

Reference: C.N.565.2016.TREATIES-IV.4 (Depositary Notification)

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
NEW YORK, 16 DECEMBER 1966

FRANCE: NOTIFICATION UNDER ARTICLE 4 (3)¹

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 22 July 2016.

(Translation) (Original: French)

New York, 22 July 2016

MLC/Secpol
N° 2016-540784

Sir,

By letter dated 23 November 2015, I brought to your attention the declaration of a state of emergency in France following the coordinated attacks on Paris on 13 November 2015 and requested you to consider my letter a notification for the purposes of article 4 of the International Covenant on Civil and Political Rights.

The French Government, by decree No. 2015-1475 of 14 November 2015, decided to implement Act No. 55-385 of 3 April 1955 concerning the state of emergency.

The seriousness of the attacks, their simultaneous nature, and the ongoing unprecedented threat within our borders then necessitated an extension of the state of emergency of which I informed you, for a period of three months, with effect from 26 November 2015, by Act No. 2015-1501 of 20 November 2015, then for a further three months, with effect from 26 February 2016, by Act No. 2016-162 of 19 February 2016, and then for a further two months, with effect from 26 May 2016, by Act No. 2016-629 of 20 May 2016.

¹ Refer to depositary notifications C.N.703.2015.TREATIES-IV.4 of 31 December 2015 and C.N.538.2016.TREATIES-IV.4 of 29 July 2016 (France: Notification under article 4 (3)).

An attack which, according to the most recent information, caused the deaths of 84 persons and injured more than 350 others was perpetrated in Nice on 14 July 2016. A terrorist organization has claimed responsibility for the attack, which followed an attack on 13 June 2016 during which two national police officers were murdered at their home in Ile-de-France by a terrorist claiming allegiance to the same organization.

The terrorist threat, representing “an imminent danger arising from serious breaches of public order”, which constituted the reason for the initial declaration and extensions of the state of emergency, remains at a highly alarming level, making it necessary to have strengthened administrative measures in place to combat terrorism within our borders.

Assessment of the measures taken since 14 November 2015 in the context of the state of emergency has confirmed the need for such measures to prevent further attacks and disrupt terrorist networks.

For this reason, the state of emergency has been extended for a period of six months by Act No. 2016-987 of 21 July 2016. The Act also modifies certain measures provided for in the Act of 3 April 1955 in order to bring them in line with developments in fact and in law.

Measures authorized under the state of emergency during this six-month period will once again include warrantless searches (article 11, section I, of the Act of 3 April 1955 concerning the state of emergency). Such searches will be more useful than in the past, as they will be carried out as part of a new regime that permits the use of digital information, provided that authorization is given by a judge.

The French Government wishes to recall that the measures taken in the context of the state of emergency are subject to effective judicial monitoring as well as to particularly close oversight and monitoring by Parliamentary machinery. Lastly, the French Government ensures that local elected officials are consulted and kept fully informed and intends to continue its dialogue with civil society.

The text of Act No. 2016-987 of 21 July 2016 is appended herewith.

Accept, Sir, the assurances of my highest consideration.

(Signed) François Delattre

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Act No. 2016-987 of 21 July 2016 extending implementation of Act No. 55-385 of 3 April 1955 concerning the state of emergency and introducing measures to strengthen counter-terrorism efforts ⁽¹⁾
NOR: *INTX1620056L*

The National Assembly and the Senate have adopted,
The President of the Republic promulgates the following Act:

PART I
PROVISIONS ON THE STATE OF EMERGENCY

Article 1

I. The state of emergency that was declared by Decree No. 2015-1475 of 14 November 2015 implementing Act No. 55-385 of 3 April 1955 and Decree No. 2015-1493 of 18 November 2015 implementing Act No. 55-385 of 3 April 1955 overseas, and extended by Act No. 2015-1501 of 20 November 2015 extending implementation of Act No. 55-385 of 3 April 1955 concerning the state of emergency and strengthening its provisions, and subsequently by Act No. 2016-162 of 19 February 2016 extending implementation of Act No. 55-385 of 3 April 1955 concerning the state of emergency, and then by Act No. 2016-629 of 20 May 2016 extending implementation of Act No. 55-385 of 3 April 1955 concerning the state of emergency, is extended for a period of six months with effect from the date of entry into force of this Act.

