Right to make mistakes and to request a review: no more penalties for a first mistake in administrative declarations

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On 12 August 2018, the law n° 2018-727 for a State at the service of a trusted society (loi pour un Etat au service d’une société de confiance) entered into force. This text provides for a series of measures aiming to “promote favourable relationships” with the administration.

This law creates a right to make mistakes in declarations to the administration, supplemented by a right to review.

**A new generalised right to make mistakes**

The principle laid down in the new Article L.123-1 of the French Code of relations between the public and the administration claims to be simple: natural persons or legal entities who infringe for the first time a rule applicable to their situation, in good faith, will not be punished by the administration if they regularise their situation, either of their own accord, or after being invited to do so. Therefore, this is a **right to correct a mistake**.

The administration will **compulsorily have to invite the company to regularise** its situation if it does not do so of its own accord. To avoid a penalty, the company will have to regularise the situation within the time allotted by the administration.

**Many types of mistakes excluded**

However, some mistakes are not covered by the right to make mistakes:

- It does not apply in case of **bad faith** or **fraud**.
- It only applies to the **first** involuntary **infringement** of applicable rules.
- It only applies if the mistake **may be regularised**, which is not the case for instance when a correction to a declaration is made after the time limit to make the declaration has expired.

- **Delays in or failures to make a declaration** do not fall within its scope.

**Broad fields of law set aside**

The law adopted specifies that the right to make mistakes does not apply to penalties:

- **Bad faith** or **fraud**
- **First** involuntary **infringement** of applicable rules
- **May be regularised**
1. required to implement **European Union law**;
2. ordered in case of an infringement of rules directly safeguarding **public health, safety of people and goods or environment**;
3. provided for in a **contract**;
4. ordered by **regulatory authorities** towards professionals subject to their control.

**A welcome result: the right to request a review for companies**

A company can now **request an administration to make a review** to ensure it complies. The administration will have to make such review within a **reasonable time**.

Then, the company will be able to **rely, against the administration, on the conclusions** of this review. However, the administration’s conclusions can no longer be relied upon:

- In the event of a **change in circumstances** after the conclusions likely to affect their validity;
- When the administration makes a **new review** giving rise to new express conclusions;
- If they go against rules aiming to directly safeguard public health, safety of people and goods or environment.

If, at the end of such a review, the administration observes an infringement of rules, **the company can regularise its situation** in the scope of the "right to make mistakes" presented above.

Other provisions of this law can also be of interest to you. Please contact us for more information.

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