

**DIALOGUE FOR ADVANCING SOCIAL EUROPE, DIADSE –
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Policy Paper – FRANCE

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1. Introduction

The labour market in France has been relatively resilient in the face of the global financial crisis of 2008 and 2009 and the sovereign-debt crisis in 2011. On average, GDP declined slightly more in the rest of the Eurozone than in France. Unemployment rates have been rising in the 8 year period under study. Between 2008 and 2009, there was a massive rise in unemployment to its highest level since the late 1990s. After stabilizing for a while, from 2011 a second wave of the crisis led the unemployment rate up to 10.4 per cent in 2013 and has remained stagnant since then. In 2009, output suddenly stalled in France as well as in most European countries, but companies reduced employment more slowly than during previous recessions. While having been hit sooner by the economic crisis than most of the Eurozone countries, France was more efficient in limiting the output decline in 2010, and again in 2012 and 2013.

The French labour market tempered relatively well the initial impact of crisis compared with other EU neighbour countries. However, France has begun to lag behind other European economies in terms of its per capita GDP. Until the 1990s, France was among Europe's leading economies in per capita GDP. By 2010, however, the country had dropped to 11th out of the EU-15. The main drivers of that change have been the low labour force participation of seniors and young people, as well as relatively high unemployment rates.

As regards the impact of the economic crisis, France's policy management during the crisis is widely recognized for its efficiency in cushioning the main effects of the crisis, both on output and the labour market. Indeed, France benefited from powerful automatic stabilizers (in particular Unemployment Insurance and poverty allowances, RSA). As a consequence, France has experienced only a moderate decline in output despite negative fiscal impulses and tight fiscal austerity during the examined period.

The country's major weaknesses, identified by the OECD, are the rigidity of its labour market and the high labour market duality. This organisation recommends taking measures to make employment contracts more flexible and simplify and shorten layoff procedures, while continuing to guarantee sufficient income protection for workers between jobs. The OECD believes the reforms already undertaken by the French government in the last years do not assure economic recovery and calls for more "ambitious" structural reforms. (OECD report: 'OECD Economic Surveys France 2015')The French response to this recommendation has been to present a proposal to adopt a second Macron Act in 2016. The "Macron 2" Act continues the structural reform programme begun by "Macron 1," officially named the Growth and Economic Activity Act, which aims to relax labour laws.

In France, in recent years labour law has been identified by many policy makers as one of the major determinants of the high unemployment rates in the country. This vision has served as justification for the adoption of several structural reforms of labour protection legislation. The French administration was not compelled by the European institutions to adopt those reforms, as it has not received any financial direct aids from the EU. However, the French legislators and policy makers followed the recommendations issued by Brussels, which clearly reflected a labour market flexicurity approach. Examples of this trend are the Act on Securing Employment 2013, adopted on 14 June 2013, following the signing of the national inter-professional agreement of 11 January 2013; the Macron Act and the Act on Social Dialogue and Employment (Rebsamen Act).

A main feature of the recent labour law reforms has been to reinforce employees' involvement procedures and collective bargaining at enterprise level. In order to strengthen the employees' involvement in the company, a new system of sharing strategic information of the company in the economic and social fields for employees' representatives is set up. This is done through the creation of an economic and social database. According to the national inter-professional agreement which inspired the Law on Secured Employment, access to shared economic information is central for the employees' involvement; crucial for the viability of enterprise survival solutions and an essential condition for effective and quality of social dialogue. The same legislation law also stimulates the information and involvement of employees on enterprise strategies, by promoting the participation of employees' representatives on the boards of large companies.

2. Act on Securing Employment 2013

On 14 June 2013 the Act on Securing Employment was adopted, following the national inter-professional agreement of 11 January 2013, which intends to establish "a new Economic and Social model in supporting competitiveness and to secure employment and careers of employees." The aim of the Act on Securing Employment 2013 is to facilitate the adaptation to structural and cyclical economic change. This Act introduces innovative measures allowing companies to adopt 'agreements on job retention', which temporarily modify their employees working time, wages and other employment conditions. This legislation has also reformed collective economic dismissals procedures and facilitated conciliation in labour courts by allowing the payment by the employer of a lump-sum compensation based on the employees' seniority.

