

The Macron Ordinances - Topic 2: New rules on redundancies

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New rules to reform French employment law, as announced in our client alert of September 19th, 2017, have been published in the French official journal on September 23rd, 2017. Except those subject to subsequent decrees, the rules are almost all already in force.

Here we focus on new rules specific to redundancies outlined in Ordinance n°2017-1387 regarding the predictability and security of employment relationships (hereinafter the “Ordinance”), including dismissals due to economic difficulties, technological changes or the need to safeguard the competitiveness of the company.

1. Scope of assessment of the economic ground

FORMER RULES	NEW RULES Article 15 of the Ordinance
<ul style="list-style-type: none"> When a company was part of an international group, the validity of economic grounds was assessed within the related sector of activity, at the level of the group (including in companies located abroad in the relevant sector of activity) even if it was the French subsidiary which suffered losses. The French labor code did not define the « group » or the « sector of activity ». 	<ul style="list-style-type: none"> The scope of assessment of economic grounds within a group is now limited to the companies of the group located in France which belong to the same sector of activity. The French labor code now refers to the implementation of a group committee: when the headquarters of the dominant company are located in France, the group is composed of the dominant company and of all the companies under its control. If the dominant company’s headquarters are not located in France, then the group is composed of all the companies located in France. To assess the validity of the economic grounds, the sector of activity is defined, notably, by <i>“the nature of the products, goods or services delivered, the targeted customers, the networks and distribution methods which are related to the same market.”</i>
<ul style="list-style-type: none"> Entry into force: As from the publication of the Ordinance, thus to all redundancy procedures launched as from September 24, 2017. 	

2. Dismissals criteria

FORMER RULE	NEW RULE Article 18 of the Ordinance
<ul style="list-style-type: none"> The scope of the criteria to be applied to choose the employees to be made redundant, was implemented at the level of the company and not only within the establishments or services impacted by the reductions in force, which could lead to various difficulties especially in companies with multiple establishments scattered on the French territory. It was only in the case of redundancies requiring the implementation of a social plan that it was possible to reduce the application scope (thus only in case of redundancies of 10 or more employees over a 30-day period, within a company of at least 50 employees). This reduction of the application scope should have been expressly authorized by a company-wide collective agreement or a collective bargaining agreement of an upper level. 	<ul style="list-style-type: none"> From now on the scope of the criteria to be applied to choose the employees to be made redundant is set by collective bargaining agreement. In the absence of such agreement, the scope of the criteria could be reduced by the employer, providing it is not lower than the scope applicable to each of the employment zone (as already defined by decree) where one or several establishments of the company impacted by the redundancies, are located.
<ul style="list-style-type: none"> Entry into force: As from the publication of the Ordinance, thus to all redundancy procedures launched as from September 24, 2017. 	

3. Redeployment obligation

FORMER RULE	NEW RULE Article 16 of the Ordinance
<ul style="list-style-type: none"> The redeployment scope of a company belonging to an international group could be extended to companies of the group located outside of France, upon request from the employee. 	<ul style="list-style-type: none"> The geographical scope of the redeployment is now limited to companies located in France. The obligation to offer redeployment positions abroad upon request from the employee no longer exists.
<ul style="list-style-type: none"> With regards to redeployment, Courts used the definition of the group extended to all companies whose activities, organization or place of operations enabled to proceed to the switching of all or part of the workforce, without providing any definition of the group in question. 	<ul style="list-style-type: none"> The Ordinance retains the same definition of the group for the redeployment obligation as for the assessment of economic grounds. The existing case-law is also codified since these companies must have an organization, activities or place of operation that may enable the switching of all or part of the workforce (in order to provide similar duties and work conditions).
<ul style="list-style-type: none"> Employees should individually receive written and personalized redeployment offers. 	<ul style="list-style-type: none"> Redeployment offers are still sent directly to employees in writing but they can also be communicated, by any means, such as a list of all available positions (for instance on the intranet of the company).
<ul style="list-style-type: none"> Entry into force: As from the publication of the Ordinance, thus to all redundancies launched as of on September 24, 2017, except for the redeployment element which requires a new decree, to be published on January 1st, 2018 at the latest. 	

4. Information and consultation of the Social and Economic Committee (the “SEC”)

FORMER RULES	NEW RULES Article 20 of the Ordinance
<ul style="list-style-type: none"> For collective redundancy of less than 10 employees over 30 days, the law did not impose a timeframe on staff representatives to give their opinion. 	<ul style="list-style-type: none"> In case of collective redundancy of less than 10 employees over 30 days, the SEC gives its opinion within 1 month as from the date of the first consultation meeting.
<ul style="list-style-type: none"> Employers with a Works Council and a Health and Security Council (“HSC”) must assess whether the HSC should be informed and consulted regarding the potential impact of the redundancy project on health, security or work conditions. In certain cases, the necessity to inform and consult the HSC was arguable. 	<ul style="list-style-type: none"> With the creation of the SEC which combines the duties of the Works Council and the HSC, the employer will communicate all necessary information regarding the potential impacts of the redundancy project on health, safety or work conditions.
<ul style="list-style-type: none"> The Works Council can decide to resort to a chartered accountant in case of redundancy in accordance with the regulations (i.e. more than 10 employees over a 30-day period). 	<ul style="list-style-type: none"> The SEC can appoint the expert of its choice to provide assistance on economic accounting and working conditions. A collective bargaining agreement could lay down guidelines to recourse to such an expert.
<ul style="list-style-type: none"> Entry into force: As from the publication of the Ordinance and to companies where a SEC was implemented as from September 24, 2017. 	

5. Collective Mutual Terminations (“CMT”)

FORMER RULES	NEW RULES Article 10 of the Ordinance
<ul style="list-style-type: none"> Since the « Renault » case in 2010 (where the French Supreme Court ruled that a plan which only contemplates reductions in force on a voluntary basis is not required to include measures of internal redeployment) case law allowed the implementation of so called voluntary departures plans aside from any social plan. 	<ul style="list-style-type: none"> The Ordinance enshrines the « Renault » Case law including the possibility to conclude CMT through a majority collective bargaining agreement approved by the labor inspection. These voluntary departures plans are autonomous from social plans: the departures are decided on a voluntary basis and exclude any layoffs.
<ul style="list-style-type: none"> Entry into force: As from the publication of the application decree and on January 1st, 2018 at the latest. 	

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