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ROYAL DECREE 1362/2012, OF SEPTEMBER 27, 2012, REGULATING THE NATIONAL CONSULTATIVE COMMISSION ON COLLECTIVE LABOR AGREEMENTS

Royal Decree 1362/2012, of September 27, 2012, regulating the National Consultative Commission on Collective Labor Agreements was published in the Official State Gazette on September 28, 2012 and has been in force since September 29, 2012.

This Royal Decree, which was made in compliance with the provisions of Law 3/2012, of July 6, 2012, on Urgent Measures for the Reform of the Labor Market, aims to regulate the composition, organization and functions of the National Consultative Commission on Collective Labor Agreements (which we will refer to by its Spanish acronym, the “CCNCC”).

Accordingly, it regulates the procedures shaping not only the CCNCC’s traditional consultative functions and role as a collective bargaining observatory, but also its decision-making functions in disputes that may arise in the context of a procedure to dis-apply the working conditions stipulated in the applicable collective labor agreement (“opting out” of collective labor agreement conditions). This function is undoubtedly important, since it will encourage and bolster the use at companies of internal flexibility mechanisms, thereby avoiding the need to resort to more drastic measures to implement employment adjustments, such as layoffs.

We describe below the most significant aspects of the new Royal Decree.

1. NATURE, COMPOSITION AND FUNCTIONING

The CCNCC is defined as a collective, tripartite body attached to the Ministry of Employment and Social Security and composed of representatives from the Executive, and from the most representative labor union and employer organizations.

The CCNCC will function ordinarily as a standing committee with a view to making its role more flexible and responsive, although it may reserve the option of sitting as a plenum to approve certain opinions, reports and decisions.

2. FUNCTIONS

The CCNCC will perform the following functions: (i) consultation, (ii) collective bargaining Observatory, and (iii) decision-making on disputes due to a lack of agreement in procedures to dis-apply working conditions established in collective labor agreements.

We now take a brief look at what these functions entail.

2.1 Consultative functions

In exercising its consultative functions, the CCNCC will make rulings in the form of nonbinding opinions and reports on the following matters:

- The adequate definition of the scope of the activity to which a collective labor agreement under negotiation is to apply (in relation to industry-wide collective labor agreements, the territorial scope of which extends beyond more than one autonomous community, or the collective labor agreements of companies that have workplaces situated in the territory of more than one autonomous community or in the cities of Ceuta or Melilla).
- The interpretation of a collective labor agreement currently in force with a view to determining the scope of the activity to which it applies (in relation to industry-wide collective labor agreements, the territorial scope of which extends beyond more than one autonomous community, or the collective labor agreements of companies that have workplaces situated in the territory of more than one autonomous community or in the cities of Ceuta or Melilla).
- The determination of which collective labor agreement is applicable to a company, based on its activities (regardless of where the company is established).

In addition, the CCNCC must be consulted in the event of the extension of the scope of a collective labor agreement, in conformity with the provisions of article 92.2 of the Workers' Statute.

The following have the right to consult the CCNCC: (i) the most representative labor union and employer organizations, (ii) directly-elected workers' representative bodies or a labor union or employer entity with a legitimate interest in such consultation, and (iii) any labor authority or court with jurisdiction in matters related directly or indirectly to the application or interpretation of a collective labor agreement.

2.2 Collective bargaining Observatory

The CCNCC will take on the functions of a collective bargaining Observatory, covering the preparation and dissemination of collective bargaining information, studies and documentation (including the production of annual reports on, and the periodic monitoring and analysis of, the state of collective bargaining in Spain, the dissemination

of good practices and new breakthroughs in the field of collective bargaining, or the pursuit of activities that permit the Observatory's work and collective bargaining role to be publicized).