This legislation follows the trend to decentralization of collective bargaining which has inspired the labour law reforms since 2004 in France. In an attempt to promote dialogue at company level, it streamlines and improves the quality of information provided to the employees' representatives bodies by establishing a new unique database with the economic and social information on the company to which the employees' representatives are granted access. On the one hand, this database facilitates the information and consultation procedures of the employees' representatives bodies. On the other hand, in terms of HR management, it allows a better anticipation on the strategic orientations of the company.

This Act also promotes the mobility of employees. Several provisions on the Act on Securing Employment aim to assist the worker to acquire new skills and to change jobs through the secured voluntary mobility and the rule on the portability of rights. Therefore, the Act on Securing Employment aims to provide more protected occupational pathways for employees in France.

3. Macron Act 2015

The Act on Economic Growth and Activity, the so-called “Act Macron”, was adopted on 6 August 2015. This Act includes several measures on the labour law field, including removing working time restrictions and a reduction in workplace protection. The most relevant reforms in the social field include employee savings plans, Sunday and nightshift working hours, new redundancies procedures, new rules on profit-sharing and employee share-ownership incentives and the implementation of a scale of compensation for the employment tribunal may grant in cases of unfair dismissal.

The Macron Act first drafts intended to imposed on employment tribunals a fixed scale on the range of damages to be awarded to employees in cases of wrongful dismissal. The original idea was that the judge might order the payment of a higher amount in case of very serious violation of labour rights (harassment, discrimination, etc.). However, the provisions in the Macron Act relating to a maximum limit on damages for unlawful dismissal were censured by the Constitutional Council, which considered that the distinction by the size of the company was contrary to the principle of equality.

The Macron Act includes also an attempt to reform the labour procedural law. In France, proceedings before the labour courts are lengthy and the time needed to arrive at a ruling is quite substantial. The Macron Act introduces several improvements, namely to better train labour court judges, impose more stringent ethical obligations and overhaul the disciplinary procedure; shorten the timeframes and better regulate the various stages of the proceedings, including from the conciliation stage, provide that the labour court’s adjudication panel should sit in small committed panels (one judge elected by employers and one by employees) and render their decision within a period of three months; consolidate proceedings when this is in the interest of good administration of justice, to have cases pending before several labour courts within the same jurisdiction of a court of appeals be adjudicated together; further encourage amicable proceedings, such as conventional mediation; and introduce the “*défenseur syndical*” (i.e., a union’s legal defender) who could represent employees not only before labour courts but also before courts of appeals in labour disputes. In addition, in companies with less than 11 employees, the union’s defender would benefit from leave authorisations to perform his/her representation duties, with a system of compensation of his/her salary and related benefits (to be reimbursed by the State) of a maximum of 10 hours per month.

4. Act on Social Dialogue and Employment 2015 ('Rebsamen Act')

On the heels of the Macron Act, which aims to provide more flexibility to employers, the French government enacted the Rebsamen Act n°2015-994, dated 17 August 2015, on social dialogue and employment, reforming collective bargaining and employees’ representation at the workplace. Thus, the so-called Rebsamen Act changed the criteria for which boards members representing the employees must be appointed in large public companies. This Act reforms the system of staff representation with the aim of improving performance in French companies. France has a complex system of employees’ representation institutions at the workplace level (elected personnel representatives - IRP), directly elected by the entire workforce. In this complex system, where trade unions are present, the key figure is the trade union delegate.

There are a large number of structures which provide representation for employees in France, both for trade unionists and for the entire workforce. Trade unions present in a company are normally able to set up trade union sections, which bring together their members in the workplace and have specific legal rights. In addition, provided they have sufficient support, unions can appoint trade union delegates in companies with more than 50 employees. These union delegates can negotiate on behalf of all employees of the company.

