Country report: France

1. Introduction

The 2008 financial crisis caused a huge increase in France’s national debt. In 2014 it was reported that France’s high budget deficit meant that there was still danger that the crisis could continue to spin out of control.1

The situation on the French labour market has also been very tense throughout the crisis. In summer 2014, for example, the unemployment rate was 10.2 per cent, twice as high as in Germany.2 In 2015 the French unemployment rate soared to 10.5 per cent – an 18-year high – as against the EU average of 9.8 per cent.3

In January 2016, President François Hollande unveiled an economic plan to deal with what he described as France’s ‘state of economic emergency’.4 He set out a new 2 billion euro plan for job creation for France, which he said was facing an ‘economic and social emergency’, as well as an ‘uncertain economic climate and persistent unemployment’.5

In response to the economic situation and also both internal and external pressure France has carried out wide-ranging labour law reform over the past two years that has been met by huge protests and furore. The new law, carrying the name of the Minister of Labour Myriam El Khomri, introduced some changes that have been seen as an attack on symbolic elements of French labour law (see in detail below).6

In sum, over the years French labour law reforms have been towards increased flexibility with some small exceptions. Moreover, this trend has not been reversed and the recent reforms generally seem to have continued in the same direction.

From the EU side, over the years France has received many country-specific recommendations (CSRs). In 2014 France was urged to significantly reduce the increase in social security spending, contain pension costs, ensure reduction of labour costs, eliminate regulatory impediments to companies’ growth, reform the unemployment benefit system, modernise vocational education and training and reduce the tax burden on labour. In 2015 the EU institutions added the requirement to reform the wage-setting process to ensure that wages evolve in line with the productivity to, among other things, ensure that minimum wage developments are consistent with the objectives of promoting employment and competitiveness. France was also required to reform labour law to provide more incentives for employers to hire on open-ended contracts and to facilitate derogations from working time arrangements at company and branch level. For 2016 four recommendations remained: to ensure labour cost reductions (including minimum wage development in line with competitiveness), to improve the links between the education sector and the labour market and to reform the unemployment benefit system, to reform the size-related criteria in regulations that impede companies’ growth, and to reform labour law to provide more incentives for employers to hire on open-ended contracts.7

2 Ibid.
5 Ibid.

In France, labour legislation was subjected to changes right at the very beginning of the crisis, with new laws dating back to 25 June 2008 (Law n° 2008-596 of 25 June 2008 portant modernisation du marché du travail) and 20 August 2008 (Law n° 2008-789 of 20 August 2008 portant rénovation de la démocratie sociale et réforme du temps de travail). These brought major changes to the regulation of the labour market, trade union representation, collective bargaining and working time.

As far as Law n° 2008-596 of 25 June 2008 on the reform of the labour market is concerned, it introduced a new form of termination for open-ended employment contracts, the so-called ‘rupture conventionnelle’ providing for mutual agreement on voluntary redundancy. It also created a new reason for concluding fixed-term contracts intended for engineers or executive officers working on a specific project. The law also called for better information of workers’ representatives with regard to the use of temporary agency work.

Law n° 2008-789 of 20 August 2008 on the reform of industrial democracy and working time can be divided into two parts. The major change in the first part concerned the reform of trade union representativeness. The second part tackled the issue of working time. One of the most important innovations was the possibility for employers and employees to set the period of overtime in advance by concluding so-called ‘conventions de forfait’ (this possibility must first be provided for in a collective agreement).

In the context of the European Semester and following the CSRs issued by the European Commission in April 2012, France presented its national reform programme, which also included amendments to labour law. Five key elements of this programme deserve emphasis.

