



NEWSLETTER

THE HURTFUL NEW PROVISIONS OF THE FRENCH LABOR LAW OF JULY 21st, 2016 ABOUT FRANCHISE NETWORKS

The French labor law (so called “El Khomri” law) passed on July 21st 2016 and published in the French Official Journal on August 9th, is disrupting the franchise business by implementing in Article 64 an **unprecedented committee for social dialog** for any franchise network with more than 300 employees. The French Constitutional Court, to which this text especially incompatible with the spirit of the franchise was referred for review by a group of parliament members, finally validated the implementation of such committee except for two interpretation’s reservations and one partial censorship.

- Implementation of the dialog committee

Pursuant to Article 64 of the said Law, a **dialog committee common to the overall franchisees of a network** may be implemented, **upon demand** of a representative trade union organization within the sector of activity or in one of the sector of activities comprising the companies of the network or having formed a trade union section within a company of the network, provided that **the network contains at least 300 employees in France** and that the franchise contracts contain **clauses having an effect on the organization of work and working conditions** in franchised companies.

Subject to such conditions, the Franchisor shall start negotiation with the trade union organization having initiated the request for implementation of the dialog committee. According to the Constitutional Court’s decision, the franchisees shall have to be involved in this negotiation.

- Composition and functioning of the dialog committee

The committee is composed of employees’ representatives and franchisees’ representatives. It is chaired by the franchisor. The agreement which implements the dialog committee provides for its composition’s details, its members appointment modalities, the meetings’ frequency etc. The modalities relating to the expenses of dialog committee functioning, of the organization of the meetings and of the accommodation and travel expenses are provided in the agreement. In the absence of agreement, the text initially stated that such expenses shall be supported only by the franchisor but this provision was censored by the Constitutional Court.

In the absence of agreement, the number of meetings of the committee is set at twice a year and the other functioning modalities will be decided by a decree from the French State Council.

- Dialog committee's competences

The Franchisor shall inform this committee of any decisions of the franchisor **likely to affect the volume or the structure of the workforce, the work duration or the conditions of hiring, work and professional training of the franchisees' employees**. The dialog committee will also be informed by the franchisor of any companies joining or leaving the network. The dialog committee may also **submit proposals** aiming at improving the conditions of work, hiring and training of the employees of the overall network.

- Criticisms regarding the creation of the dialog committee

These new provisions have for stated purpose to ensure a better protection of the franchise network employees by granting them a committee of representation similar to the ones existing in integrated group of companies and of which they have been deprived until now. However, this text, although considerably lightened if compared to its initial version, is still highly questionable as it calls into question two of the fundamentals of the French franchise model which are **the legal independence of the franchisee with respect to the franchisor** and the **flexibility** of the operation of the franchise system. The implementation of this committee seriously hinders the entrepreneurial freedom of the networks.

- The committee hurts the principle of independence

The European Code of Ethics for Franchising defines it as a system “*[...] based upon a close and ongoing collaboration between legally and financially separate and independent undertakings [...]*”.

Such a dialog committee creates an important risk of interference from the franchisor in the management of its franchisees and creates a direct link between the Franchisor and the employees of the franchisees companies. It goes against the principle itself of independence which governs the franchise.

Furthermore and as previously mentioned, this committee is entitled to formulate proposals and will review any proposal from the franchisor or franchisees representatives likely to improve the conditions of work, employment and professional training of employees of the whole network. Such a provision is likely to hinder the functioning of the franchise network and of the operation of the companies being part of the network, which by definition and because of the independency granted by this distribution scheme do not have a common or homogenous social politic.

In such conditions, the franchisee may be deprived of its independence as an entrepreneur, of its right to implement its own labor policy and to determine the work conditions of its employees as required by the French labor law.

- A more complex functioning of the franchise which is highly detrimental

The implementation of such committee will also **complicate and slow down the obligations and the functioning of the franchise networks**.

Besides, the implementation of this committee is required for franchise networks only and therefore creates a **distortion and a difference in treatment with the other distribution schemes** (concession, cooperatives etc.). Questions must be asked about why the other networks were spared and if eventually such new constraint may not result in a disaffection of the franchise distribution's scheme in favor of other lighter structures.

- The uncertainties resulting from the text

Finally, the scope of article 64 quite **broad and unclear** will generate number of questions about the perimeter and the conditions of its implementation. In order to be in the scope of the Law, Franchise's contracts shall provide for clauses having an effect on the organization of work and working conditions in franchised companies. In practice, any contract providing for a minimum of functioning rules may be concerned. Therefore, will it be enough and for example that a franchise's contract provides for minimum opening hours to fall within the scope of article 64?

Many questions will also arise about the perimeter of the information which shall be provided by the franchisor during the dialog committee's meetings, i.e. any decisions of a franchisor that may affect the volume or the structure of the workforce, the work duration or the conditions of hiring, work and professional training of the franchisees' employees. Such formulation particularly broad and imprecise will definitely generate many debates and many disputes in particular regarding **the consequences of an infringement by the franchisor of its obligation of information**, one among many subjects which are not addressed by the law.



Your contact:



Frédéric Lecomte
IT-IP Partner
f.lecomte@stehlin-legal.com