FLASH INFO

1. Law N.2014-856 of July 31st, 2014 on social and solidarity based economy (Official Journal of August 1st, 2014)

The Law on social and solidarity based economy dated July 31st, 2014 is worth noticing. Despite its title, some of its provisions, having a wider scope than the social and solidarity-based economy (SSE), may impact the implementation of company projects outside the SSE area.

Namely, the following provisions are worth remembering:

1. The creation of new information obligations binding on Small and Medium-sized Entreprises (SMEs) in the event of plan to sell;
2. The restoration of sanctions in the event that the employer infringes its obligations to search potential buyers when the closure of an establishment is contemplated (companies of at least 1,000 employees).

- **Sale of SMEs (workforce under 250 employees): new information obligations to the benefit of employees**

Please note, in addition to a periodic (ate least once every 3 years) and general information on the possibility of buying of the company by its employees, a new information obligation binding on the employer in the event of contemplated transfer of control *("cession de contrôle"*) or transfer of a business (*"cession d'un fonds de commerce"*).

This obligation concerns contemplated control transfers *(*for *"SARL"* companies: transfer of at least 50% of the company's shares; for *"SA"* companies: transfer of shares or securities giving access to the main part of the company's capital) or business transfers (whether the employer owns the business assets or not).

The information must, as a minimum, concern the fact that a transfer is contemplated and that employees can make an offer to buy the company or business (without any priority rights to buy).

The modalities of such information, which must enable to date precisely the time when the information is given, and the modalities concerning the assistance of employees, will be specified by decree. Employees will be bound by a discretion obligation concerning the information provided on the planed transfer, in the same conditions as for the members of the Works Council as the case may be (no specific sanction is provided).

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The time of the information depends on the workforce and organization of the company. For instance,if the event of transfer of control, the information must be given immediately and, at the latest two months before the transfer in the absence of Works Council; if the SME has a Works Council, employees must be informed at the latest at the time when the Works Council is informed and consulted on the planed transfer.

It is worth noting that the information procedure will have to be renewed in the event that the transfer occurs more than two years after the expiry of the time limit fixed to inform employees.

This new obligation applies to any transfer "concluded" at least 3 months after the publication of the Law. According to us, any plan to sell that should involve a closing date (as opposed to the date of signature) as from November 1st, 2014 would be concerned.

The sanction provided in the event of infringement of this new obligation is harsh and dissuasive: the transfer completed in breach of the prior obligation to inform employees can be cancelled at the initiative of any employee (being specified that this invalidity action lapses within a short period of time).

- **Closure of an establishment: new sanctions in the absence of efforts to find a potential buyer**

The Law of July 31st, 2014 restores the binding power of the provisions of the Law of March 29, 2014 on real economy, so-called "Florange Law", requiring that big companies contemplating to close an establishment and thus to implement collective redundancies must as a preliminary step search potential buyers, with the Works Council's support.

It was previously allowed to assume that this obligation would not be applied, as the French Constitutional Court *("Conseil Constitutionnel")* had invalidated the provisions of the Florange Law relating to its control and sanction (French Constitutional Court, decision N.2014-692 of March 27, 2014).

This lack is now fulfilled (as from August 1st, 2014) by the Law of July 31st, 2014, which subjects the validation of the company agreement or unilateral document on the job saving plan (*"plan de sauvegarde de l'emploi"*) and the consultation procedure to the compliance with the employer's information obligations concerning the search of potential buyers.

Please also note that the French Administration is, from now, on empowered with another prerogative (which is, in our opinion, alternative to the refusal of validation of the company agreement or unilateral document) in the event of failure by the employer: the possibility to order the employer to reimburse certain public aids granted to the company (public aids concerning the setting up of an activity, the development of a business, the research or employment).

The harshness of the sanctions provided by the Law of July 31st, 2014 invites to be cautious. It is therefore necessary to take the above-mentioned constraints into account immediately in order to prepare the timetable and implementation of the company projects.

2. Transfer of the employment contract agreed by the employee and the employer and discrepancies of treatment

- **A transfer of the employment contract agreed by employees and employer cannot justify a difference in treatment between employees performing the same work for the same employer on the same site**

In a judgment dated 15 January 2014 (n 12 - 25.402), the Supreme Court decided that the continuation of benefits resulting from a transfer of the employment contracts agreed by the employees and the employer is not intended to compensate a specific prejudice to this category of employees.

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Therefore, the inequality in treatment between employees performing the same work for the same employer on the same site is not justified by relevant reasons and disregards the principle of equality.

3. Job-saving plan ("*Plan de sauvegarde de l'emploi*")

- **Job-saving plan : issues related to psychosocial risks falls in the jurisdiction of the administrative Court**

In a judgment dated 10 September 2014, the District Court ("*Tribunal de Grande Instance*") declined jurisdiction to order the suspension of the implementation of a Job-saving plan that would include health and safety risks for employees keeping their jobs but not taken into consideration by the employer.

4. Works Council

- **The rules for information and consultation of the Works Council regarding training are now adapted**

A decree dated 12 September 2014 (n ° 2014-1045) updates regulatory provisions of the Labour Code regarding information that should be provided to the Works Council in the context of consultation on training. This update is intended to comply with the "Training" Law dated 5 March 2014. This text also brings a framework for the negotiation of Company agreements intended to adapt the schedule of Works Council consultative meetings on training.

5. « The cross-generation contract» (« *le contrat de génération* »)

- **The premium paid for the aid to hiring of senior employees is created**

A decree dated 12 September 2014 doubles the premium granted in the context of a cross-generation contract when the employer hires one junior and one senior employee at the same time. Since 15 September 2014, the amount of the premium is up to € 8,000. The decree specifies that the hiring of the junior employee must be performed six months after the hiring of the senior employee, at the latest.

6. Supplementary social protection

- **Mandatory complementary healthcare cost reimbursement : the minimum healthcare coverage is specified**

A decree n°2014-1025 dated 8 September 2014 (which was published in the Official Journal on 10 September 2014) regarding the mandatory complementary healthcare costs coverage specifies the minimum coverage that shall be guaranteed. For the record, companies must implement, no later than 1st January 2016, mandatory supplemental coverage providing reimbursement of expenses incurred due to illness, maternity or accident to the benefit of their employees, either through a branch agreement, a company level agreement or, in the absence of such agreement, a unilateral decision of the employer. This decree also determines the categories of employees who may waive affiliation at their initiative for their own healthcare coverage or their right holders.

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