First, measures have been taken to tackle the issue of the employment of more vulnerable categories of workers, namely younger and older workers, a subject of collective bargaining at sectoral and national level. Furthermore, the conclusion of so-called ‘contrats de professionnalisation’, which normally apply to younger workers willing to obtain a professional qualification or to complement their education, was opened up to unemployed workers older than 45 (with companies being granted a specific state subsidy). Moreover, a decree of 7 February 2012 provided that micro-businesses hiring a worker under the age of 26 on a permanent or temporary basis are exempted from employer social security contributions on wages for one year (Decree n° 2012-184 of 7 February 2012 instituant une aide à l’embauche de jeunes de moins de vingt-six ans pour les très petites entreprises).

Second, the reform programme also refers to the multiannual agreement between the government, the unemployment insurance agency and Pôle Emploi, intended to improve public employment services.

Third, with regard to vocational education and training, emphasis was put on apprenticeships and lifelong training. For example, higher quotas of apprentices, along with tougher sanctions were implemented (on reforms on apprenticeships see Law n° 2011-893 of 28 July 2011 pour le développement de l’alternance et la sécurisation des parcours professionnels).

Fourth, the national reform programme provided a number of measures implementing the concept of flexicurity. The programme mentioned a new tool, the ‘contrat de sécurisation professionnelle’ (contract for securing career paths). This contract was created by the inter-sectoral social partners in an agreement concluded in May 2011, with the Law of 28 July 2011 enshrining it into national law. It was codified in articles L1233-65 to L1233-70 of the Labour Code. It targeted workers made redundant for economic reasons in companies with fewer than 1,000 employees. By means of this contract, workers are entitled to personalised support measures, such as retraining or help in setting up a new business. The workers concerned receive compensation equivalent to a percentage of their former wages for a one-year period.

Finally, one of the flagship measures adopted during the crisis was the possibility of short-time working (‘chômage partiel’). Two main changes were made: workers’ entitlement to compensation during the short-time working period was improved; and the government restored the principle of administrative approval before companies implement such a scheme.

8 The authorisation the employer has to obtain from the Prefect to use this contract is valid for a maximum of six months. This authorisation is considered tacitly approved after fifteen days from the date the application is received. The employer must attach the
Another reform, not mentioned in the reform programme, dealt with so-called ‘groupements d’employeurs’, and more generally with labour leasing. The possibility to create a ‘groupement d’employeurs’ was first foreseen in Law nº 85-772 of 25 July 1985. In 2012 it was codified in articles L1253-1 ff. of the Labour Code. A ‘groupement d’employeurs’ takes the form of an association covering a group of companies. The aim of the mechanism is to translate company needs for casual/temporary labour into a possibility for the ‘groupement’ to recruit staff that can be assigned to the different companies composing it. The possibility to resort to labour leasing needs to be strictly regulated due to the risks it entails, in particular in terms of collective rights. Nevertheless, the opportunity to set up such an association has been broadly opened and liberalised. Three major changes need to be underlined: companies with more than 300 employees can now join such a ‘groupement’ (Art. L1253-5 of the Labour Code); a company can belong to several ‘groupements’ (art. L1253-4 of the Labour Code); and members of the ‘groupement’ will not necessarily be held jointly responsible for the association’s liabilities (Art. L1253-8 al. 2 of the Labour Code).

It is also worth mentioning the so-called ‘Great Social Conference’ that took place in July 2012, held at the initiative of the government and bringing together the national social partners. The objective of the conference was to set up a roadmap for social reforms. In the aftermath of this conference, the government launched a consultation of national social partners on ‘sécurisation de l’emploi’ (employment security). The guidance document handed out by the Minister of Labour sets out four priorities:

(i) The social partners have to tackle the issue of job insecurity on the labour market by finding ways to ‘promote’ open-ended contracts, by dealing with the issue of involuntary part-time work and by improving access to training and public employment services.

(ii) They have to make progress in the anticipation of business developments, employment and skills, providing workers’ representatives with better information and consultation, improving the existing ‘gestion prévisionnelle des emplois et des compétences’ (jobs and skills management planning) at company level and developing similar mechanisms at sectoral and regional levels, as well as introducing measures aimed at improving workers’ employability.

(iii) Negotiations must consider possible reforms of collective redundancy procedures.