Workers' representation is provided by two separate elected bodies, which have specific legal rights and duties. These are the employee delegates and the works council, elected either at company level or at plant level. In addition, there is a committee dealing with health and safety issues. In larger companies, the works council and the health and safety committee are usually separate, though the same individuals can be elected to both bodies. However, in companies with between 50 and 300 employees, the employer can decide that the functions of all three bodies should be combined in a single common representative body (DUP). In addition, in companies with over 300 employees, the employer and the unions (provided they represent a majority of the workforce) can agree that the three employee representative bodies can be combined in a way that best suits their needs. However, although the structures can be changed by agreement of the social partners, the legal rights and responsibilities of the bodies remain the same as set forth in the labour legislation.

The main changes introduced by the Rebsamen Act are: the reduction of the thresholds relating to the number of employees the companies should have to be under the scope of the workers' representation legislation; elimination of the condition requiring boards members to be works council representatives; the introduction of an exception for companies whose principal activity is to acquire and manage subsidiaries and interests.

The main aim of the French government when adopting this legislation is to stimulate social dialogue in companies with fewer than 11 employees, for which the Act does not require the election of Personnel Representative Institutions; and eliminate the rigidities of staff representation rules. Before the adoption of the Rebsamen Act, companies with fewer than 11 employees did not have a system of employees' representation. This Act introduces for these companies the Joint Regional Inter-Professional Commissions ("CRPI"), consisting of members elected by employees' organisations and professional management bodies.

The Act also aims to simplify the process for consulting and informing the Works Council. There were 17 obligations of recurrent annual consultations of the Works Council. Besides, obligations to inform (without collecting the opinion of the Works Council) are reflected in many legal provisions. In order to rationalise information and consultation processes and facilitate dialogue between staff representatives and management, the Rebsamen Act promotes an strategic accumulation of information exchanges and the elimination of some of the consultative obligations, i.e., employers will no longer be required to consult the Works Council on the renewal of profit-sharing agreements or employee savings plans. Therefore, according to the Rebsamen Act the minimum is set at 3 annual consultations dealing with:

- strategic orientations, the economic and financial situation
- social policy, working and employment conditions.

The Act also includes new rules simplifying the functioning of the Works Council. The Works Council has to meet each month or every two months depending on the number of employees in the company. According to the Rebsamen Act, the threshold above for Works Council meetings to take place monthly is raised from 150 to 300 employees. Additionally, the meetings frequency may be adapted by a company agreement signed with the trade unions. In any case, the Act established a minimum of six annual meetings.

The Rebsamen Act has further strengthened the protection of trade union delegates and employee representatives, whose time off for duties associated with their representative role amounts to 30% or more of their contractual hours.

The Rebsamen Act has also introduced new measures related to overtime, fixed-term contracts, arduous work and prevention of burnout. The threshold of new employees' overtime is set at 1,607 hours per year (based on five weeks of paid leave annually) and it is considered a global one by the case law.

Article 55 of the Rebsamen Act introduces the possibility to renew temporary agency work assignments twice instead of only one time, as well as fixed-term contracts. Moreover, the maximum duration of fixed-term contracts and assignment contracts is extended to 24 months instead of 18 months. Moreover, temporary permanent contracts have been codified in the Labour Code. In July 2013 the legislation applicable to Temporary Work Agencies has already been reformed. This new legislation was based on a previous agreement by the social partners. One main change introduced by this new law is that workers of temporary work agencies can be hired by the agencies through a permanent contract. In this latter case, certain provisions applicable to the assignment contract (in particular, appeals, terms and duration of the contract, compulsory indications, probation period) would not apply.

Furthermore, the Rebsamen Act introduced some changes to arduous labour. Sectoral agreements will define jobs or work situations that may be arduous. In addition, agreements and plans of action on arduous work concluded before the Act of 20 January 2014 (regarding pension and arduous work) was agreed and entered into force on 1 January 2015 continue to apply until 1 January 2018. The aim is to avoid companies from having to renegotiate arduousness at every effective step.

