

# The Brief

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## The International Capital Markets Group

Editorial

### New financial bill expanding netting in France (3)

We are delighted to inform you that the Legislative Commission of the National Assembly has just decided to proceed to vote on the text of the netting amendment already passed by the Senate on March 20 and June 5.

This, in practice, means that, once passed by the National Assembly and published in the *Journal Officiel*, both being expected soon, the bill will become effective law in France.

We kindly refer you to our Newsletters no. 21 and 22 detailing the text of the bill, explaining the rationale for this further significant improvement of the French netting regime and the discussions between the Parliament and the Government, on April 30, as to the timing of such reform.

In short, the main feature of the bill is that global financial netting will no longer be restricted to inter-banking relationships in France, but will also cover trading with e.g. corporates or funds.

The text (**an English translation of which is attached below, for your information**) was, as you know, prepared by the International Capital Markets Group of Gide Loyrette Nouel and successfully presented to the Senate and the National Assembly, respectively, by Philippe Marini MP and our Partner Xavier de Roux MP and Vice-President of the Legislative Commission of the National Assembly.

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## **Amendments to Articles L.431-7, L.432-6, L.432-8 and L.432-16 of the French Monetary and Financial Code**

[...]

### **New Article 31 bis**

"The Monetary and Financial Code is modified as follows:

I. - The first paragraph of Article L.431-7 of the Monetary and Financial Code is drafted as follows:

*"Reciprocal debts resulting from all transactions on financial instruments, to the extent that such transactions are conducted in the context of the general rules of the Financial Markets Authority [Autorité des marchés financiers] or to the extent that they are governed by one or several master agreements complying with the general principles of national or international market master agreements governing the relationships between at least two parties, one of which is an investment services provider, or a public establishment [établissement public] or an institution, an undertaking or an establishment having the benefit of the provisions of Article L.531-2, or a non-resident establishment with a comparable status, may be set-off in accordance with the valuation procedures provided for in such rules, master agreement or master agreements and may give rise to the calculation of a single netted settlement amount.*

II. - 1° Article L.432-8 [of the Monetary and Financial Code] is deleted.

2° As a consequence, the words "of Articles L.432-8 and" in the first paragraph of Article L.432-6 [of the Monetary and Financial Code] are replaced by the words "of Article".

III. - Article L.432-16 [of the Monetary and Financial Code] is deleted.

### **New Article 31 ter**

"The words "provided that they are either a credit establishment, an investment firm, an institution referred to in Article L.518-1 or a non-resident establishment with a comparable status" are deleted from the second paragraph of Article L.431-7 of the Monetary and Financial Code."

[...]

**Marked copy of Article L.431-7  
of the French Monetary and Financial Code**  
(showing the proposed changes from the current wording)

"Reciprocal debts resulting from all transactions on financial instruments, to the extent that such transactions are conducted in the context of the general rules of the Financial Markets Council Authority [~~Autorité~~ ~~Conseil~~ des marchés financiers], ~~together with reciprocal debts resulting from transactions on financial instruments or temporary transfers of title of financial instruments,~~ or to the extent that they are governed by one or several master agreements complying with the general principles of national or international market master agreements governing the relationships between at least two parties, one of which is an investment services provider, or a public establishment [établissement public] or an institution, an undertaking or an establishment having the benefit of the provisions of Article L.531-2, or a non-resident establishment with a comparable status, may be set-off in accordance with the valuation procedures provided for in such rules, master agreement or master agreements and may give rise to the calculation of a single netted settlement amount.

If there exists two or more master agreements between the parties, the parties ~~—provided that they are either a credit establishment, an investment firm, an institution referred to in Article L.518-1 or a non-resident establishment with a comparable status—~~ may link them together, so that the settlement amounts resulting from the netting that would be made in respect of each master agreement pursuant to the preceding paragraph could then be netted among themselves.

Whenever any of the proceedings contemplated under Book VI of the Commercial Code is opened against one of the parties, the said rules or master agreements may provide for the automatic termination of the transactions referred to in the first and the second paragraphs of this Article.

The termination, valuation and set-off procedures contained in the rules or master agreement(s) referred to in the preceding paragraphs are effective vis-à-vis attaching creditors. Any termination, valuation or set-off effected on grounds of civil execution proceedings will be deemed to have taken place prior to said proceedings.

The assignment of claims arising under transactions governed by the master agreement(s) referred to in the first paragraph of this Article is effective vis-à-vis third parties upon written consent thereto by the person whose obligation is assigned. As a guarantee to the obligations arising out of the master agreement(s), the parties may also provide for transfers of ownership, by way of security and fully effective vis-à-vis third parties without further formalities, of instruments, securities, bills, receivables or cash, or the creation of security interests over such assets and rights, enforceable even if one of the parties is subject to one of the proceedings referred to in the third paragraph of this Article. Reciprocal debts relating to such transfers and security interests and those relating to such transactions may then be set-off in accordance with the provisions of the first and second paragraphs of this Article.

The provisions of Book VI of the Commercial Code shall not interfere with the application of this Article."

This memorandum is a summary of certain legislative reforms introduced in France. It is circulated for information purposes only and should not be used as the basis for any business or investment decision without prior specific legal assistance. For further explanation or additional information, please do not hesitate to contact the signatories.

PS: Please kindly forward to, or advise us of the e-mail address of those of your colleagues who might be interested in receiving this newsletter or any further communications from the ICM Group of GIDE LOYRETTE NOUËL.

You can also consult this newsletter on our [website](#), in the publications section.

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