

# **DIALOGUE FOR ADVANCING SOCIAL EUROPE DIADSE**

(Funded by the European Commission - Industrial Relations and Social Dialogue Program, VS/2014/0530).

Country report: France

**Authors:**

**N.E. (Nuria) Ramos Martín and J.H. (Hanneke) Bennaars**  
**HSI – University of Amsterdam**

## Contents

<b>1</b>	<b>Introduction.....</b>	<b>3</b>
1.1	Impact of the economic and financial crisis in the labour market.....	4
1.2	Socio-political context of the reforms .....	5
1.3	Developments on collective bargaining and industrial relations.....	6
1.4	Peculiarities of the judicial system on labour law disputes .....	10
<b>2</b>	<b>Main domestic labour and social law reforms .....</b>	<b>12</b>
2.1	Main labour law reforms (2008-2015) .....	12
2.1.1	Act on Securing Employment 2013.....	12
2.1.2	Macron Act 2015 .....	15
2.1.3	Act on Social Dialogue and Employment.....	18
2.1.4	Other measures addressing employment segmentation and vulnerable groups.	22
<b>3</b>	<b>Position and role of the social partners on the social reforms .....</b>	<b>27</b>
3.1	Reforms and social dialogue.....	27
3.2	The Act on Securing Employment 2013 and the social partners.....	32
3.3	Measures regarding youth employment and activation and the position of the social partners .....	34
3.3.1	The Act on Creating Jobs for the future 2012.....	34
3.3.2	Employment and social policy measures, the role of the social partners. ....	34
3.3.3	Legislation on Vocational Training, Employment and Social Democracy and the position of the social partners.....	35
3.4	The Macron Act 2015 and the social partners .....	36
<b>4</b>	<b>Labour Market Effects of the reforms.....</b>	<b>38</b>
4.1	Act on Securing Employment 2013.....	40
4.2	Act on Creating Jobs for the Future 2012.....	41
4.3	Act on Creating a Contract of Generations 2013.....	42
4.4	Act on Vocational Training, Employment and Social Democracy 2014 .....	43
<b>5</b>	<b>Conclusions.....</b>	<b>44</b>
	<b>Annex –Reform of the French Labour Code 2016.....</b>	<b>47</b>
	<b>References.....</b>	<b>49</b>

# 1 Introduction

This report presents the findings from research carried out between February and December 2015 according to the objectives of the international project 'DIADSE – Dialogue for Advancing Social Europe'. We examined developments in France with regard to labour law reforms and social dialogue in the period of 2008-2015, with an emphasis on the effects of the socio-economic adjustments undertaken in this period and the role of the social partners in designing and implementing these reforms. The aims of the report are: setting the context for explaining the latest labour market reforms; explaining political factors triggering these reforms; and analysing the positions of the social partners or other socio-economic organisations in the reform processes (involvement, consultation, or opposition).

In line with a mixed-method approach, our analysis is based on various sources of evidence. For the purposes of extensive analysis, we draw on available literature, legislation, reports published by national authorities or independent bodies, and the most reliable and up-to-date quantitative data. First-hand data has been collected through interviews with representatives from social partners. In 2015, we conducted interviews with representatives from the social partners, of the French Central Bank and labour market experts in France. The main themes explored in the interviews are: How has the social dimension been affected by the adjustments to the economic crisis? To what extent, and in what way, have policies been directed at the objectives of enhancing flexibility and employability, and reducing labour market segmentation? What effect, if any, have the reforms had on social dialogue and what role did the social partners play in designing and implementing those reforms? How best to advance the contribution of social dialogue to the EU social model?

The report proceeds as follows. In section 2, we outline and explain the main reforms.

In section 3, our attention turns to the role of social partners throughout the period under study. The section 4 is dedicated to an evaluation of the labour market effects of the reforms undertaken. We bring in a variety of quantitative evidence to discuss trends and impacts on productivity, public finances, employment and unemployment, temporary work, collective bargaining, labour costs and wages, inequality and poverty. In section 5, we summarize the results of our research and the main conclusions regarding social dialogue over the last seven years in France.

## 1.1 Impact of the economic and financial crisis in the labour market

France's labour market 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.<sup>1</sup> 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, the analysis of past recessions shows that the French model tends to be slow in boosting job creation during economic recoveries. Besides, employment in the French public sector has shrunk (shed 40,000 jobs between 2000 and 2009.) 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. (Coquet, 2015)

On the one hand, France faces strong demand for highly skilled workers, and on other hand workers with low levels of educational attainment (estimated in more than 2 million) will be unable to find jobs by 2020. (Labaye, Roxburgh, Magnin en Mischke, 2012) While the unemployment rate of highly skilled employees is very low, the average unemployment rate ended 2015 on 10% of the workforce in metropolitan France and 10.3% overseas.<sup>2</sup>

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

---

<sup>1</sup> INSEE, January 2016, <<http://www.insee.fr/fr/themes/info-rapide.asp?id=14>>

<sup>2</sup> INSEE, January 2016, op. cit.

(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. (Coquet, 2015)

According to the OECD report: 'OECD Economic Surveys France 2015', France can expect to have a slow economic growth of 1.6% in 2016. This slow economic progress will "dampen the employment outlook," causing unemployment to "fall only slightly". Despite the poor economic forecast, levels of wellbeing in France remain high, with relatively low inequality. The quality of life indicators where France particularly stands out among the 34 OECD members are work-life balance and environmental quality. The country's major weaknesses, identified by the OECD, are the rigidity of its labour market and the high labour market duality. This organisation has recommended 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. In the 2015 report mentioned, the OECD believed the reforms already undertaken by the French government in the last years did not assure economic recovery and called for more "ambitious" structural reforms.<sup>3</sup> 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.

## 1.2 Socio-political context of the reforms

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, shared by many of the EU governments, has served as justification for the adoption of several structural reforms of employment protection legislation. Even when the French administration was not compelled by the European institutions to adopt those reforms, as it has not received any financial direct support from the EU, the French legislators and policy makers followed the recommendations issued by Brussels, which clearly reflected an approach to achieve a more flexible labour market situation. Examples of this trend are the Act on Securing Employment

---

<sup>3</sup> OECD, 2015, accessed on 15.03.2016, < <http://www.oecd.org/eco/surveys/France-2015-overview.pdf>>

2013,<sup>4</sup> the so-called Macron Act 2015; and the Act on Social Dialogue and Employment 2015 (also referred to as Rebsamen Act 2015).<sup>5</sup>

### 1.3 Developments on collective bargaining and industrial relations

The right to collective bargaining is set out in the Labour Code (*Code du travail*). Collective bargaining takes place at national, sectoral and company level in France. Coverage of collective agreements is high in spite of a very low trade union density (around 8%) (Visser, Hayter, and Gammarano, 2015). The main reason for the high coverage is the extension of sectoral agreements. All employees are covered by a sectoral agreement as soon as it is recognised as legally valid and/or extended by the government to a particular sector. This includes those employees whose employers are not members of signatory organisations. An extension is decided by the Minister of Labour after consultation with the National Commission on Collective Bargaining. This leads to an average coverage rate of 98% (Visser, Hayter and Gammarano, 2015).

The importance of collective bargaining increased with the adoption of the 1982 Auroux Acts, which obliged the bargaining parties already bound by a sectoral agreement to negotiate pay annually and to discuss the sector's job classification system and its economic development every five years. The Auroux Acts introduced the possibility of deviation in overtime, implying that: a) a collective agreement may establish worse conditions than those established by law and b) a company agreement may set out worse conditions than a sectoral agreement. The Auroux Acts also stimulated company-level bargaining by making annual negotiations on pay and working time obligatory in companies with union representation. However, these bargaining obligations do not always implied agreement obligations.

Furthermore, this system of collective bargaining has been profoundly reformed in France in the last two decades. The reforms of 2004 and 2008 involved some procedural changes regarding the conclusion of collective agreements and the relationship between the various levels of bargaining and initiated the road to decentralization. These reforms aimed at decentralising the bargaining process and modified the traditional prevalence of the sectoral level. The legal changes introduced in the system in 2004 (the Act on lifelong vocational

---

<sup>4</sup> Adopted on 14 June 2013, following the signing of the national inter-professional agreement of 11 January 2013.

<sup>5</sup> LOI n° 2015-994 du 17 août 2015 relative au dialogue social et à l'emploi.

training and social dialogue, also referred to as the Fillon Act<sup>6</sup>) and 2008 (the Act on the Reform of Social Democracy and Working Time 2008<sup>7</sup>) followed clearly that decentralisation trend. This is also the tendency noticed in the recent reform of social dialogue structures, the Act on Social Dialogue and Employment (Rebsamen) 2015, elaborated upon in section 2. The rationale behind that approach is that stimulating collective bargaining at undertaking level will increase internal flexibility, adaptability to a shifting economic situation, and enhance the competitiveness of French companies.

The 2004 the Fillon Act explicitly aimed to reinforce company-level bargaining. It did so in a variety of ways, including by facilitating company-level deviations from sectoral agreements. It changed the previous 'hierarchy' of collectively agreed norms, allowing for ample possibilities of company-level derogations. After the 2004 reform, a sector-level agreement may deviate from the provisions of an inter-sectoral agreement unless such derogation is expressly forbidden. A company-level or group-level agreement may, in turn, deviate from all or part of a sector-level agreement, again unless such derogation is expressly forbidden at the higher level (which is quite often the case). Nonetheless, the favourability principle remains in force in respect of four themes that are exempted from any derogation at company level: minimum wages; job classifications; supplementary social protection measures; and multi-company and cross-sector vocational training funds (Ramos Martin 2011).

The Act on Social Democracy and Working Time 2008 also permitted deviations regarding less favourable conditions on working time by sectoral and enterprise agreements from collective agreements of a higher level or wider application scope. This legislation went a step further in consolidating the enterprise level as the central level of bargaining by no longer allowing sectoral agreements to ban deviations to their regulations on working time resulting from undertaking level agreements.

In France, collective bargaining has taken place mainly at the sectoral level, especially when negotiating wages. However, the company level has been gaining in importance in negotiations on additional wage elements. French labour law allows forms of variable pay as long as the minima fixed by the legislator or the collective agreements applicable are respected. According to Article L. 442-1 of the Labour Code, companies with 50 employees

---

<sup>6</sup> LOI n° 2004-391 du 4 mai 2004 relative à la formation professionnelle tout au long de la vie et au dialogue social.

