

Macron Law: Publication of the Implementing Decree on the obligation to provide information to employees prior to the sale or the transfer of the business

The publication of the Implementing Decree is the final chapter of the legislative saga that resulted in the adoption of the Law on growth, economic activity and equality of economic opportunities of July 10, 2015, commonly known as the “Macron” Law. Indeed, even though the Macron Law became effective on August 8, 2015, a significant number of measures remained inapplicable pending the adoption of such Decree. This has now been done!

Decree n°2015-1811 of December 28, 2015^[1] on the obligation to provide information to employees prior to the sale or the transfer of the business was published in the Official Journal on December 30, 2015.

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1. Restriction of the scope of the employees’ right to prior information

The number of situations where companies have the obligation to inform their employees in order to make it possible for them to submit a purchase offer has been reduced. Indeed, the reference to the concept of “transfer” – which was much too broad – has been removed and the obligation henceforth only applies in case of a contemplated sale of the business^[2]. This restriction, therefore, excludes any obligation to provide information in connection with intra-group transactions, contributions, gifts, transfers in lieu of payment and any other gratuitous transactions.

2. A new reference date to be used for the fulfillment of the obligation to provide information to the employees

The date to be retained is no longer the date of transfer of ownership but the “date of conclusion of the contract”^[3]. The fulfillment of the obligation to inform employees (which takes place upon the signature by all of the employees of a waiver to submit an offer, or upon the expiry of the two-month time period) must, therefore, occur before such date. It is unfortunate that the Decree has replaced the “date of transfer of ownership” by the “date of conclusion of the contract” without specifying whether it is the date of signature of the contract (i.e. the signing date) or the date on which the transaction contemplated by the contract is completed and the ownership transferred (i.e. the closing date) that should be retained.

3. Simplified notification requirements

The information is henceforth considered delivered no longer upon the effective delivery of a registered letter, return receipt requested, but on the date of the first presentation of such letter. Consequently, it is now easier to determine the date on which an employee has been validly informed of the contemplated sale, even when he/she is absent on the date of first presentation of the letter.

4. The sanction is significantly reduced

A progress that strengthens legal certainty of transaction: The applicable sanction in case of non-compliance with the obligation to provide information to employees prior to the sale of the business is no longer the nullification of the sale^[4] but a civil fine that may not exceed 2% of the sale price^[5].

Finally, it should be recalled that these new rules apply to any and all sales of business, effective as from January 1, 2016.

^[1] Decree n°2015-1811 of December 28, 2015: <http://www.legifrance.gouv.fr/eli/decret/2015/12/28/2015-1811/jo> (in French only)

^[2] Book II, Chapter III, Title X of the French Commercial Code: “Information of the employees in case of sale of their company”

^[3] Article D 141-3 of the French Commercial Code: “The two-month period mentioned in Article L. 141-23 §1 must be considered by reference to the sale date, to be understood as the date of conclusion of the contract.”

^[4] The Constitutional Council held that this sanction contravened entrepreneurial freedom and, therefore, invalidated it

^[5] Entry into force of Article 204 II of the Law n° 2015-990 of August 6, 2015 on growth, economic activity and equality of economic opportunities



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