5. Other legal amendments of labour law legislation

In addition, during the reference period of this study several reforms of employment protection legislation were passed in France. Many of these legal measures aim to stimulate youth employment and employability for groups at risk of exclusion. Among these measures are the Act on Creating a Contract of Generationa ("contract du generation") which tried to promote the access of young workers to the labour market in combination with a mentoring system by senior workers and the Act on Creating Jobs for the Future ("Emplois d'avenir") which stimulate through public subsidies the creation of jobs for young workers in the public sector.

The regulatory framework for the apprenticeship contract and internships has also been recently reformed. By the adoption of Decree No. 2014-1420, 27 November 2014, related to the supervision of training periods in professional environments and of internships, the French government implements Act No. 2014-788 of 10 July 2014, promoting the development, internship supervision,

and improvement of internships. This Decree supplements existing legal provisions and specifies the implementation of the three objectives of the Act: integration of interns in training courses, supervision to limit abuses, and improvement of internship quality and of the status of interns. It applies for contracts concluded as of 1 December 2014. The decree reinforces the educational dimension of internships as it sets a minimum training time of 200 hours at least per year.

The aim of this legislation is to improve the protection of workers in an internship by providing for a designation and identification of each internship contract of a referring teacher and tutor in the company. This obligation is reinforced with the requirement that the definition of skills to be acquired or developed is described in each internship contract. Besides, the decree also strengthens the status of interns by registering them in a special personal register.

Internship contracts must mention the effective weekly working hours which may not exceed those of regular employees, authorisations of absence and rest periods and a list of benefits provided by the host organisation (payment of transport costs, access to the company restaurant or restaurant vouchers). Finally, the legislation increases the minimum monthly wages to be paid for any internships of a duration longer than two months.

Another vulnerable group which has received the attention of the employment policy reforms in France are persons with disabilities. On 20 November 2014, the Decree No. 2014-1386 dealing with disability quotas was adopted. This Decree implements the obligation to employ disabled workers based on Article L.5212-18 of the Labour Code. According to this provision any employer who employs at least 20 employees must also employ some workers with disabilities using several means. The decree of 20 November 2014 also amends Article R.5212-14 of the Labour Code, which specifies mandatory provisions for an employer to be exempt from this obligation. For agreements concluded after 1 January 2015, the annual or multi-annual employment program must contain a plan for hiring persons with disability, a company retention plan in case of collective dismissals, and either a plan for integration and training persons with disability or a plan introducing technological changes which facilitate their integration.

Among the other measures adopted to fight labour market segmentation and employment precariousness, it is worth noting the reform of atypical part-time contracts. The main aim of the legal changes was to limit involuntary part-time work. The Act on 27 May 2015 ratified Ordinance No. 2015-82 of 29 January 2015 on the simplification and guarantee of modalities of the application of rules on part-time work. This legislation simplifies and guarantees provisions on part-time work introduced by the Act on Securing Employment 2013. These provisions are extracted from the inter-professional national agreement of 11 January 2013, which established a minimal threshold of 24 hours of weekly work to fight involuntary part-time work. Nevertheless, the legislation excludes from this rule very short contracts (less than 8 days), as well as contracts of replacement. For those employees whose working time is less than the threshold (those recruited before 1 January 2014 and those recruited after this date, but requested a derogation from the threshold), a priority of reemployment will apply in case of an available post with a duration which is at least equal to the threshold. The ordinance provides regulations for employees who request to work for a minimum duration, priority for being awarded a post in the respective occupational group or an equivalent job. However, the employer can reject the employee's request because the employer's only obligation is to bring the list of available jobs to the employee's attention. However, this legislation

has not been very effective, as the limit of minimum working hours for part-time work contracts can be derogated by collective agreement and that possibility is used extensively.