II. While it remains in force, the state of emergency shall trigger the application of article 11, section 1, of Act No. 55-385 of 3 April 1955 concerning the state of emergency, in the wording given in this Act.

III. The state of emergency may be terminated by decree of the Council of Ministers before the expiry of the extension period. In this case, Parliament shall be informed.

Article 2

Article 4-1 of Act No. 55-385 of 3 April 1955 concerning the state of emergency shall be amended as follows:

1. The following sentence shall be inserted after the first sentence:

“The administrative authority shall promptly transmit to them copies of all instruments adopted under this Act.”;

2. At the beginning of the second sentence, the word “They” shall be replaced by the words “The National Assembly and the Senate”.

Article 3

Article 8 of Act No. 55-385 of 3 April 1955 shall be amended as follows:

1. In the first paragraph, the words “in particular places of worship in which utterances are

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made that incite hatred or violence, incite the commission of terrorist acts or glorify terrorist acts” shall be inserted after the words “of any kind”.

2. The following paragraph shall be added:

“Processions, marches and public gatherings of persons may be prohibited if the administrative authority demonstrates that its available resources do not enable it to ensure the security of such an event.”

Article 4

The following article 8-1 shall be inserted after article 8 of Act No. 55-385 of 3 April 1955:

“Article 8-1. In the areas referred to in article 2 of this Act, the Prefect may, by means of a reasoned decision, authorize the officers referred to in article 16, paragraphs 2 to 4, of the Code of Criminal Procedure and, under their authority, those referred to in article 20 and article 21, paragraphs 1, 1 *bis* and 1 *ter*, of that Code, to conduct the identity checks provided for in the eighth paragraph of article 78-2 of the Code, the visual and physical inspection of items of baggage and the inspection of vehicles moving, stopped or parked on public roads or other places accessible to the public.

“The Prefect’s decision shall state the places concerned, which must be precisely defined, and the duration of the authorization, which must not exceed 24 hours.

“The last three paragraphs of article 78-2-2, section II, and the last two paragraphs of article 78-2-2, section III, of the Code shall apply to operations conducted pursuant to this article.

“The Prefect’s decision referred to in the first paragraph of this article shall be transmitted without delay to the Public Prosecutor.”

Article 5

Article 11, section I, of Act No. 55-385 of 3 April 1955 shall be amended as follows:

1. The following paragraph shall be inserted after the second paragraph:

“Where a search reveals that another site meets the conditions established in the first paragraph of this section I, the administrative authority may authorize by any means the search of that site. That authorization shall be duly regularized at the earliest opportunity. The Public Prosecutor shall be informed promptly.”

2. The fourth paragraph shall be replaced by the following six paragraphs:

“If the search reveals any material, including electronic material, relating to the threat to public order and security posed by the behaviour of the individual in question, the data stored on any computer system or terminal equipment present at the site of the search may be seized, either by copying the data or, if it is not possible to copy or complete the copying of the data during the search, by the seizure of the medium on which the data is stored.

“The copying of data or seizure of computer systems or terminal equipment shall be conducted in the presence of a senior law enforcement officer. The officer under whose responsibility the search is conducted shall prepare an official record of the seizure indicating the reason for the seizure and providing an inventory of the materials seized. A copy of the official record shall be given to the

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persons referred to in the second paragraph of this section I. The data and media seized shall be stored under the responsibility of the head of the service having conducted the search. From the time of the seizure, there shall be no access to the seized materials without the prior authorization of a judge.

“Once the search has been completed, the administrative authority shall request the urgent applications judge of the administrative court to authorize the use of the materials. On the basis of the information acquired through the search, the judge shall rule on the lawfulness of the search and on the request from the administrative authority within 48 hours from the time the request is received. Material that is in no way associated with the threat to public order and security posed by the behaviour of the individual in question shall be excluded from the authorization. Subject to the appeal process referred to in the tenth paragraph of this section I, if the urgent applications judge denies authorization, the copied data shall be destroyed and the seized media shall be returned to their owner.

