

Inside New Staff Requirements Under French Employment Law

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Companies implemented in France, even when owned by foreign investors, have some new obligations to add to their calendars.

By Jan. 1, 2020, every company with 11 employees or more,[1] should have organized elections for the implementation of a new staff representative body, referred to as the Social and Economic Council, or SEC.[2]

Failure to do so is deemed a criminal offense which can result in imprisonment (albeit theoretical) along with the payment of a fine.

This new obligation results from the ambitious in-depth reform of French employment law initiated by President Emmanuel Macron in September 2017 — which designated purpose was to change the bad reputation French employment law continues to have overseas. The government decided to harmonize and hence, to simplify staff representation in companies while maintaining a high level of representation for employees.

The creation of a single representative body seems to combine these prima facie antagonistic goals.

As a reminder: To date, there were several employee representative bodies, or ERBs, under French employment law, which all have their own scope of competence:

- The Staff Delegates (in companies with at least 11 employees), mainly in charge of dealing with day-to-day matters pertaining to work conditions;
- The Works Council, (in companies with at least 50 employees), involved in the main changes affecting the company, its organization, notably when such changes ultimately impact the employees' rights, their working conditions, etc.;
- The Health and Safety Council, (in companies with at least 50 employees), involved in all matters likely to affect the health, safety and/or working conditions of the employees;
- The Union Delegates, (in companies with at least 50 employees), appointed by representative unions in the sector of activity of the company, whose role is to negotiate with the employer on



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employees' rights and bring collective claims on behalf of employees before appropriate tribunals.

In practice, the multiplicity of employees' interlocutors is necessarily time consuming for the employer, all the more when the latter is based overseas and is not used to manage this kind of interaction while running the business.

The SEC will soon, permanently, merge and supersede the first three above listed staff representative bodies.

What does this mean concretely for foreign employers implemented in France?

While the legislative order of Sept. 22, 2017^[3] includes transitional provisions which should facilitate a smooth implementation of the SEC, it also sets a hard deadline to organize the elections, which is Dec. 31, 2019 at the latest.

Companies that already have staff representatives should launch the election process upon expiration of the current mandates. Depending on the situations, this expiration date can be anticipated or pushed forward for organizational purposes.

How does it change staff representation?

1. Transfer of the Representation Prerogatives

For small- and medium-sized French subsidiaries (i.e. less than 300 employees), the roles and powers of the different representative bodies are merely transferred to the SEC as follows:

- In companies with at least 11 employees but less than 50, the members of the SEC will perform the duties of the former staff delegates along with some of the Health and Safety Council's prerogatives on the promotion of health, security and of the work conditions (see supra — Introduction);
- In companies of at least 50 employees and less than 300 employees, the SEC will perform the duties of the staff delegates, the Works Council and the Health and Safety Council (see supra — Introduction).

2. Creation of Specialized Commissions

A major novelty of the reform lies in the creation of specialized commissions.

As from 50 employees, companies can (or must, in certain circumstances) implement commissions which will be assigned various topics:

	Companies With 50 Employees and Up to 299		Companies With 300 Employees and Beyond		Companies With Over 1,000 Employees	
	Optional	Mandatory	Optional	Mandatory	Optional	Mandatory
Commission on Issues Pertaining to Health, Safety and Working Conditions	X			X		X
Commission on Professional Equality	X			X		X
Commission on Housing	X			X		X
Commission on Training	X			X		X
Commission on Economic Issues			X			X
Market Commission		<i>Subject to additional conditions</i>		<i>Subject to additional conditions</i>		<i>Subject to additional conditions</i>

3. Possibility to Tailor the Representation to the Features of the Company

For an even closer representation in French subsidiaries of 50 employees and beyond, members of the SEC can be specifically appointed as proximity representatives and be entrusted (potentially on top of their SEC member's role) with the duties that were performed by former staff delegates.

The reform also provides for the possibility for companies having SEC and union delegates to merge these two types of staff representatives into a single one, called the "company council." [4] On top of the SEC prerogatives, the company council has the power to negotiate any type of collective bargaining agreements and to file collective claims on behalf of employees.

How does this reform lighten the foreign employer's obligations toward employees' representatives?

Firstly, with the reduction of staff representative bodies, the number of representatives will necessarily lower down.

We should notice the same decrease with respect to the delegation hours allocated to each of the incumbent employee representatives since they will not be able any longer to concurrently hold several representative mandates and thus, to aggregate the corresponding hours of delegation. This is not without interest since when they are in delegation, the representatives are not performing any work for the company.

