

FRENCH MANAGERS' COMPENSATIONS: FROM GOVERNMENT TO PARLIAMENT, LIMITS ARE TIGHTER AND TIGHTER

We released an article in the press on March 31, 2009 when the decree pertaining to the managers' compensations was enacted by the French Government (the "Decree"). Since then, the question remained on the agenda and continued to be discussed in the media... Here are the main lines of a hectic battle between the French Government and the Parliament.

Given the current financial turmoil, the adoption of the Decree dated March 30, 2009 revealed the French Government's determination to react strongly and quickly, by regulatory means, against the extensive controversies concerning executive compensation practices.

In particular, the Decree bans stock-based compensations, such as stock options and free allotments of shares, for managers and executives of companies having benefited from the financial assistance of the State. It also specifies that such companies shall strictly limit and control the granting of variable compensations and shall base them on pre-established quantitative and qualitative performance criteria, not linked to the Stock Exchange quotation. Hence, bonuses shall not be paid or granted should the company proceed to large redundancy plans.

However, the Decree did not end the debate.

First of all, as anticipated, the Decree has an extremely limited scope as it only applies to companies receiving the exceptional financial assistance of the State

(i.e. a few banks and companies in the car industry) and to state-owned companies.

Moreover, when discussing the amendments to the 2009 Finance Act on April 2, 2009 (less than two days after the release of the Decree), the *Sénat* (French Senate) adopted, against the opinion of the Secretary of the Treasury, an amendment pertaining to managers' compensations. Therefore, the Senate raised the issue on a legislative level considering that such issue should be discussed by the Parliament and not only at Government's level.

After their review by the *Commission Mixte Paritaire* (a committee gathering senators and deputies, which prerogative is to conciliate the opposite views of the *Sénat* and of the *Assemblée Nationale* on a draft bill), the Parliament adopted on April 9, 2009 the definitive version of the amendments to the 2009 Finance Act (the "**Law**").

Such Law (officially adopted on April 22, 2009) includes in part the Senate's amendment dated April 2, 2009 and therefore modifies the measures enacted by the Government. Indeed, it widens the scope of the Decree:

- (i) Whereas the Decree only concerns a few banks and companies in the car industry (receiving exceptional financial aids from the State) and state-owned companies, the Law also includes companies benefiting from other financing measures and incentives. As a consequence, other car manufacturers and sub-contractors

receiving financial aids are now concerned by the strict measures on managers' compensations.

- (ii) Although the Prime Minister expressly excluded them from the scope of the Decree during his press conference on March 30, 2009, companies helped by the *Fonds Stratégique d'Investissement* (Strategic Investment Fund) must follow the same regime as state-owned companies.
- (iii) In addition to the ban of stock-based compensations for managers and executives of companies receiving State's financial aids, as provided by the Decree, the Law strictly limits the granting of bonuses, performance related indemnities and benefits as well as deferred compensations, which can also be banned. Therefore, golden parachutes and top-up pensions are now concerned whereas they had been ignored at first by the Decree.

As a consequence, the Law goes further than the Decree and along the same lines as our remarks in our previous article on this matter.

Indeed, contrary to stock options or free allotments of shares, the payment of bonuses or of other variable compensations directly impacts a company's cash flows. It seems thus legitimate to ban them in a turbulent economic context, all the more so since the companies concerned are inclined to complete mass redundancy plans. These rules will apply until December 31, 2010... or longer if France has not exited the crisis by this date.

At the end, the ball was in the Government's court again.

Indeed, the Government had to adopt a new text to amend the Decree and implement the Law effectively. Therefore, the new text clearly mentions top-up pensions and bans them in companies receiving State's financial aids.

With executive compensations that still hit the headlines and top managers that decide to give up their bonuses or stock-options, only time will tell whether this battle between the Government and the Parliament really ended the debate...

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