“During such time as is strictly necessary for their use, as authorized by the urgent applications judge, the seized data and media shall be stored under the responsibility of the head of the service having conducted the search. Computer systems and terminal equipment shall be returned to their owner, if necessary after the data they hold has been copied, no later than 15 days from the date of their seizure or the date on which the urgent applications judge, to whom a request has been submitted within that time frame, authorizes the use of the data they hold. With the exception of data that clearly reveals the nature of the threat to public order and security posed by the behaviour of the individual in question, copied data shall be destroyed no later than three months from the date of the search or the date on which the urgent applications judge, to whom a request has been submitted within that time frame, authorizes their use.

“If there are difficulties in accessing the data held on the seized media or in the use of the copied data, the deadlines provided in the eighth paragraph of this section I may, if necessary, be extended for the same length of time by the urgent applications judge, who must receive the request from the administrative authority at least 48 hours before the expiry of the deadline. The urgent applications judge shall rule within 48 hours on the request submitted by the administrative authority for an extension of the deadline. If the use or examination of the seized data and media leads to the detection of an offence, those data and media shall be stored in accordance with the applicable rules of criminal procedure.

“For the purposes of this article, the urgent applications judge is that of the administrative court for the district in which the site of the search is located. The urgent applications judge shall rule in the manner provided in book V of the Code of Administrative Justice, subject to the provisions of this article. An appeal against a decision of that judge may be submitted to the urgent applications judge of the Council of State within 48 hours of notification of the decision. The urgent applications judge of the Council of State shall rule within 48 hours. If an appeal is filed, the seized data and media shall remain stored under the conditions set out in the eighth paragraph of this section I.”;

3. The following paragraph shall be inserted after the fourth paragraph:

“The search shall be the subject of a report transmitted promptly to the Public Prosecutor. A copy of the official record of the seizure shall be attached to the report, where appropriate. The individual subject to the search shall be given a copy of the search order.”;

4. The following eight paragraphs shall be inserted before the final paragraph:

“When there are serious reasons to believe that their behaviour poses a threat to public order and security, persons present at the site of an administrative search may be detained on site by the senior law enforcement officer during such time as is strictly necessary to conduct the search. The

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Public Prosecutor shall be informed accordingly as soon as the detention begins.

“Persons so detained shall be informed of their right to have the senior law enforcement officer inform any persons of their choosing and their employer. If the senior law enforcement officer deems it necessary, for reasons related to the detention, not to comply with the request, the officer shall promptly refer the matter to the Public Prosecutor, who shall decide whether or not to comply with the request.

“The duration of the detention shall not exceed four hours from the commencement of the search, and the Public Prosecutor may terminate it at any time.

“A minor shall not be detained without the explicit consent of the Public Prosecutor. A detained minor must be accompanied by his or her legal representative, unless that is duly shown to be impossible.

“The senior law enforcement officer shall state, in an official record, the reasons for the detention, the date and time at which the detention commenced, the date and time at which the detention ended and the duration of the detention.

“That official record shall be presented to the detained individual for signature. If that individual refuses to sign the official record, the refusal and the reasons for it shall be noted in the record.

“The official record shall be transmitted to the Public Prosecutor, after a copy has been given to the individual concerned.

“If the individual is taken into police custody, the length of time of the detention at the site of the search shall be deducted from the amount of time for which he or she may be held in police custody.”

Article 6

The following paragraph shall be added to article 14-1 of Act No. 55-385 of 3 April 1955:

“The condition of urgency shall be deemed to have been fulfilled in the case of an urgent application for judicial review of an order for house arrest.”

Article 7

In article 15 of the same Act, the reference: “Act No. 2015-1501 of 20 November 2015 extending implementation of Act No. 55-385 of 3 April 1955 concerning the state of emergency and enhancing the effectiveness of its provisions” shall be replaced by the reference: “Act No. 2016-987 of 21 July 2016 extending implementation of Act No. 55-385 of 3 April 1955 concerning the state of emergency and introducing measures to strengthen counter-terrorism efforts”.

