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France: Staff information and consultation on business transfers

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France

Phase:

Anticipation

Type:

Staff information and consultation on business transfers

Last modified: 18 June, 2021

Native name:	Code du travail, Code du Commerce, Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie
English name:	Labour Code, Commercial Code, Law on the Modernisation of the Economy No 2008-776 of 4 August 2008

Article

Labour Code: L.2323-19; L.2323-33 ; Commercial Code: L.141-23 to L.141-27 ; Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie

Description

Information and consultation on business transfers

There is no specific provision requiring the transferee to inform and consult the works council. However, the information and consultation procedure in case of transfers shall follow the general principles of information and consultation, as under French law, the employer is responsible for informing the works council (Labour Code, [article 2323-19](#)).

However, the Labour Code denies information and consultation rights to the employees when no representative bodies are present within the company. The French legislation has not implemented article 7 § 3 of the European transfers of undertakings. In two decisions ([Social Chamber of the Supreme Court from 18 November 2009, n° 08-43397](#), and [17 December 2013, n° 12-13503](#)), the Supreme Court refused compensation to an employee, working in a company without an information and consultation body who had not received information from their employer in case of a transfer.

Information and consultation on sale of business

Since 2014, employers of companies employing fewer than 250 employees and with a turnover of less than €50 million (or a balance sheet total of less than €43 million), have to inform their staff about any project to sell the company, so that they are able to look for a buyer or take over their company. The information to provide to the employees' representatives or directly to the employees if there are no information and consultation bodies shall include

- a statement of the seller's wish to sell the business, and
- a statement indicating that the employees may make an offer to buy it.

The employer must provide such information by any means:

- two months before selling at the latest, in companies with fewer than 50 employees (and therefore not submitted to the commitment to set up a works' council)
- at the latest the day of the first meeting of the works council on the project to sell the company

Once the employees are informed, the employer has two years to complete the sale of the company. If he/she fails to sell within this time period, he/she will have to start a new information and consultation process (Commercial Code, [articles L.141-23 to L.141-27](#) and [L.141-28 to L.141-32](#)). For companies with fewer than 50 employees, if all employees inform the employer before the end of the two months' period that they will not submit an offer to take over the company, the transaction can be completed earlier. The employer is entitled to reject the offers made by the employees as the law does not grant the employees a right of first refusal in this matter. If the employer fails to comply with these regulations (no information provided or information provided too late), employees can introduce an action before the civil court against the employer to obtain damages.

Comments

Since 2015, no sale has been cancelled due to non-compliance with the regulations.

A [first assessment](#) on the new commitment to inform employees about a sale of the company quoted a survey launched by the data, insight and consultancy company IFOP on behalf of the employers' organisation CMPE and the consultancy firm KPMG highlighted that 64% of employers agreed with this provision. The measure has been adapted in 2015 to replace the sanction provided for in case of non-compliance with the regulations – the cancellation of the sale – by a sanction determined by the judge.

Cost covered by

Not applicable







Involved actors other than national government

Works council

Thresholds

No, applicable in all circumstances

Sources

-  [Labour Code \(article 2323-19\)](#)
-  [Commercial Court \(articles L.141-23 to L.141-27\)](#)
-  [Commercial Court \(articles L.141-28 to L.141-32\)](#)
-  [Government website on commercial law, 'En cas de cession d'une entreprise, les salariés doivent en être informés', \(in French\)](#)
-  [First assessment of the information commitment on the business selling \(2015\)](#)
-  [Ministère de l'Economie, Guide pratique "Droit d'information préalable des salariés en cas de vente d'une entreprise", January 2016 / Guidelines for employers and employees to deal with the information commitment about sell of business /](#)

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