
France

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A. LEGAL ASPECTS

The general lines of the system of management

French legislation (in the law of July 24, 1966) leaves shareholders complete freedom to choose between the two main systems of corporate governance in public limited companies: the monistic system with a single board of directors, or the dualistic system with an executive board and a supervisory council (or ‘supervisory board’). A combination of both is not permitted.

French legislation is thus already in accordance with Statute 21257/2001 of 8 October, 2001 regarding the European Company, which stipulates that the SE may opt for either system (article 38).

Nonetheless, one should note that the vast majority of businesses established in France have a preference for the monistic system and that this situation tends to prevail more and more. Statistics show that the number of companies opting for the executive board along-side a supervisory council is declining and that several of those who had previously opted for such an arrangement have switched back to the traditional system with a single board of directors.

The law of May 15, 2001 concerning the “new economic regulations” paved the way for a lot of flexibility in the way that boards of directors operate. More specifically, companies with a board of directors now have the choice between either separating the roles of President and managing director, on the one hand, and, on the other hand, maintaining a combination of these two posts.

So, now companies are effectively able to choose between three patterns for the organisation of management and control.

Regulations governing the participation of workers:

1. The participation of salaried employees in private companies’ boards of directors:

Two kinds of representation: wage earners and the share scheme employees.

One may make provision, in the statutes of joint stock companies in the private sector, for board members elected by the company’s salaried employees to sit on the board with a vote of deliberation.

Only the employees with a contract of employment signed by the company or by one of its subsidiaries are eligible. Moreover the number of board members elected by the company’s salaried employees should not make up more than one third of the other members of the board of directors.

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This framework for participation of wage earners in the boards of directors is just a possibility offered to shareholders and not an obligation. In fact, shareholders can even change their minds in an Extraordinary General Meeting and cancel the participation of salaried employees in the board of directors.

In addition to these provisions, companies have been invited – since the law of February 19, 2001 – to admit one or several representatives of ‘share-scheme employees’ onto the board of directors when they hold at least 3% of the registered capital (as against 5% under previous legislation).

If a level higher than 3% is reached during a fiscal year, then an extraordinary general meeting held before the ordinary general meeting is invited to make decisions concerning the participation of share-scheme employees (it is also supposed to come to a conclusion as regards the participation of wage earners).

The shareholders may reject the modification which is proposed. They will then have to be consulted again within three years (provided that the participation rate of employees still accounts for at least 3% of the capital).

At present, the vast majority of CAC 40 companies, whose wage earners have a significant share of the capital, still refuse to allow their representatives to be board members (a DARES survey had emphasized that in 1996 two-thirds of companies which had 5% or more of their capital in the hands of wage earners did not have board members representing those wage earners).

In all cases, the board members who are elected by the wage earners will have the same status, the same powers and the same responsibilities as the board members who are appointed by the shareholders’ general meeting.

Remuneration of the wage-earning board members

Remuneration of the wage-earning board members abides by what is known as ‘the general rule’. The general meeting sets the total amount of attendance allowance (fixed annual sum which represents the only possible payment for being a board member). The board is then free to make decisions about the distribution of this sum among their members. The terms of payment of the employees’ representatives in the supervisory council (dual system) are similar to those of the board of directors.

It is also necessary to note that the mandate of a board member elected by the company’s salaried employees in the private sector is incompatible with any kind of mandate as worker representative in the structures of works councils, central works councils, group councils or European works councils.

System of appointment of the wage-earning board members

The wage-earning members are elected by the company’s wage-earners but also, if it is mentioned in the statutes, by those of its direct or indirect branches, provided that their head office is located in French territory. The wage-earners are divided up in two constituencies – executives and non-executives. The applications or lists of candidates may be fielded by one or several trade unions, deemed representative in of employment legislation, i.e. by 5% of the wage-earning voters (100 of them if the number of wage-earners is higher than 2,000). The duration of the term is set by the statutes but cannot exceed 6 years. The terms of appointment of the employees’ representatives in the supervisory council (dual system) are similar to those of the board of directors.