PART II PROVISIONS RELATING TO THE STRENGTHENING OF COUNTER-TERRORISM EFFORTS

Article 8

Book 5 of the Code of Criminal Procedure shall be amended as follows:

1. The following paragraph shall be added to articles 720-1 and 723-1:

“This article shall not apply to individuals convicted of one or more of the offences mentioned

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in articles 421-1 to 421-6 of the Criminal Code, with the exception of those defined in articles 421-2-5 to 421-2-5-2 of that Code.”;

2. The following article 721-1-1 shall be inserted after article 721-1:

“Article 721-1-1. Individuals sentenced to imprisonment for one or more of the offences mentioned in articles 421-1 to 421-6 of the Criminal Code, with the exception of those defined in articles 421-2-5 to 421-2-5-2 of that Code, shall not benefit from the remissions of sentence mentioned in article 721 of the present Code. They may however benefit from a remission of sentence under the conditions defined in article 721-1.

Article 9

I. - The following article 58-1 shall be added to Part I, Chapter III, Section 8, of Act No. 2009-1436 of 24 November 2009 (the Prison Act):

“Article 58-1. The prison administration department may process personal data relating to systems for the video surveillance of detention cells within prisons.

“The aim of such processing shall be to ensure the video surveillance monitoring of detention cells in which individuals placed in custody and subject to an isolation measure are held, in cases where the individual’s escape or suicide could have a significant impact on public order in view of the specific circumstances giving rise to that individual’s imprisonment and the impact of those circumstances on public opinion.

“Such processing shall ensure the security of the prison in cases where there is a risk of escape and shall ensure the safety of the individual in custody where there is a risk of suicide.

“Such processing shall relate only to detention cells holding individuals under pretrial detention, who are subject to a warrant for detention in respect of a crime. It shall be commenced only on an exceptional basis.

“The detained individual shall be informed of the proposed decision to place him or her under video surveillance and shall have the right to make written and oral observations, in the context of adversarial proceedings. The detained individual shall have a right to legal counsel on that occasion.

“In cases of urgency, the Keeper of the Seals and Minister of Justice may decide to place the detained individual under video surveillance temporarily if that measure is the only means of preventing his or her escape or suicide. Such temporary video surveillance may not exceed five days. Beyond that period, if no decision has been taken under the aforementioned conditions to place the individual under video surveillance, the video surveillance measure shall be terminated. The period of temporary surveillance shall count towards the total duration of the video surveillance measure.

“The placement of the detained individual under video surveillance shall be subject to a specially reasoned decision taken by the Keeper of the Seals and Minister of Justice, for a renewable three-month period. The detained individual shall be informed of this decision.

“The written opinion of the prison doctor may be sought at any time, in particular before any decision to renew the measure.

“The video surveillance system shall allow the detained individual to be monitored in real time. A screen erected in the cell shall ensure the individual’s privacy while allowing opaque images to be recovered. The cameras shall be placed in a visible position.

“This processing shall involve the recording of all video sequences obtained from the video surveillance of the cells concerned.

“There shall be no sound transmission or recording.

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“This video surveillance processing shall not be linked to any biometric device.

“The recorded images that are subject to processing shall be digitally stored for one month.

“If there are serious reasons to believe that the detained individual presents a risk of suicide or escape, the prison warden or his or her representative may consult the video surveillance data for a period of seven days after it was recorded. Beyond that seven-day period, the data may be viewed only in the context of a judicial or administrative inquiry.

“After one month, all data that has not been transmitted to the judicial authority or become subject to an administrative inquiry shall be deleted.

“The persons or categories of persons who, by reason of their functions or in accordance with the needs of the prison service, shall have access to the aforementioned personal data are:

“1. Prison officers individually designated and duly authorized by the prison warden in the case of data viewed in real time;

“2. The prison warden or his or her representative in the case of the consultation, within seven days, of recorded data;

“3. The local information technology officer individually designated and duly authorized by the prison warden.

“The right to lodge an objection, as provided in article 38 of Act No. 78-17 of 6 January 1978 concerning information technology, files and freedoms, shall not apply to the aforementioned processing.

“The rights to access and rectify data, as provided in articles 39 and 40 of the aforementioned Act No. 78-17 of 6 January 1978, shall be exercised in the form of a request to the warden of the prison where the processing of video surveillance is conducted.

“A notice displayed at the entrance to the cell in which a video surveillance system has been installed shall draw attention to the existence of the said system and explain how to access and rectify the data collected.

“Records shall be kept of the creation, updating and consultation of data during processing. These records shall be retained for a period of three months. A record shall be kept of the extraction of recorded video sequences during processing. That record shall be retained for a period of one year.”

