

Published on 1 January 2014



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New time-frames for consulting french works councils

The Law on securing employment of June 14, 2013, the main features of which were outlined in our [March](#), [May](#) and [June](#) 2013 e-newsletters, has established the principle that an agreement between the employer and the Works Council (the “WC”), or in the absence of such agreement, a Decree of the *Conseil d’Etat* (Council of State), fixes the time-frames within which the WC must issue its opinions.

If, upon expiry of the allotted time-frames, the WC has not rendered its opinion, it shall be deemed to have been duly consulted and to have issued a negative opinion. The announced Decree was finally published in the Official Journal on December 31, 2013.

Preamble

Decree n°2013-1305 of December 27, 2013 on the creation of a social and economic database and applicable time-frames for consulting the WC and expertise council (the “Decree”) finally provides the long-awaited details regarding the WC consultation process.

A ministerial circular on the above-mentioned social and economic database should be published shortly. This issue shall be addressed in one of our forthcoming e-newsletter.

1. Reminder of the principle laid down by the Law on securing employment

Article L.2323-3 of the French Labor Code (the “FLC”) now reads as follows:

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“In exercising its advisory functions defined in Articles L. 2323-6 to L. 2323-60, the Works Council issues opinions and expresses wishes.

It must be granted a sufficient review period.

“Save for any special legislative provisions, an agreement between the employer and the works council or, where applicable, the central works council, adopted by a majority of the elected permanent members of the works council, or, in the absence of such an agreement, a Decree of the Conseil d’Etat shall establish the time-frames within which opinions of the works council must be issued within the framework of the consultations provided in Articles L. 2323-6 to L. 2323-60 [general running of the company, new technologies, contemplated reorganization and staff reduction measures, etc.], and Articles L. 2281-12 [employees’ freedom of expression], L. 2323-72 [workforce statistical report] and L. 3121-11 [annual quota of overtime hours]. These time-frames, which may not be less than 15 days, must allow the works council to usefully exercise its competence, depending on the nature and importance of the issues submitted to it and, as the case may be, depending on the information provided to and consultation with the health, safety and working conditions committee(s).

Upon expiration of these time-frames or of the time-frames set forth in the last paragraph of Article L. 2323-4, the works council shall be deemed to have been duly consulted and to have issued a negative opinion”.

The “sufficient review period” that used to be required in the framework of consultations with the WC is thus replaced by fixed time-frames that are set either by an agreement between the employer and the WC or by law.

Yet, the employer is required to communicate to the WC the information necessary for it to take a stand.

In this respect, the WC may initiate legal proceedings under Article L.2323-4 of the FLC that reads as follows:

*“To enable it to issue a reasoned opinion, **the works council must be provided with precise and written information by the employer as well as the employer’s reasoned response to its own observations.***

*The elected members of the works council may, if they consider that they have not been provided with sufficient elements, initiate summary proceedings and request the President of the First instance Court to order the employer to produce the missing elements. **The President must issue its ruling within 8 days.***

The initiation of such proceedings does not have the effect of extending the time-frame within which the works council must issue its opinion. Yet, if the works council has encountered particular difficulties in accessing the information necessary to render its reasoned opinion, the President may decide to extend the time-frame set forth in Article L. 2323-3.”

2. The new time-frames fixed by Decree

The consultation time-frame starts running when the employer provides the necessary information or when such information is made available in the Database (Article R.2323-1 of the FLC). As such, for the time-frame

to start running, the employer must provide precise, written and complete documentation at the outset of the process.

The principle is easy to remember: the time-frame is 1, 2, 3 or 4 month(s) (Article R.2323-1-1 of the FLC).

Specifically, the applicable time-frame is:

- 1 month in the general case;
- 2 months if an expert is appointed;
- 3 months if one or more health, safety and working conditions committee(s) ("HSWCC") must be consulted;
- 4 months if a body responsible for coordinating the various HSWCCs has been put in place.

Regarding the 2-month time-frame that is applicable when ONE expert is appointed, the letter of the Decree suggests that this time-frame shall apply to any and all types of expert, including experts appointed and remunerated by the WC. On the other hand, if the HSWCC (or the body responsible for coordinating the various HSWCCs) appoints an expert, this has no impact on the applicable time-frame.

The aforementioned time-frames are **maximum time-frames**. The WC can issue its opinion before the expiry of such time-frames, i.e. before the deadline that can be relied upon by the employer to validate the consultation process and legally acknowledge that the WC has implicitly rendered a negative opinion.

3. Time-frames within which the appointed expert must file his report

The Law on securing Employment had also introduced a new Article governing the time-frames within which the appointed expert must file his report, i.e. Article **L.2325-42-1** that reads as follows:

"The chartered accountant or the technical expert referred to in this Section shall file his report within a reasonable time-frame set forth in an agreement between the employer and the works council or, in the absence of such agreement, in a Decree of the Conseil d'Etat. This time-frame may only be extended by common agreement.

The agreement between the employer and the works council, or, in the absence of such agreement, the Decree referred to in the first paragraph hereof, sets, within the time-frame referred to in the same paragraph, the period within which the expert appointed by the works council may request from the employer all the information that he considers necessary for the performance of his assignment as well as the period within which the employer must respond to this request."

The Decree specifies the time-frames granted to appointed experts (if no agreement has been entered into between the employer and the WC) in three types of expert assignments:

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- a) **If the WC is consulted on the strategic orientations** of the company (Article R.2325-6-1 of the FLC), the chartered accountant must, within a maximum of three days from his appointment, request from the employer all the additional information he considers necessary for the performance of his assignment. The employer must meet this request within five days. The chartered accountant must submit his report to the WC 15 days before the expiry of the time-frame within which the WC must issue its opinion;
- b) **If the WC is consulted on a merger transaction** (Article R.2325-6-2 of the FLC), the chartered accountant must, within a maximum of three days from his appointment, request from the employer all the additional information he considers necessary for the performance of his assignment. The employer must meet this request within five days. The chartered accountant must submit his report within eight days from the notification of the decision of the French Competition Authority or European Commission. This report is presented during the second WC meeting provided for in L. 2323-20 §2 of the FLC;
- c) **If the WC is consulted on the introduction of new technologies or the implementation of technical changes** in companies with more than 300 employees (Article R.2325-6-3 of the FLC), the technical expert appointed by the WC must, within a maximum of three days from his appointment, request from the employer all the additional information he considers necessary for the performance of his assignment. The employer must meet this request within five days. The technical expert must submit his report within 21 days from the date of his appointment.

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