

## client alert

EMPLOYMENT | FRANCE

MAY 12, 2014

### DON'T FORGET THE JUNE 14, 2014 DEADLINE

#### WHAT NEW OBLIGATIONS?

The law on protection of employment (*loi de sécurisation de l'emploi*) promulgated on June 14, 2013 has implemented new obligations incumbent upon employers:

- **Centralized economic and social database (ESDB):** The Law institutes a **centralized database** that each company with over 300 employees will be required to set up by June 14, 2014 –and by June 14, 2015 for other companies. This database will centralize all of the company's significant economic, financial and social data. This database must include facts and figures in relation to the year in progress, as well as to the previous two years and the coming three years. Its organization and content were set by Decree (*Decree of December 27, 2013*) and further explained in a Circular letter published on March 24, 2014 (*Circular DGT 2014/1 dated March 18, 2014*). Lastly, this database must be accessible at all times to the Works Council members – or failing such, to the Staff Delegates, the Central Works Council members, the members of the Health, Safety and Working Conditions Committee and the union delegates. It must be regularly updated and will serve as support material for the new consultation obligation regarding the strategic orientations of a company.
- **Annual consultation on strategic orientations:** The Works Council must be consulted annually on the strategic orientations defined by the company's executive or supervisory board, and on their impact on business, employment, job and skills evolution, work organization, recourse to subcontracting, temporary employment, temporary contracts and internships. The information needed for this new separate consultation must be included in the ESDB. The rationale behind this new consultation is to favor the employees' knowledge of the company's economic projects and thus their adherence to such projects. The Works Council will have the possibility of suggesting alternatives, which the company's executive or supervisory board will need to consider and address in motivated replies. The Works Council will have the possibility of being assisted by a chartered accountant of its choice. It will no longer be possible to finalize the company's strategy without fulfilling the consultation procedure first.
- **A representative of employees within the governing bodies of limited liability companies (*sociétés anonymes*) and joint stock companies (*sociétés en commandite par actions*):** In addition to existing provisions in this respect, limited liability companies and joint stock companies (employing in France, directly or through their subsidiaries, at least 5,000 employees, or employing in France or abroad, directly or through their subsidiaries, at least 10,000 employees and in both instances, under an obligation to set up a Works Council) will now be required to have representatives of employees within their governing bodies. These representatives will have voting rights. The implementation of this new obligation will require an amendment of the company's Articles of association and bylaws. Several terms and conditions of appointment have been provided for.

## WHO DOES THIS CONCERN?

ESDB and consultation on strategy: This obligation concerns companies with at least 300 employees, beginning this year. They must set up the ESDB by June 14, 2014 so that the annual consultation with their Works Council on the strategic orientations can take place as early as this year (the ESDB serves as a basis for this consultation). Companies with more than 50 but fewer than 300 employees have an extended deadline of one year to set the ESDB up, that is, by June 14, 2015.

In addition, all information provided to the Works Council on a recurring basis or in the context of a consultation will need to be placed in the ESDB at the disposal of its members at the latest by December 31, 2016.

The implementation of representatives of employees in limited liability companies and joint stock companies entails that their Articles of association and bylaws will have to be amended within the course of 2014.

## WHAT ARE THE SCOPE AND EFFECT OF THESE NEW OBLIGATIONS?

At this stage, no sanctions have been set forth to accompany these new obligations. Failure to comply with these new obligations will probably be subject to sanctions linked to the obstruction of staff representation rights (*délit d'entrave*). From a civil law perspective, the Works Council could potentially claim damages for the loss incurred.

## WHAT NEEDS TO BE DONE?

These new obligations will soon be effective. The implementation of the ESDB will imply extensive identification, collection and classification of information to be added therein.

As the purpose of these measures is to involve the staff representatives in the strategy-defining process, these new obligations go beyond mere human resources management and fall within the scope of corporate governance and communication.

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