II. - The following article 716-1 A shall be added to book V, part II, chapter I, of the Code of Criminal Procedure:

“Article 716-1 A. Individuals placed under judicial examination, accused or charged, who are held in pretrial detention and are subject to a warrant for detention in respect of a crime and an isolation measure, whose escape or suicide could have a significant impact on public order in view of the specific circumstances giving rise to their imprisonment and the impact of those circumstances on public opinion, may be subject to the video surveillance measures provided in article 58-1 of Act No. 2009-1436 of 24 November 2009 (the Prison Act).”

Article 10

The phrase “renewable twice by reasoned decision” shall be added at the end of the last paragraph of article L. 225-2 of the Code of Internal Security.

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Article 11

The last sentence of the fifth paragraph of article L. 224-1 of the same Code shall be deleted.

Article 12

The following article 706-24-4 shall be inserted after article 706-24-3 of the Code of Criminal Procedure:

“Article 706-24-4. The total length of the pretrial detention mentioned in the twelfth paragraph of article 11 of Decree No. 45-174 of 2 February 1945 relating to juvenile delinquency shall be increased to two years for the investigation of the offence mentioned in article 421-2-1 of the Criminal Code.

“The total length of the pretrial detention mentioned in the fourteenth paragraph of article 11 of the aforementioned Decree No. 45-174 of 2 February 1945 shall be increased to three years for the investigation of the crimes set out under article 421-1, paragraph 1, and articles 421-5 and 421-6 of the Criminal Code.”

Article 13

Book IV, part II, chapter I, of the Criminal Code shall be amended as follows:

1. In the second paragraph of article 421-5, the word: “twenty” shall be replaced by the word: “thirty”;

2. Article 421-6 shall be amended as follows:

(a) In the first paragraph, the words: “twenty years’ imprisonment and 350,000” shall be replaced by the words: “thirty years’ imprisonment and 450,000”;

(b) In the last paragraph, the words: “thirty years’ imprisonment and” shall be replaced by the words: “life imprisonment and”.

Article 14

Article 422-4 of the Criminal Code shall be worded as follows:

“Article 422-4. Any alien convicted of one of the offences referred to under this part of the Code shall be banned from French territory by the court hearing the case, either permanently or for a maximum of ten years, in accordance with the conditions laid down in article 131-30.

“However, the court may decide, by means of a specially reasoned decision, not to impose this sentence, taking into account the circumstances of the offence and the personality of the perpetrator.”

Article 15

Article L. 851-2 of the Code of Internal Security shall be worded as follows:

“Article L. 851-2.-I. - In accordance with the conditions laid down in part II, chapter I, of the present book, and solely for the purposes of terrorism prevention, individual authorization may be given

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for the real-time collection, from the networks of the operators and persons referred to in article L. 851-1, of the information or documents mentioned in the same article L. 851-1 concerning an individual previously identified as being likely to have a connection to a threat. Where there are serious reasons to believe that one or more individuals who are close to the individual concerned by the authorization are likely to provide information regarding the purpose of the authorization, individual authorization may also be granted in respect of each of those individuals.

“II. - Article L. 821-5 shall not apply to an authorization granted pursuant to this article.”

Article 16

At the beginning of the first paragraph of article L. 511-5 of the Code of Internal Security, the words: “When justified by the nature of their work and the circumstances,” shall be deleted.

Article 17

Book VIII of the Code of Internal Security shall be amended as follows:

1. In article L. 852-1, section III, the word: “necessary [for]” shall be replaced by the word “associated [with]”;

2. In the first paragraph of article L. 863-2, the word: “exchange” shall be replaced by the word: “share”.

Article 18

Book IV, part I, chapter I, section 4, of the same Code shall be amended as follows:

1. Article L. 411-7 shall be amended as follows:

- (a) Paragraph 2 shall become paragraph 3;
- (b) Paragraph 2 shall be worded as follows:

“2. Persons proving, at the time of signature of the contract of engagement, that they have at least three years' service as a police support officer;”;

2. Article L. 411-9 shall be amended as follows:

(a) In the first paragraph, the words “as volunteers” shall be replaced by the words: “under article L. 411-7, paragraphs 2 and 3”;