<sup>7</sup> LOI n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail.

or more have an obligation to develop employee financial participation schemes that must be negotiated with the workers' representatives. Other collective forms of profit-related pay may be adopted on a voluntary basis, but they cannot go below the minimum wages fixed by law and/or collective agreements. The same rule applies to variable pay forms introduced by the individual employment contract (Vigneau and Sobczak, 2005). Variable payment systems generally became more widespread since the 2000s due to laws on the workers' right to financial participation in the undertaking, notably Act No. 2008-1258 of 3 December 2008 in favour of the revenues of work and Act No. 2008-111 of 8 February 2008 on the purchasing power of the employee (Allouache, 2009). The minimum wages fixed by sector-level collective agreement must be respected in individual contracts of employment. However, if the collective agreement reaches its term without being replaced by a new one, the wage will be considered as an individually acquired benefit which is integrated into the employment contract.

A main feature of the recent labour law reforms (2013-2015) 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 has been set up. This was done through the creation of an economic and social database. According to the national inter-professional agreement which inspired the Act on Securing Employment 2015, 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 also stimulates the information and involvement of employees on enterprise strategies, by promoting the participation of employees' representatives on the boards of large companies.

Traditionally, France is characterised by highly adversarial industrial relations and by a trade union movement that is rather strong at the national level but has very little presence on the shop floor (Caroli and Gautié, 2008; Vincent, 1998). The French trade union model is not one of massive trade union militancy (Brunhes, 2008). On the contrary, the penetration of the unions in the workplace is low, with only 8 percent trade union density - with unions members concentrated in the public sector and large size companies. The 2004 and 2008, changes in the Labour Code removed the automatic entitlement of the five most representative trade unions at national level to negotiate collective agreements. In an attempt to solve that problem, the two sides of industry in France concluded an agreement on the



reform of industrial relations, dealing with the representativeness of trade unions and the development of social dialogue. According to this agreement, at company level, unions will achieve recognition when they have gained at least 10% of votes in works council or workforce delegate elections. This agreement improved the involvement of trade unions at workplace level because it lays down several rules governing the appointment of a union shop steward, the functions of local trade unions in small and larger companies (with over 50 employees) and the procedures for negotiations over terms and conditions in companies without a shop steward. This reform of several aspects of collective bargaining is codified and further developed in the Act on Social Democracy and Working Time 2008. This Act sets the rules for determining the most representative trade unions at company, branch and inter-professional level. The representativeness of unions is fixed in an objective way, taking into account the number of votes obtained in the elections for employees representatives at the company level – with representation thresholds for representation of 10% of the votes cast in the first round of the workplace elections (works councils or workforce delegates) and 8% of the votes at branch and inter-professional levels.

In 2008, the majority rule regarding the adoption of company agreements established by the 2004 Fillon Act was amended to promote further decentralisation of collective bargaining. (Ramos Martin, 2011) Since then, the validity of company agreements is conditional upon having been signed by one or more unions receiving at least 30% of the votes cast at the first round of the works council or workforce delegate elections, regardless of the number of voters, and if not opposed by one or more unions that received the majority of votes cast in the same elections, regardless of the number of voters.

More recently a reform of the criteria of employers' representativeness has been passed by Act on Vocational Training, Employment and Social Democracy 2014.<sup>8</sup> This act adopts general criteria of representativeness similar to those applicable to trade unions of employees, except for that of the audience (votes casts in elections), which would be measured in relation to the number of companies which are members of the employers' association. The criteria are: respect for republican values, independence, financial transparency, a minimum of two years' seniority, influence characterized by activity and experience, audience measured by the number of member companies. The act also establishes rules specific to each level of negotiation and, in particular, resolves the problem of multiple accessions to national and

---

<sup>8</sup> LOI n° 2014-288 du 5 mars 2014 relative à la formation professionnelle, à l'emploi et à la démocratie sociale.

inter-professional organizations by laying down a principle of freedom in the weighting of votes. It is argued that this new legislation does not imply the recognition of a fundamental right for employers' organisation equivalent to the constitutional right to collective bargaining of workers but it merely establishes that they could rely on a right to social dialogue (Bonnin, 2014).

The reforms of the rules of representation for both employees and employers representatives had been identified by policy makers as a crucial step for the advancement and "good health" of social dialogue in France (Larose, 2008). The system have been reformed in the last decade and the jury is still out concerning the prognosis of "bonne santé" of the industrial relations system.

#### 1.4 Peculiarities of the judicial system on labour law disputes

In France, labour disputes are ruled by elected and bipartite Labour Courts. The Councils of "*prud'hommes*" are Courts of first instance judging individual disputes between employers and employees or apprentices over wages, working conditions, leave, dismissal, etcetera. They decide on conflicts arising from a contract of employment or apprenticeship. The labour court is composed by lay judges elected among employees and employers' representatives which an equal representation of both groups. In case of a tie, a professional judge will intervene in the decision. These courts initially try to solve labour disputes through conciliation and, if conciliation fails, the cases go to trial. Currently only 7 per cent of cases end at the conciliation stage. Besides, the process is slow (it takes on average 14 months for a judgement to be pronounced) and often ends up in appeal afterwards (around 60 per cent of the *prud'hommes* rulings are appealed), and then ruled by professional judges.

In the last years, the French labour court system has been heavily criticised by employers' organisations and expert reports who claim that the French industrial courts slow down the hiring of workers and contribute to rising unemployment. However, research studies based on international comparisons have challenged those negative views on the labour court system in France and show that the labour disputes systems are similar across Europe. The study also concluded that the more employees are involved in the formulation of the rules and the decisions, the more the number of litigations decrease (Schulze-Marmeling 2014).

In 2015, the Macron Act has reformed labour courts and it is aimed at speeding up dismissal procedures. Measures has been passed to simplify the complex procedures before industrial

tribunals which according to the employers led to lengthy delays in resolving labour disputes, especially regarding the dismissal of employees. Within the new system, once a complaint is lodged before the Labour Court, the dispute goes to a Conciliation Board, comprising two advisors, one employee, and one employer. This board should stimulate that the parties reach an agreement in conciliation without going before the adjudication panel. If both parties are in favour or if the conciliation board believes it is unlikely to be able to resolve the dispute, the file will be sent to a professional judge. Furthermore, the time taken for cases to be settled will be considerably shorter after the conciliation phase.

## 2 Main domestic labour and social law reforms

### 2.1 Main labour law reforms (2008-2015)

#### 2.1.1 Act on Securing Employment 2013

On 14 June 2013 the Act on Securing Employment<sup>9</sup> was adopted, following the signing of the national inter-professional agreement of 11 January 2013.<sup>10</sup> This legislation is based on a previous agreement of the social partners at cross-sectoral level and intends to establish "a new Economic and Social model in supporting competitiveness and to secure employment and careers of employees."

The Act on Securing Employment 2013 aims to provide more protected occupational pathways for employees in France. With that purpose, several innovative measures were introduced by this legislation:

- The generalisation of complementary health insurance for all employees from January 2016, via a company or sector agreement;
- The introduction of the concept of rechargeable rights for the unemployment insurance. With the new system introduced by this legislation employees with fixed-term contracts can keep, at the end of their contract, the right to unemployment insurance that they have acquired in link with their previous employment contracts;
- A reduction on social security contributions for companies recruiting young workers with open-ended contracts;
- A penalisation for higher social contributions for employers signing very short fixed-term contracts of employment;
- The introduction of a personal training account universal, individual and transferable, which replaces the individual right to training (this new policy measures has been further developed by the aforementioned Act on Vocational Training, Employment and Social Democracy 2014 and have been made more concrete by inter-professional collective agreements);

---

<sup>9</sup> LOI n° 2013-504 du 14 juin 2013 relative à la sécurisation de l'emploi.

<sup>10</sup> *Accord National Interprofessionnel du 11 janvier 2013 pour un nouveau modèle économique et social au service de la compétitivité des entreprises et de la sécurisation de l'emploi et des parcours professionnels des salariés.*

- Rules establishing stricter limits to the use of small part-time jobs;
- Establishment of a right to secured voluntary mobility periods in companies with more than 300 employees. Implemented with the agreement of the employer, the mobility period aims at discovering a job in another company with a guarantee to return to his company of origin at the end of the mobility period;
- The mandatory presence of employee representation -with a mere advisory capacity and no vote- in the board of directors of large companies.

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' representative 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' representative bodies. On the other hand, in terms of HR management, it allows a better anticipation on the strategic orientations of the company. The objective of this legislation has been to achieve a sort of flexicurity "*à la française*" in line with the reforms promoted in the sein of the European institutions, with a more clear present of flexibility elements through the "securisation" of the rupture. This has been done through the mechanisms of diminishing the role of the judiciary in the employment restructuring processes and promoting decentralisation of collective bargaining, without the adoption of genuine elements of "employment securement" as a counterbalance. (Canut, 2014) Some experts interviewed have a completely opposite view and they are more positive in the evaluation of this legislation and consider that it goes in the right direction of constructing a new social law, aimed at conciliating the protection of workers with the economic efficiency. They advocate for a more "contractualization" of the employment relationship and less intervention through public regulations. According to this view, a reinforcement of the role of the social partners needs to be accompanied by a reduction of the "excessive rate of

judicialisation" with is affect negatively the social environment as economic ratio. (Cette & Barthélémy 2014)

Before the adoption of the Act on Securing employment, the French Labour Code already established various obligations on the employer to provide information to the works council. To facilitate the collection, simplification, and accessibility by employees' representatives to that information on the enterprise's financial results and its economic and social situation, this new database has to be developed by enterprises before 14 June 2015.

This issue of a strengthened social dialogue is also present in the expansion of the recipients of the economic information. Indeed this database is permanently accessible not only to members of the works council, or in absent of them to the staff representatives, members of the central works council, the committee on health, safety and working conditions and union representatives. That the union delegates are receiving the same information as the elected representation is seen by the trade unions representatives interviewed as an advancement of bargaining procedures, as they are responsible to jointly negotiate with the employer the employment maintenance or to develop with the employer a social plan, ("*plan de sauvegarde de l'emploi*").