2.3 Decision-making functions relating to disputes over procedures to dis-apply working conditions established in collective labor agreements

2.3.1 Requirements

The CCNCC will resolve a dispute between a company and the representatives of its workers due to a lack of agreement in procedures to dis-apply working conditions established in the applicable collective labor agreement, as referred to in article 82.3 of the Workers' Statute, provided that both of the following conditions are met:

- There must not have been an application for the involvement of the joint employer/employee committee under the collective labor agreement, or if its involvement has been sought, the committee must not have reached an agreement.
- Any procedures established in general nationwide multi-industry agreements *ex* article 83 of the Workers' Statute, including the prior commitment to submit disputes to binding arbitration, must not be applicable, or where any such procedures have been used, they have not resolved the dispute.

2.3.2 Jurisdiction

In order for the CCNCC to entertain an application for its involvement to resolve a dispute, the disapplication procedure must affect (i) company workplaces situated in the territory of more than one autonomous community, or (ii) companies situated in the cities of Ceuta or Melilla.

Notwithstanding the above, additional provision two of the Royal Decree provides that under collaboration agreements between the Ministry of Employment and Social Security and the autonomous community governments, it is possible to allow the CCNCC to act in the territory of autonomous communities in which equivalent tripartite bodies have not yet been established and until such time as they are.

2.3.3 Application and procedure

Companies and workers' statutory representatives (or in their absence, a committee composed of a maximum of 3 members appointed pursuant to article 41.4 of the Workers' Statute) are entitled to seek the involvement of the CCNCC.

The main aspects of the procedure are summarized below:

- The procedure must be commenced by means of an application submitted electronically by one of the parties on the website of the Ministry of Employment and Social Security. The application must indicate (i) the reason for the dispute, (ii) the proposal to dis-apply working conditions, (iii) the new working conditions to be applicable at the company, and (iv) their period of application. The application must be accompanied by the documentation stipulated by article 20 of the Royal Decree.
- The applicant must serve a copy of the application (and the accompanying documentation) on the other party immediately after it has been submitted, giving notice of the number allocated to it. Evidence that this obligation has been fulfilled must be provided.
- After the application has been received and, where appropriate, after a request has been made to remedy any defects in it, the Secretary of the CCNCC will send it immediately to the other party so that it may such submissions as it sees fit within 5 days.
- The decision resolving the dispute may be rendered (i) by the CCNCC itself, or (ii) by appointing an arbitrator from among independent and impartial experts. If the parties agree on the applicable dispute resolution procedure, the agreed procedure will be the one conducted. Otherwise, the CCNCC itself will choose the procedure.
- Where the dispute is resolved by the CCNCC itself, whether sitting as a standing committee or plenum, a report will be requested from the CCNCC's technical services and must be issued within not more than 10 days following the date of request.

Within this 10-day time period, the parties may be asked to provide supplementary documentation or explanations. Once the report and any submissions made by the other party have been analyzed, the standing committee or plenum must meet to resolve the dispute.

- An arbitrator will be appointed from among independent and impartial experts. Where the parties agree on the appointment of the arbitrator, the mutually agreed arbitrator will be appointed preferentially. Otherwise, the CCNCC will make the decision by agreement between its members and if an arbitrator cannot be appointed, the decision will be made by the CCNCC itself.

After being appointed, the arbitrator will be formally given the brief together with the application and accompanying documentation, and the deadline by which the award must be made. For this purpose, the parties may be asked to appear or to provide supplementary documentation. The CCNCC will also provide the arbitrator with such supporting resources as he/she may require, including, at the arbitrator's request, a report from the CCNCC technical service.

- The CCNCC's decision or the arbitral award, which will be binding and immediately enforceable, may (i) reject the disapplication of working conditions (because the grounds cited do not exist), (ii) accept the proposal to dis-apply the working conditions as it stands, or (iii) propose their disapplication but with a different degree of intensity (after gauging their appropriateness in relation to the ground cited and their impact on the affected workers). A ruling will also be made on the duration of the period for dis-applying the original working conditions.
- The decision must be rendered within not more than twenty-five days, reckoned from the date on which the dispute was submitted to the CCNCC.

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