(b) In the last paragraph, the words “and the reservists mentioned in article L. 411-7, paragraph 2, of the present Code” shall be inserted after the words “national police”;

3. A paragraph worded as follows shall be added to article L. 411-10:

“The persons mentioned in article L. 411-7, paragraph 2, of the present Code may undertake all missions performed by retired national police officers, with the exception of any mission abroad.”;

4. Article L. 411-11 shall be amended as follows:

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(a) In the first paragraph, the words: “and the reservists mentioned in article L. 411-7, paragraph 2” shall be inserted after the words “voluntary reservists”;

(b) The following paragraph 3 shall be inserted after paragraph 2:

“3° In the case of the reservists mentioned in paragraph 2 of the same article L. 411-7, one hundred and fifty days per year.”

Article 19

The maximum length of service in the military, civil security, medical or national police reserve corps as provided in article L. 4251-6 of the Defence Code, in article 34, paragraph 11, of Act No. 84-16 of 11 January 1984 on statutory provisions concerning the central government civil service, in article 57, paragraph 12, of Act No. 84-53 of 26 January 1984 on statutory provisions concerning the local government civil service, and in article 41, paragraph 12, of Act No. 86-33 of 9 January 1986 on statutory provisions concerning the health service shall be extended for the total period during which Act No. 55-385 of 3 April 1955 concerning the state of emergency is implemented, subject to the employer’s agreement.

Article 20

The following sentence shall be added to the last paragraph of article 15 of Act No. 86-1067 of 30 September 1986 concerning freedom of communication:

“It shall prepare a code of conduct regarding the audiovisual coverage of terrorist acts.”

Article 21

I. - In article 711-1 of the Criminal Code, the first paragraph of article 804 of the Code of Criminal Procedure and the first paragraph of articles L. 285-1, L. 286-1, L. 287-1, L. 288-1, L. 445-1, L. 446-1, L. 447-1, at the end of article L. 448-1, in the first paragraph of articles L. 545-1, L. 546-1, L. 895-1, L. 896-1, in article L. 897-1 and in the first paragraph of article L. 898-1 of the Code of Internal Security, the reference: “Act No. 2016-731 of 3 June 2016 strengthening efforts to combat organized crime, terrorism and the financing thereof, and enhancing the effectiveness of criminal procedure and the safeguards provided for therein” shall be replaced by the reference: “Act No. 2016-987 of 21 July 2016 extending the application of Act. No. 55-385 of 3 April 1955 concerning the state of emergency and establishing measures to strengthen counter-terrorism efforts”.

II. - Article 9, section I, and article 19 shall be applicable in the Wallis and Futuna Islands, in French Polynesia and in New Caledonia.

Article 19 is applicable in the Terres australes et antarctiques françaises (French Southern and Antarctic Lands).

This Act shall enter into force immediately and shall be implemented as a law of the State.

Done in Paris, on 21 July 2016.

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François Hollande

By the President of the Republic:

Manuel Valls
Prime Minister

Jean-Jacques Urvoas
Keeper of the Seals and Minister of Justice

Bernard Cazeneuve
Minister of the Interior

Annick Girardin
Minister of the Civil Service

George Pau-Langevin
Minister for Overseas

⁽¹⁾ *Preparatory work*: Act No. 2016-987

National Assembly:

Bill No. 3968

Report No. 3978 by Mr. Pascal Popelin, on behalf of the Law Commission

Discussion and adoption, following the employment of the accelerated procedure, on 19 July 2016 (TA No. 801)

Senate:

Bill No. 803 (2015-2016), adopted by the National Assembly

Report No. 804 (2015-2016) by Mr. Michel Mercier, on behalf of the Law Commission

Commission text No. 805 (2015-2016)

Discussion and adoption on 20 July 2016 (TA No. 183, 2015-2016)

National Assembly:

Bill No. 3992, modified by the Senate

Report No. 3993 by Mr. Pascal Popelin, on behalf of the joint mixed commission

Discussion and adoption on 21 July 2016 (TA No. 806)

Senate:

Report No. 808 (2015-2016) by Mr. Michel Mercier, on behalf of the joint mixed commission

Commission text No. 809 (2015-2016)

Discussion and adoption on 21 July 2016 (TA No. 184)

1 August 2016



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