Moving to the decentralized level of collective bargaining has been, for several years, the aim of several legal reforms in France. The Act on Social Democracy and Working Time 2008 already strengthened the legitimacy of the union representation through preferential use of collective bargaining, in particular to address the employment issues. In this line, the Act on Securing Employment 2013 promotes collective bargaining on restructuring and employment by facilitating the negotiation of the social aspect of restructuring (the so called "employment protection plans").

This Act also promotes the mobility of employees by organising the portability of his rights. The logic behind the concept of portability of rights is that the loss of a job does not involve the loss of all employment rights by the employee. This system include rights which are "rechargeable" after a period of service, as the right to unemployment benefits; rights which are temporarily maintained, such as collective pension acquired rights from previous employment; and rights which are carried by the employee through his career pad, such as vocational training. Several provisions of the Act on Securing Employment 2013 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. This law has replaced the "individual right to

training" -set by the National Inter-professional Agreement of 7 January 2009 and the Act of 24 November 2009- by the "personal training account". This new instrument expands the scope of the portability of rights to training. According to the new system, the employee keeps the acquired rights during his whole working life, despite eventual periods of unemployment, reinforcing the pursued aim of career security.

The Act on Vocational Training, Employment and Social Democracy 2014 has further developed the requirements on the right to an individual training account for employees. From 1 January 2015, all private sector employees have an individual training account valid from when they first join the labour market until they retire. An employee who changes jobs or alternates between work and unemployment will retain his or her right to training. Every employee receives 24 hours per year worked (for a full-time position) until they reach a threshold of 120 hours, and 12 hours a year until they reach the threshold of 150 hours. If the worker is employed on a part-time basis, the duration of the rights acquired is calculated proportionally to the working time.

### 2.1.2 **Macron Act 2015**

The Act on Economic Growth and Activity, called "Macron Act 2015", after its main promotor, the French Minister of Economic Affairs Emmanuel Macron, was finally adopted on 6 August 2015.<sup>11</sup> This Act includes several measures on the labour law field, including removing working time restrictions through the allowance of opening shops on Sundays and evenings, and a reduction in employment protection.

The most relevant reforms in the social field include employee savings plans, Sunday and nightshift working hours, new redundancies procedures, and a reform of labour courts procedures. A brief description of the most relevant reforms follows:

#### **a. Sunday Work**

Only very few French shops, primarily in tourist areas, are currently open on Sundays. Under the Macron Act 2015, retailers in shopping areas ("zones commerciales"), touristic areas and international touristic areas will have the right to remain open on Sundays and evenings until midnight. International tourist zones (Article L. 3132-24 of the Code du travail): these are

---

<sup>11</sup> LOI n° 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des chances économiques.

zones which, given their international reputation, are visited by exceptionally high numbers of high-spending foreign tourists. Retailers operating within these areas would automatically be entitled to remain open on Sundays. This possibility is subject, however, to the existence of a collective agreement under which the workers concerned will be compensated, and with the condition of Sunday work being strictly voluntary. The legislation also amends regulations governing Mayor's Sundays (Article L. 3132-26 of the Code du travail), which could be increased.

#### **b. Profit-sharing and employee share-ownership incentives**

The new rules align certain aspects of profit-sharing schemes and measures to make collective pension savings plans ("PERCO") more accessible. Employers and employees will get new tax and social security rebates for shares awarded to them, and the so-called "BSPCE" – a type of share option plan designed for growth companies – has been made more flexible.

The new measures reforming the regime of employees' shares:

- Reduction of the vesting period from 2 years to 1;
- No minimum retention period but the aggregate of the vesting and retention periods cannot be less than 2 years (previously 4 years);
- the difference between the number of shares distributed to each employee cannot be higher than a ratio of 1 to 5 only in case free shares exceed 10% of the share capital (15% for non-listed small and medium companies);
- The rate of the employer's social security contribution is reduced from 30 to 2 per cent;
- The employee's social security contribution of 10% is abolished;
- The acquisition gain for the beneficiary is treated for tax purposes as an "added-value" which can qualify for a tax reduction;
- When more than 3% of the share capital of a listed company is held by the employees, one or more directors representing the employee shareholders must be appointed.

#### **c. Employee representation**

The imprisonment sentence for company managers committing "*Délit d'entrave*" (obstructing the proper functioning of the staff's representative body) has been abolished.



This amendment will ease concerns by company managers about the potential risk of imprisonment for failing to comply with their duties to inform and consult the French works council and other representatives. Nevertheless, the new law is replacing the possibility of imprisonment with high financial penalties, which could be a more effective measure to assure compliance with the information and consultation duties, since prison sentences were rarely imposed in this kind of criminal offenses in the past.

**d. Redundancy procedure**

Some minor changes to the procedural requirements for collective redundancies have been introduced. For example, employers will be able to determine the scope of selection criteria to be applied to choose the employees to be made redundant at company level in a unilateral document as an alternative to doing so in a collective agreement. In addition, the obligation to look for alternative posts abroad for employees at risk of redundancy will be simplified. Employees interested in working abroad will be required to take an active part in the search process. When an employer considers redundancies, he/she must undertake every possible effort to resettle redundant workers within the company or within the group to which the company belongs, both in France and abroad. By an Act of Parliament dated 18 May 2010, the employer is required to ask the staff members concerned whether they would consider job offers abroad by forwarding them a questionnaire based on a standard legal form. As regards the employer's duty to find different posts for redundant staff, it will be restricted to any job opportunities that may be available in France. Should a staff member wish to be informed of job offers abroad, he/she must file a request and specify any restrictions in terms of wages or location. The employer must then forward concrete written proposals to the employee, provided that such positions are available.

**e. Proposal for limits on damages for wrongful dismissal**

The Macron Act 2015 first drafts intended to impose on employment tribunals a fixed scale on the range of damages to be awarded to employees in cases of wrongful dismissal. The judge might order the payment of a higher amount in case of very serious violation of labour rights (harassment, discrimination, etc.). According to the initial proposals, either party might request that litigation follow two alternative and potentially accelerated routes. However, the provisions in the Macron Act 2015 relating to a maximum limit on damages for unlawful dismissal were censured by the Constitutional Council, which considered that the distinction

by size of company was contrary to the principle of equality. New proposals from the Government on this subject are being discussed in the new labour law reform of 2016.

#### **f. Reform of labour courts**

As explained above, proceedings before the labour courts are lengthy and the time needed for a ruling is quite substantial. The Macron Act 2015 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 proceeding - including 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, finally, appoint a "*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, with the preservation of his/her salary and related benefits (to be reimbursed by the State) – up to 10 hours per month maximum to properly perform his/her duties.

#### **2.1.3 Act on Social Dialogue and Employment**

Following the tracks of the Macron Act 2015, which aims to provide more flexibility to employers, the French government enacted the Act on Social Dialogue and Employment 2015 (Rebsamen Act, mentioned before in 1.2). This legislation extensively reforms collective bargaining and employees' representation at the workplace. This Rebsamen Act changed the criteria for which boards members representing the employees must be appointed in large public companies. The amendments of the system of staff representation by the Rebsamen Act are aimed to improving performance of workers' involvement 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.

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 representative body. 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.

The main changes introduced by the Rebsamen Act 2015 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 aims of the French government, when adopting this legislation, were to stimulate social dialogue in small size companies and to eliminate the rigidities of staff representation rules. This Act introduces an obligation for companies with fewer than 11 employees to set forth a Joint Regional Inter-Professional Commissions ("CRPI"), consisting of members elected by employees' organisations and professional management bodies. Before the Rebsamen Act 2015, companies with fewer than 11 employees did not have to make arrangements for staff representation bodies. This Act have created the so-called Joint Regional Inter-Professional Commissions ("*CRPI*"), consisting of members elected by employee representative organisations and professional management organisations, which will be created as of 1 July 2017. Their purpose will be to assure representation for employees and management in small companies.

Employee representation is divided among several institutions in France. In companies with more than 50 employees, the latter are represented by:

- the Personnel Delegates ("DPs"),
- the Works Council ("CE"),
- the Committee on Hygiene, Safety and Working Conditions ("CHSCT").

According to the Rebsamen Act 2015, a Single Personnel Delegation will, be set forth in companies with fewer than 300 employees. Moreover, companies with fewer than 200 employees are also allowed to combine the Personnel Delegates and the Works Council within one joint body, the Single Personnel Delegation. In companies with more than 300 employees, by company agreement signed by majority of the unions' representatives, staff representation bodies may also be grouped in a single body. This grouping of staff representation institutions aims to reduce the number of meetings and consultations. This measure aims to increase efficiency and save time and costs for the companies. Indeed, an excessive number of meetings and negotiating requirements have been mentioned by the employers' representatives interviewed as a major concern.

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. Obligations to merely inform the Works Council are envisaged in a large number of labour law provisions. Critical voices argue that these numerous and dispersed obligations are seriously distracting industrial relations processes and are a hindrance for effective bargaining. They do not provide social partners representatives with a global vision of the company's economic and financial situation and, according to managers, deter strategical decisions concerning the economic and personnel's policies. According to the Rebsamen Act 2015, the 17 annual consultations will be replaced by a reduced number of consultations dealing with:

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

In order to rationalise the system, certain consultations obligations will be eliminated: employers will no longer be required to consult the Works Council on projects regarding collective agreements or on the renewal of profit-sharing agreements or employee savings

plans. Besides, the obligations regarding "special consultation and notification of the Works Council" are simplified and compiled in a new title of the Labour Code.

The Rebsamen Act 2015 also includes new simplified rules dealing with the functioning of the Works Council. The Act aims to streamline the process for consulting and informing the Works Council and reduce the frequency of the meetings, which may be adapted by a company agreement signed with the trade unions. Formerly, the functioning and the methods for consulting the Works Council often lead to purely formal consultations. The Works Council had to meet each month or every two months depending on the number of employees in the company. According to the Rebsamen Act 2105, only companies with more than 300 employees will have to consult the works council monthly. Additionally, the frequency of the meetings with the work council may be adapted by a majority company agreement signed with the labour unions, but a legal minimum of six annual meetings is set forth in the new law.

This 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 law provides that their pay must increase in line with that received by other employees with a similar status and seniority.