(iv) Social partners are to develop schemes aimed at allowing companies to keep workers in employment instead of resorting to redundancies, through improving existing short-time working schemes and setting the rules for the conclusion of collective agreements at company level specifically designed to counteract difficult economic circumstances.

The collective agreements to which the guidance document refers are very similar to the ‘accords compétitivité-emploi’ (competitiveness/employment agreements) proposed by the former government. One explanation could be that guidelines come from a higher – namely the European – level. Indeed, it is worth noting that this roadmap for national social dialogue is totally in line with the recommendations made by the European Commission and the Council in the context of the European Semester. These recommendations point out that the measures mentioned above are steps in the right direction but are not at all sufficient. They also criticise the complexity of redundancy procedures in France and argue for a more flexible labour market.

On 6 November 2012, the Prime Minister presented the National Pact for Growth, Competitiveness and Employment. This pact includes many labour law measures already foreseen in the ‘Rapport Gallois’. With regard to workers’ representation, the government plans to have workers’ representatives sit on company boards (details are to be negotiated by the social partners), and to offer companies willing to do so the possibility to designate a worker representative as chair of the work council. The National Pact also states that apprenticeships and lifelong training are to be seen as priorities, also for the social partners. As a way of better matching company needs and education, the government intends...
to strengthen company participation in vocational and technical education school boards. The ‘Gallois Report’ also called for improved social dialogue. The negotiations on the ‘sécurisation de l’emploi’ (employment security, see above) were certainly in line with this recommendation. Another issue raised by the report was the poor functioning of public employment services and the government is now committed to tackling this issue. Finally, the report argued the case for simplifying and stabilising the regulatory environment. With regard to this matter, the government is committed to implementing the ‘SME test’, the aim of which is to evaluate the impact any new piece of legislation will have on SMEs prior to its implementation. Also to be noted is the fact that the government’s National Pact does not take over the measure advocated in the ‘Gallois Report’, namely to reform the legal provisions governing open-ended employment contracts, which were considered too rigid.

Concerning **working time**, in 2012 changes were adopted that clarified that establishment of a distribution of working hours over a period that is longer than a week and not more than the year covered by a collective agreement does not constitute a modification of the employment contract which requires the express consent of the employee, except for part-time employees. Moreover, the law simplified the requirement to continue the payment of wages in case of unemployment and the taking of annual leave for persons who have been employed for three months or more. Another simplification measure in terms of working hours was the entitlement to paid holidays from the first day of work. Now employees are entitled to paid leave of two and a half working days per month of effective work with the same employer without having to work a minimum of ten working days for the employer. This amendment sought to bring French law into conformity with the *Domínguez* case.\(^9\)

The French legislator has also sought to promote ways of acknowledging and promoting **employees’ stakes in company performance**. The Social Security Finance Act was amended in 2011. This amendment introduced a ‘prime de partage des profits’ (profit-sharing bonus), a bonus directly linked to a company’s dividends. According to Article 1, all French commercial companies with more than 50 employees had to negotiate the principal amount and the modalities of that bonus, which was to be given to their employees when dividends were distributed to their shareholders. The amount of the bonus was calculated on a per share basis, which is supposed to be higher than the average amount of dividends distributed during the previous two years. While the ‘profit-sharing bonus’ continued to apply in 2014 (following a letter of the General Labour Directorate of 8 April 2014), the Social Security Finance Act was amended once more on 22 December 2014 to abolish the bonus, effective from 1 January 2015.