6. Involvement of the social partners on labour market reforms

In France social partners have often been initiating measures to compensate for the consequences of the crisis. A clear example is the national inter-professional agreement of 11 January 2013, which led to the adoption Act on Securing Employment 2013. However, not all the important reforms that have been decided by the French government in the examined period have been subject of negotiations with social partners, i.e. the Macron Act 2015, and these are also not satisfied with some of the reforms passed unilaterally by the government, for instance, with the Act on Social Dialogue and Employment 2015.

Social partners criticize new governments' ways of implementing new initiatives without proper consultation and without thoroughly evaluating reforms measures that have been taken before. For instance, some of the Macron Act 2015 reforms have been criticized by the social partners as rushed, and as an attempt to destabilize the joint nature of the procedures on labour disputes. Unions in particular have claimed that these reforms were not urgent and more time should have been allowed for consultation, especially in the employment related measures (for example, the provisions allowing greater scope for shops to open on Sundays). However, unions have welcomed other measures, such as the strengthening of the employee defender's role and the new training obligation.

The 2015 Rebsamen Act on modernizing social dialogue was launched by the government after social dialogue at national level failed. This Act heralds many changes for consultation bodies and collective bargaining at company level. Unions are divided on the Act. The French Democratic Confederation of Labour (CFDT) said the creation of the bipartite regional committees would help give representation to employees in very small businesses. However, the General Confederation of Labour (CGT) denounced plans to relax the system of worker representation and opposed the possibility of merging the information and consultation bodies and the weakening of the health and safety committees. Force Ouvrière (FO) denounced 'the decline of workers' rights and resources' contained in the Act. Meanwhile, the main employers' organisation, MEDEF, has also criticized the Act. MEDEF considers the reforms inconsistent and opposes the creation of bipartite regional committees, which it says will cause a new administrative burden for SMEs.

Finally, the unions have been campaigning against the enactment of the 2016 Act on Employment, the Modernisation of Social Dialogue, and Safeguarding Career Paths (also known as the El Khomri Act or the Labour Act). This significant labour Act reform covers working time, social dialogue, and redundancies. With respect to the social dialogue, there are two significant amendments of the existing rules both aiming to increase the importance of the social dialogue at company level to the detriment of the social dialogue at branch level. First of all, the Act opens the possibility that an agreement on company level deviates from a collective branch agreement to the detriment of employees. This is a breach with the existing system, that provided a strict hierarchy: a collective agreement on branch level cannot deviate to the detriment of employees from a statutory rule and a company agreement cannot deviate to the detriment of employees from a collective branche agreement. This enlargement of the scope of company agreements is only applicable to a limited number of subjects. The most important subject is working time. On a company level, agreements

can be made regarding the compensation for overtime and the maximum daily and weekly working time can be increased.

The second measure is that the thresholds to conclude a company agreement are changed. A company agreement should be supported by trade unions that represent at least 50% of the employees that will be affected by the company agreement. This percentage used to be 30%. However, in case the threshold of 50% is not achieved, employees or trade unions that represent 30-50% of the employees can ask for a referendum. If within that referendum 50% of the employees votes in favour of a company agreement, it can be concluded. This means that even without the consent of a trade union, a company agreement can be achieved.

Trade unions have been particularly opposed to the possibility that company agreements on working time take precedence over agreements made at branch level and to the fact that they are in a way side-lined when it comes to company agreements which could lead to employees that, pressured by their employers agree on less favourable terms. The Unions have been protesting heavily against the new law and seven trade unions (FO, CGT, FSU, Solidariés, UNEF, UNL and FIDL) have issued a joint manifest in August stating that the Labour Act will increase precariousness and is not in line with international conventions on labour law. On the other hand employers organisations, such as MEDEF, are of the opinion that the act is not responding to the needs of the labour market. Furthermore they feel that limiting the possibility of company agreements to working time arrangements is far too less of a change.

It seems that imposing a new system of social dialogue without involving the social partners leads to a poor social basis of the new legislation and it remains to be seen what the actual results will be.