The Rebsamen Act 2015 has also introduced new measures related to overtime,<sup>12</sup> fixed-term contracts, arduous work and prevention of burnout. These measures make the renewal and duration of temporary agency work assignments, as well as fixed-term contracts, more flexible.

Furthermore, this Act allows changes, through sectoral agreements, on the definition of jobs or workplaces that may be considered 'arduous labour'. The Act introduces some changes to the notion and regulation of arduous labour. Sectoral agreements will no longer determine employees' exposure to arduous factors by referring to a job in order to avoid creating new special systems. They will only define work situations that may be arduous. In addition, agreements and action plans on arduous work, which have been concluded before the Act

---

<sup>12</sup> This Act adapted the threshold of new employees' overtime in case of variations. Before the threshold, -set at 1,607 hours per year (based on five weeks of paid leave annually)-, was considered a global one by the Court of Cassation (Court of cassation, Social Chamber, 14 November 2013, No. 11-17644). The modified legislation allows that variations agreements would increase or decrease that threshold depending on the days of leave taken or not.

entered into force on 1 January 2015, will continue to apply until 1 January 2018. The aim is to avoid companies from having to renegotiate arduousness all the time.

#### 2.1.4 **Other measures addressing employment segmentation and vulnerable groups.**

In the period examined during this project the French legislator has adopted several measures designed to stimulate employment for the youth and other groups at risk of exclusion of the labour market. The main measures adopted are summarized below:

##### 1. The Act on Creating Jobs for the Future - "*emplois d'avenir*"- 2012<sup>13</sup>

The aim of this Act is to fight unemployment among low skilled young people by introducing a new type of fixed-term contract in the new Article L. 5134-112 of the Labour Code. This law aims to create new jobs for the younger generation aged 16 to 25 years, primarily in activities of general interest and social utility and mainly in the public sector by a "supported contract for employment" ("*Contrat d'accompagnement dans l'emploi*"). Employers in the private sector can also benefit from this measure under certain conditions and sign "contracts of employment initiative" ("*Contrat initiative emploi*"). The "*emplois d'avenir*" construction shall be applicable to full-time jobs. However, if it is justified (training, nature of employment, etc.), they may be applicable to part-time jobs (actual working hours should not be less than one half of total working time).

The French State subsidises this type of contract with a grant called "assistance employability" for at least 1 year and for 36 months maximum (new Article L. 5134-113 of the Labour Code). This grant paid to the employer amounts to 75% of gross earnings at minimum wage (*SMIC*) for employers in the public sector and 35% of the salary for private sector employers.

The law also creates a special contract called "*emplois d'avenir professeur*" which aims to facilitate the integration of young people into teaching jobs in public and private schools. It targets students following a training for higher education who are younger than 26 years and are planning a career in teaching.

---

<sup>13</sup> LOI n° 2012-1189 du 26 octobre 2012 portant création des emplois d'avenir.

## 2. Contract of generation ("*contrat de génération*")

The generation contract is a new form of employment relationship launched by the Act on Creating a Contract of Generations 2013<sup>14</sup> to promote the stay in employment of older workers, the integration of young people into the labour market and the transfer of skills between different generations of workers. To pursue that objective the contract is coupled with a new financial aid system (Dechristé, 2012 & 2013). This Act is based on an agreement by the social partners, the *Accord National Interprofessionnel du 19 octobre 2012, relatif au contrat de génération*.

The Act on Creating a Contract of Generations 2013 established a financial assistance of 4,000 euros per year (for three years) aimed at small and medium enterprises (50 to 300 employees), for hiring a young person under 26 years, under a permanent contract (for at least 80 per cent of the regular working time) on the condition of keeping an employee aged 57 or more in employment. The generation agreement requires in addition that the companies are signing collective agreements on the employment of seniors and young workers. This contract initiated a new era of active ageing policies in France (Willmann, 2013). Please be referred to paragraph 4.3 for the results and effects of this Act.

## 3. New Apprenticeship contract and reform of vocational training.

In the last lustrum several legal measures have been adopted by the French government to reform vocational training. A main development on this terrain was the adoption of Act on Vocational Training, Employment and Social Democracy 2014<sup>15</sup> This Act was based on the principles for the reform of vocational training agreed by the social partners on 14 December 2013.<sup>16</sup> Following the new legislation, the employers' contributions to vocational training are redefined, the collection system is simplified and in charge of a joint institution, the OPCA, with exclusive competence on this task. Moreover, the landscape of vocational training tools is clarified. The personal formation account (CPF) set forth an universal right, fully transferable. The use of this account will be controlled by the OPCA or by the companies in respect of employees and by the employment service or the regions, through a joint fund of employment securement, for jobseekers. This new system in which the social partners are

---

<sup>14</sup> LOI n° 2013-185 du 1er mars 2013 portant création du contrat de génération.

<sup>15</sup> LOI n° 2014-288 du 5 mars 2014 relative à la formation professionnelle, à l'emploi et à la démocratie sociale, entering into force as per 1 January 2015..

<sup>16</sup> *Accord National Interprofessionnel du 14 décembre 2013 relatif à la formation professionnelle*.

involved in the management of joint vocational training funds represents a qualitative advancement in transforming vocational training in an investment strategy for the future of undertakings in France. (Wargon, 2014) This new vocational training model, based on a mobile individual training account, has been praised as it contributes to set forth an effective employee's right to get access to initial qualified training and to progress in further qualification levels during the person's professional life. According to this vision, the CPF undoubtedly represents a major innovation of this reform and a long-term investment for the future. (Luttringer, J. M., 2014)

In November 2014, the Act on Promoting the Development, Internship Supervision and Improvement of Internships has been implemented.<sup>17</sup>

The decree implementing this Act supplements existing legal provisions and specifies the implementation of the three objectives of the law: 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 strengthened 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 internship with more than two months duration.

---

<sup>17</sup> *LOI n° 2014-788 du 10 juillet 2014 tendant au développement, à l'encadrement des stages et à l'amélioration du statut des stagiaires*, entered into force through the adoption of Decree No. 2014-1420 of 27 November 2014, related to the supervision of training periods in professional environments and of internships,



#### 4. Disability quotas

On 20 November 2014, the Decree No. 2014-1386 was adopted. This Decree deals with the implementation of the obligation to employ disabled workers based on the obligation mentioned in Article L.5212-18 of the Labour Code. According to this provision any employer who employs at least 20 employees must also employ workers with disabilities. The provision on the Labour Code provides for a number of means for an employer to fulfil this obligation. The employer can apply a collective agreement at any level with favour the hiring of workers with disabilities. The decree of 20 November 2014 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 on or after 1 January 2015, the annual or multi-annual program must contain a plan for hiring persons with disability—in ordinary employment—a company retention plan in case of collective dismissals, (which was optional before), and at least one of the two following measures: a plan for integration and training persons with disability or a plan introducing technological changes which facilitate their integration.

#### 5. Reform of the temp-work contract

Article 55 of the Act on Social Dialogue and Employment 2015 (Rebsamen) 2015) introduced the possibility to renew temporary agency work assignments twice (as well as fixed-term contracts -'*contrat à durée déterminée*'). However, the total duration of the tenure (including renewals) is to remain unchanged. Prior to this change, the French Labour Code only allowed for one single renewal, and an 18-month limit to the total duration of the assignment (renewal included), with some exceptions as detailed below. Any assignment still ongoing on the date of publication of the law, as well as any assignment that started after 19 August 2015, can be renewed twice as long as the total duration of the tenure including renewals stays within the maximum.

In France, the use of temporary agency workers (and the same applies to fixed-term contract) is limited to the following situations (Article L1251-6, Labour Code):

- Replacement of absent workers;
- Temporary surge in activity;
- Seasonal work;
- Replacement of a business owner;

- Assignments are usually limited to 18 months (including renewals), but can last up to 24 months under the following circumstances (Article L1251-12 Labour Code,):
- The temporary replacement of an employee whose role will no longer exist in the company;
- The end-user is dealing with an order placed by a foreign customer, and the work requires 'disproportionate means' such as a much larger workforce, and/or skills that are not present in the company;
- The assignment is based abroad.

## 6. Limiting involuntary Part-time work

The aforementioned Act on Securing Employment 2013 has been amended through the ratification of Ordinance No. 2015-82 of 29 January 2015. This legislation simplifies and guarantees provisions on part-time work introduced by the Act on Securing Employment 2013. These provisions extracted from the inter-professional national agreement of 11 January 2013, established a minimal threshold of 24 hours of weekly work to fight involuntary part-time work (see paragraph 2.1.1).

The Ordinance 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.

This limit of minimum working hours for part-time work contracts has not been very effective in reducing the number of short-hours part-time contracts in France. The reason is that the minimum of 24 hours can be derogated by collective agreement and that occurs quite often.

### 3 **Position and role of the social partners on the social reforms**

#### 3.1 Reforms and social dialogue

As described before in paragraph 1.3, in 2007 and 2008 the social dialogue in France had an impulse due to the Act on Modernising Social Dialogue 2007<sup>18</sup> and the Act on the Reform of Social Democracy and Working time 2008.<sup>19</sup> These acts oblige the government to consult the social partners with respect to new envisaged legislation in the field of labour law. Alternatively, the government can oblige the social partners to negotiate on a national level on a certain issue that the government desires to regulate. If an agreement is reached, this will be codified into an act. The interviews conducted show that both unions and employers' organizations are positive with respect to this development. However, they also agree on the fact that this new approach has led to only one successful national agreement that has turned into a law: the *Accord National Interprofessionnel du 11 janvier 2013*. This agreement is codified into the Act on Securing Employment 2013, further elaborated in paragraph 3.2. Afterwards, there have been other agreements concluded in 2012 and 2013, but less comprehensive.

Several reasons for this relatively low success are identified by the interviewees. A part from the initiatives based on the changed regulations in 2007 and 2008 (*the Accords National Interprofessionnels*), the economic crisis has also led to a reactivation of the social dialogue on a sectoral level. As an example of this trend it can serve the metal industry in France. This industry has been strongly impacted by the economic crisis which started in 2008 in a very negative way. However, this has led to a reactivation of social dialogue in the sector in order to find flexible innovative solutions to preserve employment in the sector. The employers' and employees' representatives managed to reach joint solutions for combining a reduction of the working time of employees with the receipt of a partial unemployment benefit and for the support of employees affected by restructuring measures through the creation of mixed joint funds supported by employers and employees contributions. These agreements instituted a more reactive, unified and simplified system of negotiated decision concerning restructuring

---

<sup>18</sup> LOI n° 2007-130 du 31 janvier 2007 de modernisation du dialogue social.