In March 2012 the government adopted a plan for developing teleworking and a law was passed that introduced provisions for **regulating teleworking** in the Labour Code. The amendment rewrote the conventional definition of teleworking and of what makes an employee a teleworker. It also addressed the voluntary character of teleworking, the costs associated with it and issues surrounding teleworkers’ use of equipment. The new law extended the existing legal right of teleworkers to be considered for vacant posts in their company before employers turn to external recruitment. This right was extended to all teleworkers, regardless of whether they were originally recruited as such. At the same time it has been reported that this amendment failed to address important questions posed by this form of employment.\(^10\)


3.1 Job promotion, job security and the right to information

After the publication of the national reform programme, the government started consultation of national social partners on the issue of the so-called ‘*contrat de generation*.\(^11\) The aim of

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11. According to the proposal, in businesses with more than 300 employees, the conclusion of a collective agreement is compulsory for establishing such a ‘generational contract’. In case of non-compliance, companies will be deprived of a specific tax incentive (the so-called ‘allégement Fillon’). In smaller businesses, the ‘*contrat de generation*’ takes the form of an individual contract signed by the
this contract is to foster youth employment and to keep older workers in employment with a view to facilitating the transfer of knowledge. Inter-professional national social partners concluded an agreement on 19 October 2012 to set the regulatory framework for such agreements. The text was then adopted by the Council of Ministers on 12 December and was presented to Parliament, which adopted the proposal on 14 February 2013. The ‘contrat de génération’ is based on the following principles:

- the company hires an employee younger than 26 (or 30 if disabled) on a permanent contract (CDI);
- the young employee is accompanied by a senior employee of the company as part of a formal mentoring programme;
- the company commits to keeping the senior employee until retirement.

Act No. 2013-504 on security of employment (‘Loi portant sécurisation de l’emploi’) was published on 16 June 2013. This Act reflects provisions agreed in the national cross-sectoral agreement for a ‘new economic and social system toward corporate competitiveness and secure employment and professional careers for employees’, signed on 11 January 2013 between the French employers’ associations and three of the five major trade unions. The new Act entailed:

- New procedures for implementing collective redundancies. As regards the social plan – worked out when a company with at least 50 employees declares a minimum of ten employees redundant within a 30-day period – the employer is able to negotiate an agreement with the relevant trade union or unilaterally implement a social plan. In both cases, the Labour Authority evaluates the validity of the employee representatives’ information and consultation procedure, as well as the content of the plan (collective agreement or unilateral document).

- Two new mandatory consultations of the works council. Each year, the works council must be consulted on the strategic orientation of the company (and its impact on business), as well as on the use of the competitiveness tax credit received by the company. The Decree No. 2013-13 of 27 December 2013 implementing Act No. 2013-504 establishes a time limit during which the works council has to deliver its opinion.

The Act of 14 June 2013 also:

- obliged the employer to seek a buyer in the event of a proposed closure of the site; the works council must be informed of this search (and may ask an expert) and of possible takeovers (on which it is allowed to give an opinion);
- set at 24 hours per week the minimum part-time working for contracts concluded since 1 January 2014;
- provided a reduction of the prescription period for employee claims (from five to two years after the termination of the labour contract).

On 14 December 2013, the social partners reached an agreement reforming the vocational training system. The text provided for the creation of an individual training account (‘compte personnel de formation’) in which the rights to training hours earned each year accumulate up to a total limit of 150 hours (24 hours per year of full-time work up to 120 hours, and then 12 hours up to 150 hours). The account is not linked to the company but
‘follows’ the employee throughout their working life (from the moment they enter the labour market until they retire). The bill provided also for the organisation of a professional interview, for all employees in all businesses, every two years and after long periods away from the company, to think about ‘prospects of professional development, notably in terms of skills and employment’. As far as funding is concerned, the different existing statutory obligations were replaced by a single mandatory contribution, amounting to 1 per cent of the payroll in businesses with 10 employees or more and to 0.55 per cent in those with 10 employees or fewer.

Law No. 2014-384 of 29 March 2014 – the so-called ‘Florange Law’ (‘loi visant à reconquérir l'économie réelle’) imposed the obligation to find a buyer on businesses with at least 1,000 employees after 1 April 2014 that are thinking about closing an establishment with at least 50 employees. A company failing to comply with the obligation has to pay a penalty – up to 20 times the amount of the monthly minimum wage for each job cut. However, the obligation was invalidated by a decision of 27 March 2014. The Constitutional Court ruled that this system – forcing an employer to accept a serious takeover offer in the absence of legitimate grounds in the event of a site closure at the risk of a sanction – was contrary to the freedom to conduct business and to the right to property. The judges considered that the planned penalty was out of proportion to the seriousness of the breaches sanctioned.

