ORDINANCES REFORMING THE FRENCH LABOUR CODE

The ordinances reforming the French Labour Code have been adopted by the Council of Ministers on 22 September 2017 and published in the Official Journal on 23 September 2017. The ordinances deeply amend the legislation regarding the staff representatives, the redundancies for economic reason and the collective bargaining.

MERGER OF THE STAFF REPRESENTATIVE BODIES

Social and Economic Committee. The ordinances simplify the staff representation by merging the several employee representative bodies which currently coexist into a single body named Social and Economic Committee (CSE) which will be compulsory in companies employing at least 11 employees (applicable by 31 December 2019 at the latest).

In companies employing at least 50 employees, the CSE will perform the current roles of the staff delegates, the works council and the health and safety committee. In companies employing less than 50 employees, the CSE will perform the current roles of the staff delegates.

A specific commission dealing with health, safety and working conditions issues will be compulsory in companies employing at least 300 employees, and at the request of the Labour Inspector in companies performing risky activities.

In case of expertise requested by the CSE, it will have to bear 20% of the expert's fees. Only in specific cases, such as employment safeguard plans, the company will bear the entire expertise costs.

Company Council. A collective agreement can create a "Company Council" which would perform the attributions of the CSE and would be entitled to negotiate collective agreements (excluding some specific collective agreements such as those organizing employment safeguard plans).

SIMPLIFICATION OF REDUNDANCIES FOR ECONOMIC REASON

Economic ground. Pursuant to the current French case law, in case of redundancies for economic reason in a company belonging to an international group, the validity of the economic reason *(economic difficulties, technological changes, necessity to safeguard the company's competitiveness)* must be assessed at the level of the business sector to which the company belongs, within the entire group at the worldwide level.

The ordinances reduce this scope of assessment of the economic ground by stating that *"the economic difficulties, technological changes and necessity of safeguarding the competitiveness of the company are assessed at the level of said company if it does not belong to a group, otherwise at the level of the business sector common to the companies of the group which are established in the national territory".*

The assessment of the economic ground for redundancies in French subsidiaries of international groups would therefore be reduced to the relevant business sector of the companies of the group located in the national territory. However, according to the Ministry of Labour, "*the Court will check cases of fraud, for example the transfer prices artificially penalizing the French subsidiary*".

Collective contractual termination. The ordinances introduce in the Labour Code the possibility to set up, by way of collective agreement, a collective contractual termination of the employment contracts excluding any dismissal (as of today known as "*voluntary departure plans*").

The collective agreement would set the maximum number of departures, the conditions to benefit from such termination and the modalities of information of the CSE. The compensation granted to the employees in the context of this agreement could not be lower than the legal indemnities due in case of dismissal. The collective agreement will have to be validated by the Labour Administration.

CAP ON DAMAGES FOR UNFAIR DISMISSAL

Limitation of damages for unfair dismissal. The ordinances set caps on the damages granted by the Labour Courts in case of unfair dismissal.

The French Labour Code did not set any maximum amount for the damages that can be granted by Labour Courts in case of unfair dismissal, preventing employers to precisely anticipate the cost of an unfair dismissal.

The ordinances solve this issue by enforcing compensation caps which will depend on the seniority of the employee.

The maximum compensation will be, for example, 2 months of salary for an employee with one year of seniority, 6 months of salary for an employee with 5 years of seniority, 15,5 months of salary for an employee with 20 years of seniority. In any case, the maximum cap is 20 months of salary, for employees with 29 years and more of seniority.

Lastly, in companies employing more than 10 employees, the minimum of 6 months' salary for damages granted to employees having 2 years of seniority is lowered at 3 months of salary.

Waiver of the caps. However, these caps will be waived in case of dismissal considered as null and void, e.g. in case of discrimination, moral or sexual harassment, breach of the protective status of protected employees or pregnant woman, or violation of a fundamental freedom of the employee.

In such cases, the minimum amount of the damages that can be granted to the employee are at least 6 months' salary.

COLLECTIVE BARGAINING

Company-level negotiation. The ordinances extend the possibility for company-level agreements to contain measures less favorable than those provided by branch-level agreements (except in specific matters such as minimum wages, classifications, modalities of the trial period or professional equality).

Validity of the collective agreements. To be valid, any company-level agreement concluded as from 1st May 2018 (rather than 1st September 2019) will have to be concluded by the representative trade unions gathering at least 50% of the votes at the first ballot of the last professional elections (instead of 30% currently).

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