne out by the well-known firms, leading lights of the French economy, that have set up operations here, such as Valrhona, Chapoutier, Maison

Delas, Jaboulet and even Louis Vuitton.

What added value does our firm offer in the conduct of your public business?

The firm's added value resides in the legal support it provides on a day-to-day basis, whether it be assisting our Communes with their own specific requirements or advising the entire Community on sensitive issues, such as human resources management within the framework of territorial public service. The regulations governing local authorities are constantly changing. It is essential for us to be able to count on DELSOL Avocats to keep us up to date with the changes that are constantly obliging us to re-think our working practices. DELSOL Avocats is skilled at providing this day-to-day assistance, helping us to avoid and anticipate legal problems and offering us the best possible solutions.

The law relating to territorial authorities nowadays is exceeding complex and technical. We must be able to rely on a firm that can provide crosscutting advice on all subjects that affect us, be they economic, social or planning and development related.

Secured planning permission: what possible responses?

updated means of recourse but, sadly, with only limited effect, given that successful prosecutions for abusive appeals are far too rare and too tardy to act as a real deterrent.

This is, of course, by no means the only piece of legislation in this particular area. There is the decree of 9 July 2015 reducing the length of the application process, or the Macron Act of 6 August 2015, which sets a restrictive list of grounds to move for demolition following the withdrawal of planning permission. The latest to date, the decree of 5 January 2016, extends the period of validity of planning permission granted.

Despite all these initiatives, however, welcome as they are, the situation still gives cause for

concern because the tools provided fail to offer a concrete response to the main demand emanating from construction firms, which is for simpler, speedier procedures.

This issue has become a priority, and there are a number of different avenues that could be envisaged, such as the possibility of petitioning the court for an immediate decision on whether action is justified, or setting up a short-term calendar for addressing the merits of the case, to avoid the current situation where it can take over a year, appeals included, between the filing of an application for planning permission and permission finally being granted.



Life sciences

Innovative public procurement in the service of health

Thomas ROCHE, partner in the «Life Sciences» department
Renaud-Jean CHAUSSE, partner in the «Public Law» department

Fact. Public procurement today has advanced far beyond its original function to become a tool for the execution of government economic policy.

Order n° 2015-899 of 23 July 2015 and decree n° 2016-360 of 25 March 2016, introducing reforms to public procurement contracting, enshrine this new dimension and make procurement a "growth driver", in accordance with directive 2014/24/EU of 26 February 2014.

The framework of public procurement has thus been reconfigured to act as a lever for economic development, in particular by encouraging research and innovation. This shift is of particular interest to the health sector, an industrial sector with enormous potential in France. Public hospital procurement is increasingly being used to

encourage innovation in order to stimulate supply and contribute to progress. The toolkit required is ready to hand. In complex situations, or where no supply as yet exists, innovation partnerships offer a possible solution.

Public procurement can thus have a real impact by acting as a catalyst, even if it is not the only means of disseminating innovation in the field of health.

In addition to public procurement, other schemes may be deployed towards achieving this end, such as the fixed-sum "innovation" grant used to finance innovative technologies and procedures likely to offer clinical or medico-economic benefits.

The panel of mechanisms available in support of innovation in health covers a broad spectrum.

Two new associates

January 2016: Delphine BRETAGNOLLE and Renaud-Jean CHAUSSADE, both based in Lyon, were co-opted as associates, Delphine in the Social Law-Social Protection Department and Renaud-Jean in the Public Law Department. These two appointments confirm the momentum behind the firm's growth and underscore its commitment to a policy of internal promotion.



Delphine BRETAGNOLLE

Delphine, 36, is a graduate of the University of Lyon III where she obtained a Master's in Private Law (with a Judicial Careers major) and a DESS post-graduate degree in Law and Assessment of Social and Health Structures. After obtaining her CAPA certificate in 2004, she joined the Social Law-Social Protection Department in the Lyon office of DELSOL Avocats, becoming Of Counsel in 2012. In addition to her classic activities in employment law (counsel and litigation), she has also developed a recognised practice in:

- corporate restructuring
- business reorganisation
- class actions
- collective bargaining
- compliance and risk audits.

Employment
Law - Social
Welfare Law

Delphine also works closely with the firm's Company Law-Mergers & Acquisitions Department. Equally at home in English and Italian and a member of the firm's Italian desk, she works mainly for French groups of varying sizes and for subsidiaries of Italian groups.



Public Law

Renaud-Jean CHAUSSADE

Holder of a DEA post-graduate degree in Public Law, awarded at the beginning of 2002 by the University of Auvergne, Renaud-Jean CHAUSSADE, 36, also simultaneously took the LL.M course in International Public Law at the University of Quebec in Montreal.