Law No. 2014-856 on the social and solidarity economy of 31 July 2014 introduced the obligation for all healthy businesses with fewer than 250 employees to provide information to their own employees in case of considering the sale of shares or of an ongoing business. The Act aimed to encourage – prior to selling the business to a third party – acquisition by employees, who must be provided with information to enable them to make an offer.

Finally, from 2013, companies with at least 5,000 employees in France (or 10,000 employees worldwide) must appoint employee representatives to their board of directors or surveillance board if the head office is located in France.

3.2 Working time

Law No. 2014-1545 of 20 December 2014 on simplifying the operations of enterprises builds on the work of the Council of Simplification for Companies. It contained legislative provisions that specify a range of simplification measures, most of which need to be implemented through ordinances to be adopted by the government and presented for ratification within a given time-frame. These measures included the harmonisation of certain legal notions – for example, the concept of ‘day’ in labour and social protection law) and the power to determine the conditions under which a part-time employee working fewer than 24 hours per month may request, based on Law No. 2013-504 on the security of employment (see below), an extension of their working hours to meet or exceed the new legal minimum of 24 hours.

In relation to working time, Sunday opening times have gradually been extended. Since 1906, Sunday has been enshrined in French law as a day of rest. But over the years innumerable specifications and exemptions have been added and a limited number of sectors are permitted to operate on Sundays. Following the Rapport Bailly (named after its author, J.P. Bailly, the director of a public authority) submitted to the French government on 30 September 2013, it adopted Decree No. 2013-1306 on 30 December 2013. Besides certain shops – including tobacco shops, florists, garden centres and furniture stores allowed to remain open all day – retailers’ Sunday operations are subject to specific conditions (being located in a tourist or high-density area as determined by administrative decision). The latest exemption allowed home improvement (DIY) stores to be open on Sundays, provided that employees willing to work on Sundays receive at least twice the amount of their usual pay, be granted compensatory rest and given guarantees in terms of job security and training opportunities. A major overhaul of the law was planned for 1 July 2015 (see below).

Since 1 January 2014, the minimum part-time working time has been set at 24 hours a week. Nevertheless, a part-time worker can ask their employer to conclude an employment contract with a working time lower than 24 hours per week. Sectoral agreements can also provide derogations from the minimum of 24 hours. A delay of application until 30 June 2014 was set to allow social partners to negotiate working time in each sector.
Employees now have the right (subject to the agreement of their employer) to donate part of their annual leave to another employee of the company, who has a child under the age of 20 years old who is seriously ill (Labour Code Art. L. 1225-65-1, al. 1). The beneficiary of the donation must submit a medical certificate to the employer confirming that their presence at home is necessary and that the care the child needs is onerous. Such employees may only receive other employees’ fifth week of holiday entitlement (that is, the donating employee must take at least four weeks of annual leave). The employee can, however, also donate ‘RTT’ (additional rest days to which they are entitled, usually up to 10 per annum). The employee cannot donate any leave which has not already been provided by the employer and is due as an entitlement (that is, parental or any other type of leave to which the employee may be entitled). Furthermore, the number of days off are considered working periods to determine seniority.

3.3 Atypical work

A collective bargaining agreement of 10 July 2013 implemented the possibility for temporary agency workers to conclude indefinite employment contracts with their temporary work agencies. This type of contract is a novelty in France.

Since 1 July 2013, an additional contribution for short fixed-term contracts has to be paid to the unemployment insurance fund – in order to encourage permanent recruitments – amounting to 7 per cent for contracts less than one month, 5.5 per cent for contracts between one and three months and 4.5 per cent for customary fixed-term contracts of less than three months. Employers do not have to pay this contribution if they permanently hire a person under 26 years of age.