<sup>19</sup> LOI n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail.

processes. Two major important achievements of social dialogue were mentioned by the interviewees in this industry:

1. The 2009 sectoral agreement<sup>20</sup>

This agreement was connected with the establishment of training joint funds which help employers to hire young workforce. The system raised 60 million euro and led to the creation of apprenticeship programs. The employers praised as positive for the metal sector the new measures on secured mobility for the employees and that for that purposed joint centralized funds are being set out, that the employers are contributing for a safe future, and that is expected to lead to increase mobility of the workforce. They also mention that this is a very innovative and positive new system but that there are different funds depending on the sectors and that there are still difficulties to connect the various funds which need to be solved.

2. The aforementioned National agreement of 11 January 2013 on labour market reform and the national agreement of 14 December 2014 on vocational training reform.

The evaluation by the interviewees of the results of these agreements is positive, as they have led to more flexibility in the adoption of decisions affecting employment at company level. The global analysis is that through the implementation of these agreements the French social partners in the metal sector have applied a successful flexibility policy and have managed to avoid higher destruction of employment in the sector. They also emphasized that the reduction of individual employees working time has not been accompanied by wage moderation.

According to the interviewees the agreements reached at the sector have led to profound changes in social dialogue. It was the first time that concrete measures combining flexibility and security in employment were adopted at this sector.

The moderate success of the national agreements is explained by the interviewees in different ways. First of all, there is a strong political focus on labour law related issues. In general, new governments want to implement new initiatives. This sets the agenda for the negotiations, but in a rather random way and often without having thoroughly investigated the results of previous initiatives. Secondly, the process of negotiating towards an *Accord National Interprofessionnel* starts with a roadmap of the government. This roadmap can be highly

---

<sup>20</sup> Accord National du 7 mai 2009 relatif à des mesures urgentes en faveur de l'emploi dans la métallurgie.

influenced by lobbies of either unions or employers' organisations which makes it difficult to have a really open negotiation. Thirdly, new legislation in the field of labour law is issued not only by the Ministry of Labour, Employment, Vocational Training and Social Dialogue but also by the Ministry of the Economy, Industry and the Digital Sector, or other ministries. An example of this is the Act Macron 2015 (see paragraphs 2.1.2 and 3.4) for further elaboration). This Act contains several amendments on the rules regarding collective redundancy, without social partners being consulted in any formal way. Fourth, in France, collective bargaining at sector level is considered still more relevant than at national level. The obligation to negotiate periodically without the need to reach an agreement is seen as a sort of "administrative burden" for the companies who need to have permanent staff dedicated to deal with these negotiations. In any case, both social partners recognized that bargaining at the sector level is more productive in the French context. National Agreements are considered too general and not suitable to deal with the specificities of the sectors.

The public administration has also recently evaluated the development of social dialogue in France. The 'Report Combrexelle'<sup>21</sup> issued by the Conseil d'État (an advisory body to the government) provides an analyses of the current state of the social dialogue. The starting point is that the collective bargaining in the current moment, it is not equipped for the current timeframe that demands flexibility and quick paces. In this report the explanation for the hampering of the social dialogue is twofold. On the one hand, the complexity of the French labour law is mentioned as a limiting factor. On the other hand, the social partners playing the role of "not per se aiming at consensus" culture/strategy is described as a limiting factor.<sup>22</sup>

The observations on the second matter in the Report Combrexelle coincide with the input of the interviewees regarding the industrial relations and their development. Combrexelle states that on both sides the complexity of the law is felt as hampering, for the employers' organisations because this in general results in delay, for unions because it is difficult to always dispose of enough negotiators that have the same information as the other side of the table. On the employers' side the actors are not always convinced about the use of collective

---

<sup>21</sup> Jean-Denis Combrexelle, "*La négociation collective, le travail et l'emploi*", September 9th, 2015, <<[www.gouvernement.fr/partage/5179-rapport-la-negociation-collective-le-travail-et-l-emploi-de-jean-denis-combrexelle](http://www.gouvernement.fr/partage/5179-rapport-la-negociation-collective-le-travail-et-l-emploi-de-jean-denis-combrexelle)>>.

<sup>22</sup> This analysis is shared by various authors in the public and legal debate in France. As an example we refer to Jacques Barthelemy and Gilbert Cette, *Réformer droit du travail*, Odile Jacob, September 2015. The authors explain that a new system of labour law should be established in which there is more leeway for collective agreements to deviate from the law at the appropriate level.

agreements, since it does not provide immediate and actual revenues for the enterprises. On the unions side, the collective bargaining is merely seen as an instrument to equally divide wage raises, working time reduction and working conditions and not so much as an instrument to regulate the labour market in times of crises. Furthermore, a very relevant observation in the Report Combrexelle is that there is a lack of trust between the negotiating parties.

The interviews conducted show a similar picture to the evaluation presented by the Combrexelle report. It is perceived on the unions' side that the relation with the employers' organisations has hardened, although it also depends on the sector. In some sectors negotiations are still constructive, in other sectors they are more conflictual. It is sometimes perceived as if the employers' organisations use the economic crises as an excuse to achieve as much flexibility as possible. Furthermore, it is acknowledged that times have changed with respect to the social dialogue. According to the unions, the employers' organisations are more radicalised than four or five years ago: considering the social dialogue as time consuming and difficult and highly focussing on simplification of all issues to a point that there are almost no rules to follow.

On the employers' side it is mainly the complexity and the lack of 'gain' that plays a role. The relation with the unions is perceived as poor.<sup>23</sup> Although, it is generally considered that the reforms, started in 2008 and continued until 2015, are transforming the system of collective bargaining and that company level social bargaining is becoming stronger, employers feel that the changes are slow and that the sectoral level still prevails in collective bargaining negotiations. They consider that better rules on information and consultation have been introduced, especially in restructuring processes, including collective redundancies. The employers' representatives estimated that the new rules have led to positive developments as they help to adopt social agreed measures (ie. in social plans). It has allowed more constructive ways of taking painful measures regarding employment.

The overall assessment of social dialogue is that, in general terms, important agreements have been reached by the social partners. However, the employers interviewed mentioned that they were not fully satisfied with the laws implementing the agreements of the social partners due

---

<sup>23</sup> OECD (2015), *OECD Economic Surveys :France*, OECD Publishing, Paris, p. 36. <[http://dx.doi.org/10/1487/eco\\_surveys-fra-2015-en](http://dx.doi.org/10/1487/eco_surveys-fra-2015-en)>.

to the fact that, in the Parliamentary discussions, crucial agreed issues have been changed. On the contrary on the union's side the satisfaction with the implementation of the social partners' agreements is higher and they observed that agreements are in general transported to the legislation rather genuinely.

Another reason for the decrease of successful National Agreements is that the negotiating parties at a national level cannot always align the interests of all their members because they can have very different interests, especially at the unions' side. This is pointed out by the French labour market expert interviewed.

Finally, a common view of the social partners is that the legislative activity in the last years in the field of labour law has been quite intense. They have to constantly update their knowledge. They complained that the government foresees new labour market reforms before the previous ones are duly implemented. It takes time to raise awareness amongst stakeholders and it also takes time to evaluate the effects on the labour market. Therefore, they share the joint opinion that legal changes on labour market reforms are being adopted in an excessively quickly trend.

The latest amendments regarding the social dialogue are laid down in the so-called Rebsamen Act 2015 and aim to modernize the social dialogue. This legislation has been finally adopted by the government alone as the negotiations between the social partners concerning this reform failed. As explained above, the reform is changing the rules regarding representation for employers and is mainly impacting the inter-professional level. Since at the time of the interviews not all measures in the Rebsamen Act have been implemented in more detailed regulations, most social partners are reluctant to give a very detailed opinion. However, from the unions' side, the law has been criticised for diluting the rights of employees. Furthermore, one of the critics is that the obligation to cluster various subjects of negotiation might indeed avoid fragmentation, but can easily lead to themes being overseen or drowned. Employers' organisations oppose against the introduction of regional commissions for consultation and representation. It is perceived as expensive and complex requirement, mainly harming smaller enterprises.

### 3.2 The Act on Securing Employment 2013 and the social partners<sup>24</sup>

This Act codifies the *Accord National Interprofessionnel du 11 janvier 2013 pour un nouveau modèle économique et social au service de la compétitivité des entreprises et de la sécurisation de l'emploi et des parcours professionnels des salariés*. The agreement was signed by three Unions: CFDT, CFTC and CGC and three employers' organisations: MEDEF, CGPME and UPA. The Unions FO and CGT did not sign the agreement. The main reason for not signing was because the agreement provides too much flexibility for the employer. In particular, the measurement opening a possibility for employers to decrease the activity as an alternative for redundancy dismissals in case of exceptional circumstances, has led to reluctance to sign. On the employers' side this measure is perceived as useful to increase the competitiveness of companies and the entire country. The employers interviewed evaluate this legislation as positive because it:

- fulfils the aim to facilitate the "adaptation to structural and cyclical economic change";
- Allows companies to adopt agreement on job retention by temporarily modifying working-time/wages/employment;
- Reforms collective economic dismissals procedures and facilitate conciliation in labour courts – allows the payment of lump-sum compensation based on employees' seniority;
- Promotes dialogue at company level as it streamlines and improves the quality of information provided to the employees' representatives bodies by creating a new unique database with the economic and social information on the company;
- secures the information and consultation procedures of the employees' representatives bodies;
- in terms of HR management allows a better anticipation on strategic orientations of the company.

Another measure included in the Act on Securing Employment 2013 which the employers consider a positive development, are the rules on occupational pathways, inter alia:

- Generalisation of complementary health insurance for all employees;

---

<sup>24</sup> See paragraph 2.1.1 for further elaboration on this Act.



- Rechargeable rights for the unemployment insurance;
- Bonus on social security contributions for companies;
- Recruiting young workers with open-ended contracts;
- Penalisation of social contributions for very short fixed-term contracts;
- Create a personal training account (developed by the Act on Vocational Training, Employment and Social Democracy 2014, see paragraph 2.1.4);
- Right to secured voluntary mobility period.