Also good news should be the shortening of the consultation time frames the employer must observe

when the opinion of the SEC is required prior to making any business decision falling within the scope of its competence (e.g., divestitures, operational reorganization, etc.).

Indeed, before the creation of the SEC, the consultation periods between the various bodies had to be coordinated and could last up to four months.

With the SEC, it could not exceed three months.

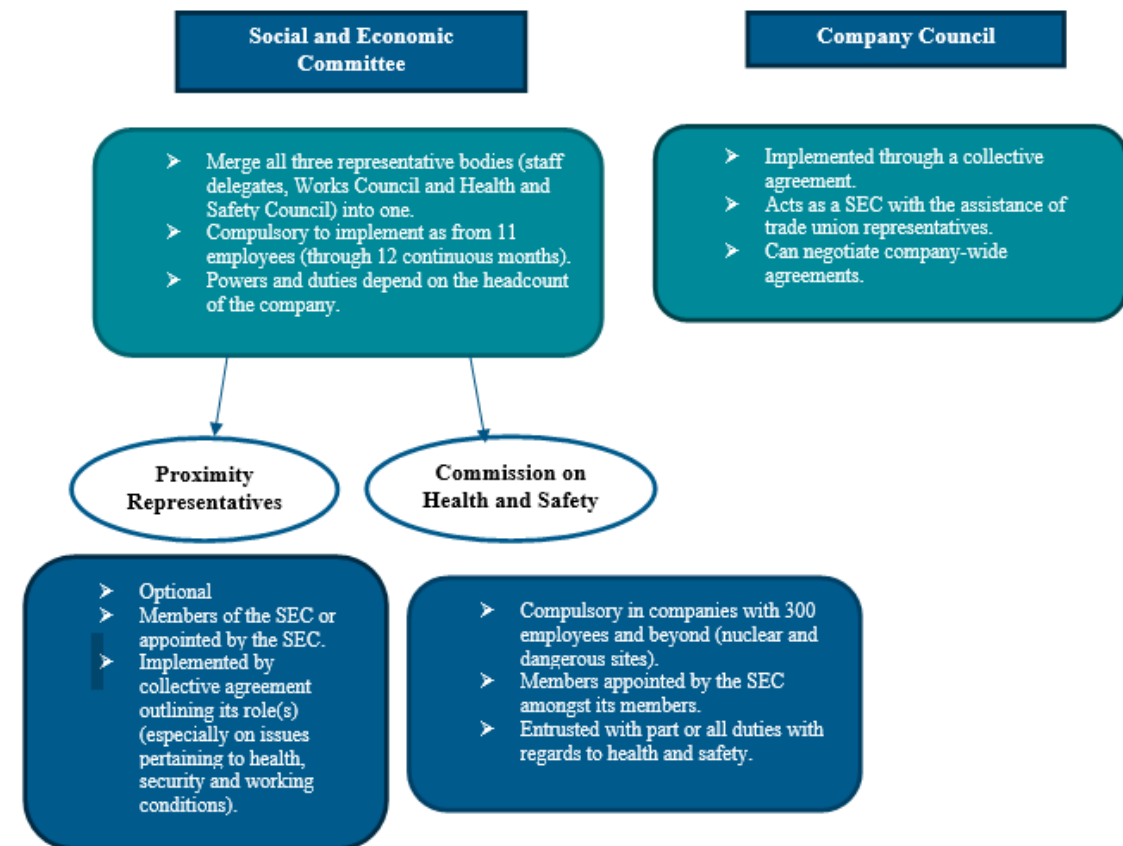
Finally, the reform introduces a fair dose of flexibility by providing that various organizational issues can be arranged between the employer and the unions through the conclusion of company-wide collective agreements, e.g., tailoring the number of annual meetings in companies with over 50 employees (within minimums depending on the head count), maximum consultation time frames of the SEC, or the pooling of delegation hours among members of the SEC.

Conclusion

Not only does the new law simplify collective representation as a whole, but companies, through the conclusion of collective agreements, will also have the possibility to tailor the SEC and its internal organization to their own needs and particulars.

The SEC should thus be a major step toward making French employment law more pragmatic and hopefully, making France more attractive to foreign investors.

The Reform at a Glance



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[1] Assessed over the last 12 consecutive months.

[2] "Comité social et économique" or "CSE", in French.

[3] Which provisions entered into force on Jan. 1, 2018.

[4] "Conseil d'entreprise" in French .