Decree No. 2014-1354 from 12 November 2014 and based on Law No. 2014-288 of 5 March 2014 related to professional training, employment and social equality furthermore strengthened the rights of fixed-term workers regarding educational leave. The criteria of eligibility for the ‘congé pour validation des acquis de l’expérience’ or VAE (educational leave for the validation of prior job experience), were eased. Fixed-term workers are now entitled to request such leave if they can show that they have worked or studied for 24 (salaried) months, consecutive or otherwise, within the past five years. Before the reform, they had to show that they had worked or studied for four (salaried) months within the past 12 months.

On 10 July 2014, Law No. 2014-790 was adopted to fight unfair social competition in a cross-border context, transposing Directive 2014/67/EU of the European Parliament and the Council of 15 May 2014 on the enforcement of the Posting of Workers Directive (96/71/EC). The law strengthened sanctions for illegal work and obligations of the client ordering the services and the providers of the services in the case of foreign service providers and subcontractors. It was implemented by Decree No. 2014-364 of 30 March 2015. This decree specified a range of formal and information requirements, conditions of joint and several liability extending to contractors for failure to fulfil the enumerated obligations and incurred sanctions (a Circular of 22 October 2014 specified the law’s repressive measures). It also specified administrative sanctions applicable in case of failure to comply with sanctions, the possibility to implement special inquiries for complex crimes, the creation of a blacklist published on the internet after the publication of a decree (which has yet to be published), the introduction of sanctions involving the road transport sector and the possibility for associations and unions to bring civil actions.

Moreover, young people’s rights in training at work were reviewed. In order to implement Law No. 2014-788 of 10 July 2014, on 27 November 2014, Decree No. 2014-1420 was adopted, dealing with the supervision of training periods in professional environments and of internships. Its aim was to promote the development, supervision and improvement of internships. The decree supplements existing legal provisions and specifies the implementation of the three objectives of the law:

(i) integrating interns in training courses and thereby strengthening the educational dimension of internships (the decree sets a minimum for interns’ time spent in training of at least 200 hours per year);

(ii) enhancing the supervision of internships in order to limit abuses (for each internship contract, a referring teacher and a tutor in the company have to be designated); and
(iii) improving the quality of internships by laying down a minimum of information that needs to be provided (internship contracts must contain, among other things, the effective weekly working hours, which may not exceed those of regular employees, and a list of benefits provided by the host organisation, for example, coverage of travel expenses and access to company cafeteria/restaurant vouchers), by gradually increasing minimum monthly remuneration paid for internships of more than two months and by reaffirming the status of interns (interns are now to be registered in a special personnel register).

These rules apply to internship contracts concluded as of 1 December 2014.

3.4 Equality

The Gender Equality Act of 4 August 2014 contained measures to improve workplace equality, ensure parity and provide for a balance between private and professional life. In order to encourage shared parental leave, the Act extended the payment period for the parental allowance when both parents reduce or completely stop their professional activity to take care of the child and both claim (simultaneously or one after the other) the benefits. At the company level, bi-annual negotiations on professional equality objectives are mandatory. They have to include defining and planning measures to remove the gender pay gap (Article L. 2242-7) and address career development and job diversity (Article L. 2242-5). The law also extended the obligation to have at least 40 per cent of women in management structures to non-quoted businesses with 250 workers or more and net annual sales of at least 50 million euros.

With regard to equality law developments, it is also noteworthy that earlier that year the legal grounds that are enumerated in the Labour Court and based on which discrimination is prohibited were amended. The Framework Act for Town Planning and Urban Cohesion (Law No. 2014-173), adopted on 21 February 2014, modified Article L. 1132-1 of the Labour Code. The list of discrimination grounds was expanded, now including also ‘place of residence’ as a ground on which persons may not be discriminated against.