Overall, the signing parties are satisfied with the way the agreement has been transferred into law. Even if there were adjustments made, the signing parties don't oppose to that because it concerned issues that they were not able to fully address themselves.

Despite the optimism around this act and around the process of establishing it, the recent evaluation of the Act shows that the effects are limited. Please be referred to paragraph 4.1 for an overview of the evaluation.

The National Agreement of 11 January 2013 not only resulted in legislation, but also in the adoption of several sectoral agreements on job retention in the metal industry. A policy of "social amortization" was adopted with a reduction of working time. The consequence was that employment in the sector decreased less than economic activity. These agreements provided flexibility in times of economic crisis. Under the new agreements social partners have more flexibility to conclude enterprise level agreements to preserve jobs in the event of unforeseen severe economic circumstances. The agreement also allows for the temporary adjustment of wages and working time for no longer than two years, in return for a commitment from the employer not to make redundancies. As a result of the labour law reform, the social partners have the right to reach agreement over the procedure for collective redundancy.

Moreover, several measures aimed to diminishing labour market segmentation are comprehended in the Act on Securing Employment 2013 (measures such as a minimum working time of 24 hours for part-time contracts or the higher costs on short fixed term contracts). Some of these measures have been further implemented by collective agreements (mainly at sectoral level).

### 3.3 Measures regarding youth employment and activation and the position of the social partners

#### 3.3.1 **The Act on Creating Jobs for the future 2012**

The measures provided for in this act are merely executed in the public or semi-public sector. Unions are positive about the act and about the outcome. Youth employment programmes for low skilled youngsters are generally supported by the unions. The optimism about the outcome is confirmed by an evaluation of this Act, please be referred to paragraph 4.2 for a description of that evaluation.

#### 3.3.2 **Employment and social policy measures, the role of the social partners.**

As mentioned above, the *National inter-professional agreement of 19 October 2012 on the contract of generations* led to the adoption of the Act on Creating a Contract of Generations 2013. This agreement is signed by all three employers' organisations (MEDEF, CGPME and UPA) and all Unions (CFDT, CFE-CGC, CFTC, CGT and FO). Although having signed, some of the unions had their concerns about this collective agreement. First of all, there has been critics on the limited negotiation that took place, and secondly, on the idea behind the contract of generations. They are of the opinion that keeping older employees active is more a question of providing decent working conditions than a problem that can be solved by financial aid to hire younger people and letting older employees stay at the same time. This point of criticism is shared by the French labour market experts interviewed. They pointed out that there was no one economist supporting the expected effects of the law. The employers' organisations are merely satisfied, because the agreement replaces older agreements that were far more complicated, but don't consider it a success either.

All parties interviewed are of the opinion that the codification of the agreement into law is accurate as the content of the law is similar to that of the social partners' agreement. Moreover, the Act continues to stimulate social dialogue because further agreements can be (and actually are) concluded at company level.

Another example of measures in this field, the use of Shared Learning Paths, "Parcours Partagé d'Apprentissage (PPA)" in the metal sector can be named. This type of

apprenticeship established by Decree n°2012-627 of 2 May 2012<sup>25</sup> provides for an apprentice employee allocating its time between a company in the sector and subcontracting SMEs.

The objectives of this "path" are to:

- Promote the integration of young people
- Encourage hiring of skilled youth in subcontracting SMEs on the metal sector
- Insert the apprentice in the extended enterprise program
- Create links with subcontracting SMEs
- Ensure the sustainability of the metal business

The interviewees also pointed out that the origin of this type of career paths are also the outcome of an agreement of the social partners in 2010 which was later on adopted as legislation. The social partners consider these agreements as a clear success of social dialogue at sector level.

### **3.3.3 Legislation on Vocational Training, Employment and Social Democracy and the position of the social partners.**

The Act on Vocational Training, Employment and Social Democracy 2014 is based on a national agreement: *Accord National Interprofessionnel du 14 décembre 2013 relatif à la formation professionnelle*.<sup>26</sup> The agreement was signed on the employers' side by MEDEF and UPA. On the Unions side it was signed by CFE-CGC, CFDT, CFTC and FO. According to the CGPME representatives, the reason for them not to sign this agreement was that the provisions are too complex, will have an adversary effect on employment and will give employees too much freedom to get training during working hours.<sup>27</sup>

The systems that are introduced bring along a huge administrative burden and are too complex, says the French labour market expert that we have interviewed. He also expects that most employers will oppose to this measurement.

All parties interviewed are of the opinion that the conversion of the agreement into a law is correct. The content of the law is similar to the content of the agreement.

---

<sup>25</sup> Décret n° 2012-627 du 2 mai 2012 relatif à l'accueil des apprentis dans plusieurs entreprises.

<sup>26</sup> This national agreement is a further elaboration of the *Accord National Interprofessionnel du 11 janvier 2013 pour un nouveau modèle économique et social au service de la compétitivité des entreprises et de la sécurisation de l'emploi et des parcours professionnels des salariés*.

<sup>27</sup> <http://www.cgpme-pdl.fr/formation-professionnelle-loi-du-5-mars-2015-2.html>.

However, this Act also introduced rules for employer association representativeness, with a measurement of business support based on membership. In the opinion of the employers' representatives interviewed, it was necessary to reform the rules for employers' representativeness. Nevertheless, the new rules have more impact at the inter-professional level and change less at the sector level. These new rules were introduced by the government after the social partners did not manage to find an agreement on this issue. It is a conflictual measure because of the financial aspects of the new regulation.

It has also been mentioned that as a follow up of that law the government have used training funds gathered by the social partners for developing their policies for new training programs. The mention that through the Acts of Finance from 2010-2012 the government has transferred high amounts of those paritarian funds for training programs without explicit agreement with the social partners and that that has been a controversial issue.

Immediately after the adoption of Act on Promoting the Development, Internship Supervision and Improvement of Internships promoting the development, internship supervision and improvement of internships, the government adopted the measure of using 200 million euro for stimulating the objective of the recruitment of apprenticeship workers and 100 million for programs of younger workers insertion in the labour market. The use of those funds was discussed at social conference where the employers' associations and the trade unions CFDT, CFTC, CFE-CGC, UNSA, and FAFPT were present. The CGT and the FO and FSU were not attending that social conference. The FO criticized the lack of real social dialogue on how this plan will be implemented in the public sector and the Federation of Hospitals in France the fact that it was not invited by the government to join the discussions. (Pastor, 2014)

### 3.4 The Macron Act 2015 and the social partners

The Macron Act 2015 has been issued without any formal involvement of the social partners. Most partners have tried to influence the process on an informal way, but there has not been a formal consultation. The unions have mentioned their concerns about this legislative process and they are of the opinion that the provisions regarding labour should always be dealt with by the Ministry of Labour, Employment, Vocational Training and Social Dialogue and not by the Ministry of the Economy, Industry and the Digital Sector.

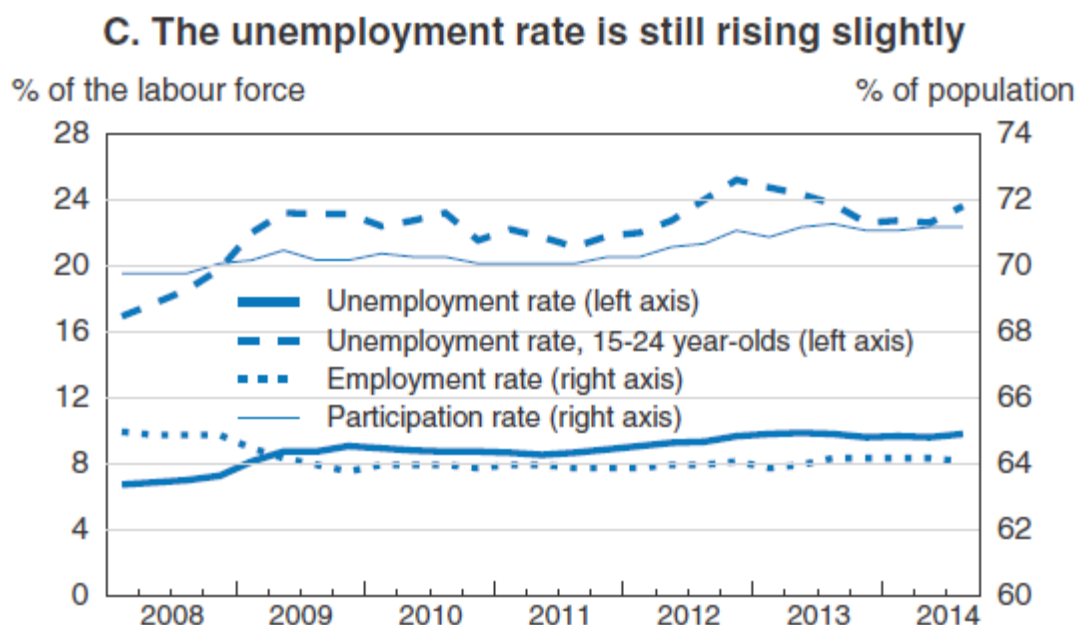
With respect to the content of the Act, the general opinion of the unions is that the law is not favourable for employees, with exception of the measures regarding the posting of workers.

The unions oppose against liberating the Sunday work and night work, the initially suggested cap on severance payments and the provisions regarding redundancy. They consider that those measures overthrow the existing balance in the social dialogue.

