

Focus on the Social and Economic Committee, the new employee representative body created by Ordinance n°2017-1386

The merger of the various employee representative bodies into a single one called “*Social and Economic Committee*” (“SEC”) is one of the flagship measures of Macron Ordinance n°2017-1386 dated September 22, 2017. While it was already possible to aggregate all the employee representative bodies, in particular under the so-called “*Single Staff Representation*” mechanism, this is no longer merely an option.

Indeed, since January 1, 2018, companies with 11 employees or more have the obligation to set up a Social and Economic Committee. This Committee merges and supersedes the staff delegates, the Works Council and the Hygiene, Safety and Working Conditions Committee. This article briefly describes the main characteristics of this new body, including with respect to its set-up, operation, commissions and powers.

I. Implementation of the SEC

A) Time-line and staff thresholds

Applicable legislation provides for a gradual implementation of the SEC. While Ordinance n°2017-1386 includes transitional provisions, companies must, in principle, set up their SEC at the expiry of the current employee representation mandates and no later than December 31, 2019. As such, from January 1, 2020, every company which has employed 11 employees or more during the last 12 consecutive months must have

implemented a SEC[1].

B) Scope of implementation

The SEC is implemented at the level of the company. Companies with at least 50 employees that have at least two distinct establishments must set up establishment-level SECs as well as a central SEC[2].

If there exists a so-called social and economic unit with at least 11 employees, established by a collective agreement or acknowledged pursuant to a court decision, a common SEC must be set up.

In addition, an inter-company SEC may be implemented whenever this is justified by the nature or the scale of problems/difficulties that are common to companies operating on the same site or on the same zone. This inter-company SEC must be put in place through an inter-company collective agreement between the employers of the companies located on the relevant site or zone and representative trade unions at the inter-trade or departmental level.

II. Operation of the SEC

A) Composition of the SEC

The SEC consists of the employer and employee representatives[3]. In addition, in companies with 50 employees or more, each representative trade union can be represented by a union representative at the SEC. In companies with less than 300 employees, the union delegate serves, as of right, as union representative at the SEC[4].

In companies with less than 50 employees, the employer may be assisted by collaborators who, taken together, may not be more than the number of permanent employee representatives[5].

In companies with 50 employees or more, the SEC is chaired by the employer or its representative who can possibly be assisted by three collaborators acting in an advisory capacity. The SEC must appoint a secretary and a treasurer from among its permanent members[6].

B) Number of employee representatives

The number of employee representatives sitting at the SEC is set forth by Decree and depends on the company's headcount. This number may be amended by the pre-election protocol, subject to certain conditions[7].

There must be an equal number of permanent and substitute employee representatives. In addition, contrary to the previously applicable rules, it is now stated that the substitute attends the meetings when the permanent member is absent.

C) Term of office of the SEC members

SEC members are elected for a term of 4 years; however, an industry-wide, group-wide or company-level agreement can provide for a shorter term, between 2 and 4 years^[8].

In addition, the number of terms in office is henceforth limited to 3, except:

- for companies with less than 50 employees;
- for companies with 50 to 300 employees, whenever the pre-election protocol stipulates otherwise.

III. The commissions of the SEC

Applicable legislation provides for the implementation of specialized commissions within the SEC^[9]. This can be a mandatory obligation, in particular given the company's headcount or the nature of its business activities. Commissions can also be set up pursuant to company-level agreements.

One of the main commissions is the Health, Safety and Working Conditions Committee (*Commission santé, sécurité et conditions de travail*) that is responsible for handling health and safety related issues that used to be addressed by the Hygiene, Safety and Working Conditions Committee.

Other specialized commissions can be created with the SEC, such as:

- Procurement Commission;
- Business Commission;
- Information and housing assistance Commission;
- Training Commission;
- Gender equality in the workplace Commission.

IV. The powers of the SEC

The powers of the SEC vary according to the company's headcount.

In companies with less than 50 employees, the SEC has powers that are similar to those previously granted to staff delegates. Specifically, its tasks include presenting to the employer all individual and collective complaints concerning wages, enforcement of the French Labor Code and other legal provisions on social protection, as well as agreements applicable within the company. It also has a number of powers in respect of health, safety and working conditions, and may refer issues to the labor inspectorate^[10].

In companies with 50 employees or more, the SEC is assigned tasks that are quite similar to that of the Works Council and the Hygiene, Safety and Working Conditions Committee, subject to a few alterations^[11]. In these companies, the SEC is endowed with legal civil personality in order to manage its assets.

As a result, while the rules governing the SEC correspond closely to that applicable to staff delegates, Works Councils and Hygiene, Safety and Working Conditions Committee, we do witness the creation of a new body that breaks with what existed up to now. The powers that were vested in the former bodies are now

mandatorily entrusted to a single one that gathers all staff elected representatives.

- [1] Article L 2311-2 of the French Labor Code
- [2] Article L 2313-1 *et seq.* of the French Labor Code
- [3] Article L 2314-1 of the French Labor Code
- [4] Article L 2143-22 of the French Labor Code
- [5] Article L 2315-21 of the French Labor Code
- [6] Article L 2315-23 of the French Labor Code
- [7] Article L 2314-1 and R 2314-1 of the French Labor Code
- [8] Article L 2314-33 *et seq.* of the French Labor Code
- [9] Article L 2315-36 *et seq.* of the French Labor Code
- [10] Article L 2312-5 of the French Labor Code
- [11] Article L 2312-8 *et seq.* of the French Labor Code

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