Beginning his career in 2002 as an external collaborator with the International Labour Organization in Geneva, he obtained his CAPA certificate in 2005. He began practising as an associate in public law with YGMA in Paris before joining the Lyon office of DELSOL Avocats for the first time in 2006, where he spent four years. In 2010, he took over as head of the Public Law Department at Bismuth Avocats in Lyon, before returning to DELSOL Avocats as Of Counsel in charge of the Public

Law Department in early December 2012. Through his experience and his work at the firm, he has built up a recognised practice in public ownership and procurement, planning and development, environment and energy, as well as in the area of territorial authority law, public economic law, tourism law and public health law.

In the press...

Henri-Louis DELSOL, associate in the Company Law-Mergers & Acquisitions Department, wrote an article for *Option Finance magazine*, published on 30 May, on the reform of contract law, with special emphasis on preferential agreements.

Anne IMBERT, associate in the Social Law-Social Protection Department, was interviewed by *Liaisons Sociales* magazine on 27 May, where she explained: *"The right to strike is enshrined in the constitution, but blocking a whole business constitutes an abuse of that right"*.

Amaury NARDONE, Chairman of the Board of Directors and associate in the Company Law-Mergers & Acquisitions Department, was interviewed by radio station Lyon Première on 26 May, where he explained the role of the Parlex network on the occasion of its annual seminar, hosted by the firm in Lyon from 19 to 22 May. At the request of weekly newspaper *Tribune de Lyon*, he wrote an article, published on 25 May, explaining what motivated Delsol Avocats to launch its recent advertising campaign on Radio Classique.

Mathieu LE TACON, associate in the Tax Law Department, was interviewed by *Paris Match* magazine (for the 4/11 May issue) about new tax rules offering a reduction in wealth tax in return for investing in SMEs.

Alexis CHABERT, associate in the Litigation Department, wrote an article for the April issue of *Acteurs de l'Économie* magazine on the problems of unfair competition and the so-called order on motion procedures making it possible to present evidence of unfair practices.

Thomas ROCHE, associate in the Life Sciences Department, gave his views in an article, published in the April issue of *Expertises des Systèmes d'Information*, on the recent merging of Chapters IX and X of the French data protection act, the *Loi Informatique et Libertés*.

Philippe PACOTTE, associate in the Social Law-Social Protection Department, is a regular contributor to the journal *Jurisprudence Sociale Lamy*, offering his and his team's analysis of issues relating to the legal obligations of employers.

Advertising ban lifted: DELSOL Avocats leads the way on Radio Classique

On 9 November 2015, the Council of State lifted the ban on advertising by the legal profession. Subject to the essential principles of the profession, lawyers are now free to launch commercial advertising campaigns, whether by means of flyers, posters, films, radio or television.

DELSOL Avocats is one of the first firms to have taken the plunge, through a partnership with Radio Classique. Over a period of two months (March and April), listeners to the morning news, which concentrates mainly on business issues, were given an introduction to the firm's

eight departments via a short slot entitled "The Business Law Minute by DELSOL Avocats".



Events

Philippe DUMEZ, associate in the Company Law-Mergers & Acquisitions Department, spoke at a roundtable in Lyon on 14 June, organised jointly by the firm, BNP Paribas, Aderly, the Italian Chamber of Commerce in Lyon and Orial, on the theme of business opportunities in Italy.

DELSOL Avocats played host in Lyon to the annual four-day seminar of Parlex, the international network of business law firms of which DELSOL Avocats is a member, from 19 to 22 May 2016.

Alexis BECQUART, associate in the Non-Profit Organisations Department, organised and moderated a working breakfast on 9 June in Paris, on the theme of the exploitation, legal structuring and taxation of real estate owned by non-profit organisations and foundations.

Frédéric SUBRA and Mathieu LE TACON, associates in the Social Law Department, and Xavier DELSOL and Lionel DEVIC, associates in the Non-Profit Organisations Department, organised a working breakfast in Paris on 31 May and

in Lyon on 7 June, on the theme: *"Entrepreneurs, families and philanthropic capital: how to secure the future or the transmission of a family business or estate, possible links to philanthropy"*.

Nathalie PEYRON and Benoît BOUSSIER, associates, and Fabio BONAGLIA, an attorney in the Real Estate Law Department, organised a working breakfast in Paris on 24 May and in Lyon on 3 July on the subject of business introductions in the development of a real estate project.

Lyon: a new reception area for client and partners



As the firm continues to grow, we are frequently obliged to rethink our operating and working methods, in human as well as material terms. After several months spent refurbishing our Paris offices in 2012, the time has now come to equip our Lyon headquarters with the capacity to match our ambitions. The work commenced in Spring 2016 at 11, quai Lassagne will mean that by

September of this year we will be ready to welcome our clients and partners to our entirely dedicated reception area. The new area that will emerge will be primed for performance, with six meeting rooms equipped with state of the art digital technology.