Employers' organisations feel more comfortable with the Macron Act 2015, although they are convinced that the act is just a start on the right direction and not going far enough. With respect to the Sunday work and night work, they are of the opinion that the possibilities are still too restricted. Furthermore, the act does not answer the need of companies to simplify the regulations. These demands for the employers have led to further reforms of the Labour Act in France which has been adopted in 2016. These last amendments are not covered by the time lapse of this case study. (see annex)

## 4 Labour Market Effects of the reforms

Not all the legal measures mentioned in this report have been evaluated yet. In this paragraph the main findings of the evaluations that took place will be summed up. In general, the following general figures can be presented:

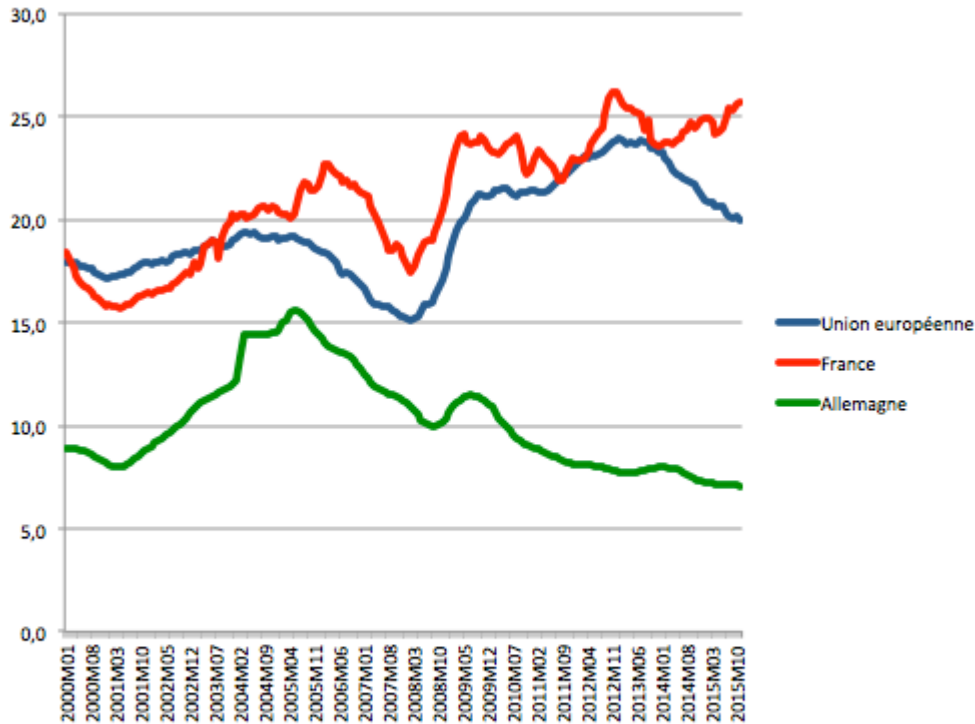


Source: OECD ECONOMIC SURVEYS: FRANCE @OECD 2015, p. 19 figure 2.

The unemployment rate has risen past 10% and it is almost at 23% for the age group of 15-24 in 2014.<sup>28</sup> In 2008, the unemployment rate was 6.8%, end 2015 it is 10.2%.<sup>29</sup> Besides, the youth unemployment rate has also risen dramatically in the last years. In 2008, the youth unemployment rate was 19%. By the end of 2015 it was 25,9 %. See table below with the figures on youth employment rate in France:

<sup>28</sup> OECD ECONOMIC SURVEYS: FRANCE @OECD 2015, p. 18.

<sup>29</sup> INSEE: <http://www.insee.fr/fr/themes/info-rapide.asp?id=14>



Source : Eurostat

With respect to part-time and full-time work, the numbers have changed slightly. In 2008 53.9% of the labour force worked full-time. This percentage has dropped at the end of 2015 to 52.5 %. The percentage of part-time workers has risen from 11.1% in 2008 to 11.8% at the end of 2015.<sup>30</sup>

There is also a slight shifting in the percentage of employees that work on the basis of a permanent contract and those who work on a temporary contract. In 2008 50.2 % of the work force had a permanent contract. This percentage has decreased to 48.6%. In the same period the percentage of workers with a temporary contract has risen from 7.0% up to 7.4%.<sup>31</sup>

<sup>30</sup> INSEE: <http://www.insee.fr/fr/themes/info-rapide.asp?id=14>

<sup>31</sup> INSEE: <http://www.insee.fr/fr/themes/info-rapide.asp?id=14>

## 4.1 Act on Securing Employment 2013

In April 2015 the French Government has edited a report on the results of the Act on Securing Employment 2013.<sup>32</sup> The following results can be highlighted, focusing on the measures that follow from the 2013 National Agreement.

### 1. Increasing the costs of short fixed-term contracts

This measure has not lead to the decrease of short term contracts (one month), although the costs of such contracts are increased. According to the report 2015, the number of employees that are hired for one month or shorter has on the contrary *increased* from 14.9 million in 2013 to 15.7 million in 2015. This can be explained by the fact that measures in general need time to settle in, but the reporting committee does not find this a strong argument given the simplicity of the measure.<sup>33</sup> The explanation given by the Unions is that the increase of the costs is simply not high enough to take away the advantage of short term contracts for employers. This analysis is endorsed by the expert on the French labour market who has been interviewed.

### 2. Rechargeable rights

This provision makes it possible for people that are regularly in and out unemployment to keep their unused accrual of rights if they find new employment instead of losing the accrual. The reporting committee indicates that in October 2014 23,000 beneficiaries have benefited from this provision instead of the expected 1 million possible beneficiaries. As a possible explanation for this, the reporting committee explains that in a lot of cases, the 'old' rights are based on a lower salary than earned in the most recent job. Therefore the income is perceived as having nothing to do with the last income that it is supposed to replace. This issue shall be resolved.<sup>34</sup> There is no further data available on the period afterwards.

### 3. Establishing a legal minimum of 24 hours in part-time contracts

---

<sup>32</sup> *Bilan de la loi de sécurisation de ' l'emploi du 14 juin 2013, 3 avril 2015, << [http://travail-emploi.gouv.fr/IMG/pdf/CONFERENCE\\_THEMATIQUE\\_DU\\_3\\_AVRIL\\_2015\\_-\\_Bilan\\_de\\_la\\_loi\\_de\\_sécurisation\\_de\\_l\\_emploi.pdf](http://travail-emploi.gouv.fr/IMG/pdf/CONFERENCE_THEMATIQUE_DU_3_AVRIL_2015_-_Bilan_de_la_loi_de_sécurisation_de_l_emploi.pdf)>>*

<sup>33</sup> *Bilan de la loi de sécurisation de ' l'emploi du 14 juin 2013, 3 avril 2015, p. 10.*

<sup>34</sup> *Bilan de la loi de sécurisation de ' l'emploi du 14 juin 2013, 3 avril 2015, p. 26/27.*



It is possible to deviate from this legal minimum on a sector level. The evaluation report shows that in many sector agreement this is the case and a lower minimum is established. This seems to indicate that the protective objective of the measure has not been reached, under the influence of the social partners themselves.

#### 4. Decreasing activity in case of serious economic problems

Companies that are confronted with a difficult economic environment or with exceptional circumstances can temporarily decrease or suspend their activities. The new law makes this easier. The affected employees receive a compensation for the unemployed hours, paid by the employer but partly borne by the State. From the evaluation it becomes clear that the objectives of the measure are met: there has been an increase of companies that make use of the possibility to decrease activity (from 86.9 % to 90.1 % of the companies with less than 50 employees. Furthermore, there is more diversity of the sectors that make use of the provision. Thirdly, the number of authorized hours to cut has increased with 25% and the authorized period has lengthened from 2.5 to 3.5 months.<sup>35</sup> Based on the available information it cannot be established whether or not this increase is due to the fact that this provision is called in too easy and merely used as a means to be competitive than as a means to avoid redundancy or closure.

#### 5. Obligation to find a buyer if the company is in trouble

This obligation applies when a company has more than 1000 employees. The precise conditions and rules of procedure are laid down in laws established later on. Within a short year after the provision became valid, 42 cases of closed down companies within the scope of the provision (i.e. having more than 1000 employees) have been assessed. In half of those cases a normal social plan was drawn up without looking for a buyer. In only three of these cases the company would actually be obliged to look for a buyer, given the applicable criteria in the law. The other half of the companies did look for a buyer or was in the process of doing so, although with virtually no success.

## 4.2 Act on Creating Jobs for the Future 2012

---

<sup>35</sup> *Bilan de la loi de sécurisation de 'l'emploi du 14 juin 2013, 3 avril 2015, p. 43.*

This act has been evaluated at the request of the government by the Institute Bertrand Schwarz.<sup>36</sup> It has been calculated that as per 31 December 2014, 187 452 contracts have been signed with the targeted group of youth. More than half of these contracts are for three years and for 57% it was their first stable job. Given that the objective of the act was to reach 150 000 contracts, it can be concluded that the objectives have been reached.

#### 4.3 Act on Creating a Contract of Generations 2013

This Act has been evaluated in March 2015.<sup>37</sup> During 2013, less than 20.000 financial assistance petitions were filed for contracts of generation. Between 2013 and 2015, 59000 applications for aid under a "generation contract" were submitted by 35,000 companies to recruit young people. 49,000 of these requests have been validated (83%) and have led to the signature of a generation contract. Trade, industry, and construction are the main sectors using this new contractual form. 23% of the contract of generation registered from 2013 to 2015 lasted less than a year. It is remarkable that according to the evaluation the financial support that is offered by the act is most often used for a young low skilled worker that was already working in the company in combination with a senior employee working in a higher qualified job, also already working at the company. Only 1.5% of the young employees that are employed in 2013, are employed based on the contract of generations. (Dares, 2016)

Taking into account the limited number of contracts signed and the expectations of this new measure, the interviewed experts consider this contract as a failure attempt to promote solidarity between various generations of workers and promote youth and elderly workers employment. It has been argued that the "relative failure" of the bargaining of generation contracts might have been the victim or casualty of the 2008 crisis. Though, in a context of high economic uncertainties, hires on permanent contracts have continued to decline, just like apprenticeships and training-study contracts. The requirements resulting from hiring a youth with a permanent contract while retaining and older worker for 3 years may have influenced

---

<sup>36</sup> Please be referred to <<<http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/18709.pdf>>> for the press release on the outcome and <<[institutbertrandschwartz.org/lagora/actualites-de-linstitut/parution-de-letude-action-sur-les-emplois-davenir.html](http://institutbertrandschwartz.org/lagora/actualites-de-linstitut/parution-de-letude-action-sur-les-emplois-davenir.html)>> for the entire online report

<sup>37</sup> <http://dares.travail-emploi.gouv.fr/dares-etudes-et-statistiques/etudes-et-syntheses/dares-analyses-dares-indicateurs-dares-resultats/article/l-aide-a-l-embauche-en-contrat-de-generation-une-incitation-a-perenniser-l>

the mobilization of the generation contract device, especially when this mobilization was accompanied by a bargaining obligation (Méda, Tallard, and Renoux, 2014).