System of appointment of the board members who represent the share-scheme employees

These appointments depend on the qualification of the ordinary general meeting of the shareholders. The candidates are appointed on the initiative of the president of the board of directors (or executive board) and prior to the general meeting of the shareholders:

- by the supervisory council of each open-end investment trust when the right to vote which goes with the shares held by the wage earners is exercised by the board members.
- by the share-scheme employees themselves, when the right of vote is directly exercised by them (in such a case, only the applications presented by a group of shareholders representing at least 5% of the share scheme employees can be accepted).

The exception of privatised companies

Since the law of July 25, 1994, in case of transfer of a company from the public to the private sector, the statutes of this company should be modified before the transfer is implemented so as to reserve a certain amount of seats in the board of directors for the representatives of the salaried employees:

- two seats for the representatives of the labour force as a whole and one seat for the share scheme employees if the board of directors is made up of less than 15 members.
- three seats for the representatives of the labour force as a whole and one for the share scheme employees if the board of directors is made of more than 15 members

2. The employees' representatives in the public sector companies:

The July 26, 1983 law regarding the democratisation process of the public sector opened the door to the representation of wage earners in the board of directors or in the supervisory councils of public sector companies.

The number of these delegates varies according to the workforce of the company: three representatives if this workforce represents between 200 and 1,000 employees, one third of the members of the board of directors for a staff of over 1,000 people. The employees' representatives in the board of directors are elected thanks to a one-ballot vote with proportional representation; One seat should be reserved for the executives.

The salaried employees' representatives serving in this function are unremunerated. However, they benefit from reduced responsibility compared to the general legal framework. First, when their responsibility is implicated, it must be judged by taking into account the absence of financial compensation for their mandate. Secondly, there is – whatever the situation- no joint and several liability with the administrators who represent the shareholders.

3. The representation of works councils in the boards of directors and supervisory councils

Since the law of October 28, 1982, in joint stock companies, the works council can appoint two members (one from the group of executives, technicians and supervisors, one from the group of employees and workers) to attend all the meetings of the board of directors or supervisory council. However, they only have an advisory role.

They may claim for the same documents as those given to the other members of the board of directors or SC. They are allowed to make proposals in the name of the works councils about which the board of directors or SC must give a motivated opinion.

Article 99 of the law concerning the May 15, 2001 new economic regulations intended to urge works councils to be 100% actors of the company law by introducing two new clauses (new article L 432-6-1 of the work legislation):

- in companies, the works council may resort to legal proceedings in order to appoint an assignee whose role is to call a meeting of the shareholders in case of emergency. It may also request the registration of termination plans on the agenda of the meetings.
- in companies, the works council may appoint two of its members - one of the group of executives, technicians and supervisors and the other of the group of employees and workers - to attend the general meetings. (This clause is useful only in the case of non-listed companies because, for the others, it is a long standing convention for them to have shares bought by one or several members of the works council). They must be listened to – upon their own request - in the course of all the proceedings which require the unanimous consent of the associates.

Conclusions

The participation of salaried employees in the management structures of companies is, in France, mainly optional and highly minority.

The influence of these employees is legally limited and reduced in fact, considering both the practises of the companies (few companies resort to the legal possibility of having the employees' representatives participate in the structures of management) and the prevailing monistic system which tends to limit the role of the boards of directors to the mere validation of decisions which are made at another level.

Moreover the French trade unions have, for a long period of time, shown very little interest in participation.

HISTORICAL ENVIRONMENT/ CULTURAL/ POLITICAL ASPECTS

How and why do we have this situation today?

In France the management of companies is historically dominated by the prevailing role of the state in the production network (post-war nationalisations then the 1982 nationalisation program). This situation has long influenced the nature of the management teams of big companies who, in the majority, have been trained in the same 'Grandes Ecoles' (ENA and the Polytechnics). This has frequently led to the domination of these 'elites' in the boards of directors.

Moreover, until the mid 80s, the structure of the capital of French companies compared to that in other countries has been largely based on bank financing, itself being under the control of the

state. Among the G7 countries, France was then the country in which one could find the highest concentration of shareholders. Company management has, for a long time, been characterised by stable and close relationships between managers and shareholders (comprehensive coherence of leading elites, concentrated shareholding, major impact of institutional financing).

Although the company concept which is put forward aims at targets which are more significant than the sole interest of the shareholders (“the social interest of the company” put forward, for instance, in the 1995 Vienot report about company management), the role of workers’ representatives in company management has never been significant in France.

Historically the French system of labour relations is characterized by poor negotiations and the prevailing logic of disputes. French employers have constantly striven to protect their power. French trade unions, politically divided, have shown little interest during the post-war decades for the taking of responsibility in the co-management of companies.

As for the works councils, they have focused for a long time on charitable, social aspects. The development of restructuring and the 1982 Auroux laws paved the way for the reinforcement of the works councils’ economic prerogatives and the development of information consultation processes.

The present environment of company management is yet very different from this historical picture, resulting from certain amount drastic changes from the mid 80s onwards. More specifically:

- major restructuring of companies from as early as the late 1970s
- important waves of privatisation: the 1986 privatisation law led to the sale of 65 companies up to 1991. In 1993 the new right-wing government implemented a new program of privatisation (twenty or so companies). The Jospin government followed suit from 1997 onward, thus reinforcing the structural aspect of the privatisation process and the opening up of the capital of public companies. This mutation has led to an increasingly greater number of new shareholders (institutional investors) in the capital of French companies, which deeply modified the balance between the concerned parties to the benefit of shareholders.
- transformation of the means to finance companies: prevailing indebtedness disappeared in favour of self-financing (increase in company profitability and an increasing ratio of profits in the value added).
- larger role of the stock market and impacts of *financiarisation* (deregulation and liberalisation): transfer of capital between the companies and their shareholders, mergers-acquisitions operations etc.
- globalisation of French companies

Parallel to these financial and capital evolutions, several reports (the Vienot reports, the September 2002 Bouton report) have urged high-rated companies to adopt management methods which are more and more focused on the Anglo-Saxon model (see footnote). For instance, recently, the more and more central promotion of “independent administrators” within the boards of directors tends to emphasize a concept of company management which is already more and more controlled by external power.³

³ There are two main types of approach to company management. One is based on the concept of company considered as a group made up of a variety of intervening parties who are defined by their status (shareholders, workers, managers). The other one focuses on the only shareholder whose management is supposed to guarantee

Conclusion

The French system of company management can thus be seen as highly destabilised, its historical background being largely under question today. The extremely brisk and substantial emergence of foreign investment in the capital of many groups tends to strengthen the role of policies focused on security for shareholders, whereas the participation rate of the employees' representatives is still very low.

Nevertheless a certain amount of changes have been visible for a few years. On one hand the participation of the employees in the process of decision-making has been reactivated by the development of the employees' financial participation (corporate performance schemes, profit-sharing schemes, company savings schemes, employee share-schemes, stock options..).

However a recent survey (Rébérioux, 2003) confirms the complexity of the issue of the participation of employees in the process of decision-making. It paid particular attention, through an econometric study, to clearly defining the links between the structure of the financial capital (quotation and identity of the shareholders) and the rate of participation of the wage earners in the management of companies. It brings out a negative impact of quotations on the quality of the information passed to the employees' representatives about the most strategic topics as well as on the integration of wage earners in the process of decision-making. A listed firm will thus tend to pass less information to their employees' representatives and to consult its wage earners to a lesser degree than a firm with an unrestrainedly negotiable capital.

From a general point of view, Europe seems to be under the influence of two heavy contradictory trends which refer to the two main patterns of company management (see supra): the rising emphasis on a financial logic supported by the globalisation of financial markets on one hand and the increasing integration of wage earners in the process of decision-making in the company on the other hand.

It remains that the issue of the participation of the wage-earners, nowadays in France, seems to be less of a taboo subject, even in trade unions.

The prospect of the European Company is thus able to offer them a good opportunity to further promote their claims for increased involvement in the process of decision-making in companies.

a maximum return on investment. This latter approach tends to become the reference in today's debate on company management.

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