#### 4.4 Act on Vocational Training, Employment and Social Democracy 2014

The act introduces a Personal Training Account for everyone older than 16, filled with hours that can be used for Vocational Training. Furthermore free professional job counselling should be available for everyone. The evaluation<sup>38</sup> is merely focused on whether or not all administrative systems are in place to execute both measures and not on the effect on the labour market. No other data has been found in this respect.

---

<sup>38</sup> The evaluation is part of the *Bilan de la loi de sécurisation de l'emploi du 14 juin 2013, 3 avril 2015*, p. 13-16.

## 5 Conclusions

The overview of the French socio-economic context leads to the following conclusions:

- France have been only been slightly affected by the latest economic crisis. The French economy recovered rather quickly (mid 2010 GDP was back at its pre-crisis level) but still faces a relatively large national debt. However, in the last 5 years unemployment levels are stagnated at relatively high rate (10% in the last quarter of 2016). Thus, as in many other EU countries, labour and social regulation has been identified by politicians and policy makers as a major cause of the high unemployment rates in France;
- No direct commands from the EU institutions have been noticed in the origin of the labour law reforming process but the French government has followed the recommendations issued by the European institutions aiming to develop a French flexicurity approach;
- The main policy aims of the examined structural reforms are to remove regulations which produce rigidities on the labour market and to promote a decentralisation of collective bargaining structures. In France, there is a lasting trend towards decentralisation. Deviation in peius by company agreements in certain circumstances has been made legally possible since 2008. The Rebsamen Act on labour relations and employment of 2015 goes further in that trend, aiming to simplify relations between social partners and to promote employees' representations at small and medium size enterprises.
- Numerous and deep structural reforms have been passed before, during, and after the economic crisis, but, until 2016, the reforms have been patchy, their pace was slow and, according to some experts, their substance insufficient to meet needs.

When addressing the reactions of the social partners to the governments' structural reforms, adopted as a reaction the economic crisis, it can be noticed that, in France, the social partners have often been involved in the measures to compensate for the consequences of the crisis. Even when not all the reforms that have been decided by the French government during the examined period (2008-2015) have been subjected of negotiations with social partners, there is an extensive number of Acts which originated in agreements of the social partners. A

positive example of the relevant role of social dialogue in offering responses to the crisis is the Inter-professional Agreement signed 11 January 2013, which intends to establish 'a new economic and social model in supporting competitiveness and to secure employment and careers of employees'. This agreement is implemented by the adoption of the Act on Securing Employment 2013. Nonetheless, the interviewees have also expressed their disappointment in some occasions on how some of the social partners' agreements have been implemented in the subsequent legislation.

On other cases, the social partners have openly criticized the 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 criticised by the social partners as rushed, and as an attempt to destabilise the joint nature of the procedures on labour disputes. In particular unions 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). Nonetheless, unions have welcomed other measures, such as the strengthening of the employee defender's role and the new training obligation (EUROFOUND 2015a).

Sometimes the legislators have decided to intervene in industrial relations by stimulating and reforming social dialogue processes, when the bipartite bargaining between unions and employers has failed to produce results. For instance, the 2015 Rebsamen Act on modernising social dialogue was launched by the government after social dialogue at national level collapsed. That Act heralds many changes for consultation bodies and collective bargaining at company level and unions are divided on their opinions about this 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 criticised 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. (EUROFOUND 2015b)

One clear conclusion is that the reforms of collective bargaining and employees' representation have not profoundly altered the picture of social dialogue processes in France. Despite the clear attempts of the legislator to promote the decentralisation of collective bargaining, the bargaining structures remain stable in France. The results of the research shows that the sector level bargaining is still prevailing in France. Some interviewed have criticized that an economic downturn might not be the most suitable moment to change the model of industrial relations. From the study results, it can be concluded that the current trend of imposing collective bargaining decentralization in a context of economic crisis does not help for promoting fairer working conditions and can frequently lead to a deterioration of job quality. The pressure on the employees' representatives at that level to accept agreements lowering employment conditions - including wages - increased exponentially when unemployment is high and jobs at the company are at stake.

## **Annex –Reform of the French Labour Code 2016**

On November 4th, 2015 the French Minister of Labour, Employment, Vocational Training and Social Dialogue has announced a reform of the Labour Code. In that respect, on March 24th, 2016, an Act is introduced in Parliament and the government expects to pass the Act this summer. The main measures can be summarized as follows:

### **I. Strengthening the role of social partners in establishing regulations regarding labour law**

The role of the social partners is strengthened by introducing a three tier system. The first tier contains the fundamental principles applicable for everyone who is laid down in the law. The second tier describes the area's that are open to negotiation for the social partners on sector or company level. The third tier provides supplementary provisions that apply if no collective agreements are concluded.

Next to this new system, the Act introduces the following provisions:

- Strengthen the legitimacy of company agreements between union representatives and a company by introducing the demand of majority (the agreement must be signed by unions that represent 50% of the employees instead of 30% which is currently the case;
- Improvement of the training and means of the unions;
- Bringing down the number of sectors from the current 700 to 200 in order to be more efficient.

### **II. Making companies more visible, especially small and medium enterprises in order to encourage employment under permanent contracts and to create jobs.**

- Introduction of an indicative amount of severance payment in case there is no actual reason for termination in order to reduce the current insecurity at this point;
- Incorporation in the law of reasons for dismissal on economic grounds as are currently accepted in case law;
- Introduce support offices.

### **III. New protective measures for precarious workers and young workers, particularly those who have difficulties entering the labour market:**

- Create a personal activity account that enables employees to build up rights they can use at any time in their career, e.g. to increase their skills;

- Create a budget for young drop-outs and low skilled unemployed;
- Increase the hours that can be used for training from 24 hours a year to 40, for all low skilled employees.
- Introduction of the right to be offline/unattainable in order to provide effective resting time and developing teleworking.
- Protection of precarious workers such as season workers and semi self-employed workers ('portage salarial')
- Strengthen the battle against social dumping
- Reform the position of the company doctor in order to follow the medical track of employees more efficient and better targeted.



## References

- Allouache, A., (2009), 'La composition et la charge de la rémunération', *Droit Social*, No. 11, November 1025–1036;
- Bonin, V. (2014), 'La démocratie sociale constitutionnalisée ?', *Droit Social*, 428 ;
- Brunhes, B., (2008) 'La réforme du dialogue social : les petits pas avant les mutations en profondeur' *Droit Social*,403-406 ;
- Canut, F., (2014), 'L'environnement européen de la flexisécurité', *Droit Social*, (2014), 668-680 ;
- Caroli, E. and Gautié, J. (eds.), (2008), *Low-wage work in France*, New York, Russell Sage Foundation;
- Cette, G. and Barthélémy, J., *Refonder le droit social: mieux concilier protection des travailleurs et efficacité économique*, La Documentation française, 2013, 1-2017 ;
- Croquet, B., 'Labour Market Measures in France 2008-13: The Crisis and Beyond', ILO, (2015), 1-91;
- Dechristé, C., (2012) , 'Contrat de génération: un projet de loi avant la fin de l'année.' *Dalloz Actualité*, September, 1-2;
- (2013), 'Contrat de génération : création du traitement automatisé de l'aide financière, *Dalloz Actualité*, September,1-2 ;
- DARES, (2016), 'Les embauches en contrat de génération de 2013 à 2015', *Dares Résultats*, n. 82, 1-8;
- Labaye E., Roxburgh C., Magnin C., and Mischke J., *French employment 2020*in McKinsey and Company, *Five priorities for action*, (2012) accessed 01.02.2015, <http://www.mckinsey.com/global-themes/employment-and-growth/french-employment-2020>
- Larose, C. (2008), 'Quand v-t-on sortir de l'impasse sur le dialogue social?', *Droit Social*, 18-20.
- Luttringer, J. M., (2014), 'Le compte personnel de formation: genèse, droit positif, socio-dynamique', *Droit Social*, 2014, 972-985;
- Méda, D., Tallard, M., and Renoux, J. L., (2014), *Intergenerational Bargaining – Country Report France*, 1-80'
- [http://www.intergenerationalbargaining.eu/uploads/backbone/upload/asset/67/Intergenerational\\_bargaining\\_in\\_France\\_national\\_report\\_version\\_4\\_dec\\_2014.pdf](http://www.intergenerationalbargaining.eu/uploads/backbone/upload/asset/67/Intergenerational_bargaining_in_France_national_report_version_4_dec_2014.pdf)

- Pastor, J. M., (2014) 'L'apprentissage au coeur de la grande conference sociale', Dalloz Actualité 11 July 2014;
- Ramos Martín, N. E, (2012), 'Sector-level bargaining and possibilities for deviations at company level: France', EUROFOUND, 1-11;
- [http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EUROFOUND/20110325-015753\\_Eurofound\\_Sector\\_level-barg\\_FRANCE\\_Feb11pdf.pdf](http://csdle.lex.unict.it/Archive/LW/Data%20reports%20and%20studies/Reports%20and%20studies%20from%20EUROFOUND/20110325-015753_Eurofound_Sector_level-barg_FRANCE_Feb11pdf.pdf);
- Schulze-Marmeling, S. (2014) 'Les conseils de prud'hommes : un frein à l'embauche ?', Connaissance de l'emploi, 111 : 1-4;
- Vincent, C., (1998) EIRO, 'Debate over mandating employees to conclude collective agreements', Dublin, Eurofound, <http://www.eurofound.europa.eu/eiro/1998/07/feature/fr9807123f.htm>;
- Vigneau, C. and Sobczak, A., (2005) 'France: The helping hand of the state', in Blanke, T. and Rose, E. (eds.), Collective bargaining and wages in comparative perspective: Germany, France, the Netherlands, Sweden and the United Kingdom, in Blanpain, R. (ed.), Bulletin of Comparative Labour Relations, N. 56, 31–48;
- Visser J., Hayter S., and Gammarano R., (2015), "Trends in Collective Bargaining Coverage: Stability, Erosion or Decline", Labour Relations and Collective Bargaining, N.1, ILO, 1-12;
- Wagon, E., (2014), 'Une réforme d'envergure qui associe l'ensemble des acteurs', Droit Social, 968-971;
- Willmaan, C., (2013), 'Politiques de vieillissement actif : le contract de génération, un nouvelle étape', RDSS, 231-244;