Since 1 January 2013, paternity leave can be taken by persons linked to the mother of the child through a civil solidarity pact or through co-habitation. In general, paternity leave may now be taken by the father of the child, that is, an employee, but also by the common law husband of the mother or by the person linked to the mother through a civil solidarity pact or through co-habitation. This paternity leave is now called ‘congé de paternité et d’accueil de l’enfant’.

3.5 Other measures

Following the adoption of Decree No. 2013-875 on 27 September 2013, the reform of the French Labour Inspectorate became effective from early 2014. The main changes included centralisation of the organisation of labour inspection by establishing a single body. The reform’s aim was, in Social Affairs Minister Sapin’s words, to arrive at ‘a more collective approach’. Starting from 1 October 2013, a phased reclassification of inspectors and the redeployment of controllers to the role of labour inspector took place. Within the restructured Inspectorate, the current regional labour inspection ‘sections’ were brought together in ‘control units’, consisting of eight to 12 officials and responsible for supervising compliance with the Labour Code. Some new administrative and financial penalties applied for certain violations of the Code and also the powers of labour inspectors were extended (including the power, under Article L. 4731-1, to close down dangerous workplaces that was previously restricted to the construction and public works sector and now covers all businesses).

Concerning worker information in the event of a transfer of undertaking the Court of Cassation adopted an important ruling on 17 December 2013. It decided that Article 7(6) of
Directive 2001/23/EC on the transfer of undertakings had not been correctly implemented into national law. In the event of a transfer of an undertaking where there are no employee representatives (and the absence of such representation does not lie within the responsibility of the workers), this European provision obliges Member States to ensure that the employees concerned be informed in advance of the occurrence and implications of the transfer. In casu, through the application of Article L. 1224-1 of the Labour Code the employment contracts had been transferred automatically and subsequently terminated by the transferee. This French provision did not contain an obligation of information by the employer. Consequently, the employer was not culpable for failing to inform the workers about the transfer of the undertaking and the termination of transferred workers’ contracts was found to be valid.

Seven month later, the French legislator aimed to clarify the legal situation by Law No. 2014-856 of 31 July 2014 concerning social equity and solidarity and the transfers of undertakings for employees. This law was implemented by Decree No. 2014-1254 of 28 October 2014 in relation to employee information in case of a transfer of undertaking. The Decree elaborates the concept of a transfer of undertaking as stipulated in the law and represents the regulatory component of the Commercial Code. It specified the information procedures to be followed for employees regarding the owner’s decision to transfer undertaking. However, if the transfer of undertaking occurs following exceptional negotiations the prior information requirements of employees are excluded, if the exceptional negotiation contract was concluded before 1 November 2014. Furthermore, the Decree also provided that if there are employees interested in buying the company, they may obtain assistance from an individual of their choice but must inform the manager accordingly. This individual will be under the obligation of confidentiality.

Three months later, the government set up a temporary Parliamentary Mission, headed by Herault MP Dombre-Coste and under the auspices of Minister of Economy, Industry and Digital Macron and Secretary of State for Trade, Crafts, Consumption and Social Solidarity Economy Delga. The Mission’s task was to prepare an initial observation on the conditions of application of the right to prior information in the case of a transfer of undertaking. Its purpose was to produce recommendations on how to facilitate and support transfers and takeovers while safeguarding employment. More concretely, the mission’s objectives were to:

- evaluate the number of jobs affected by difficulties experienced in the transmission of sound businesses;
- evaluate the conditions for the application of the right to information during the first months;
- propose necessary changes, when appropriate, for effective application of the employee’s right to prior information while ensuring; and
- identify necessary additional measures for employees and business leaders to facilitate the transfer and the company's takeover.

### 4. Labour law reforms: 2015 onwards

#### 4.1 Macron Act

Summer 2015 saw major economic and labour law reforms in France. The Macron Act, the Law on Growth, Activity and Equality of Economic Opportunities (Law No. 2015-990) – named after the law’s initiator, Minister of the Economy, Industry and the Digital Sector Macron – was adopted on 10 July and, following its validation by the Constitutional Council, published on 8 August 2015.

In August 2015, new measures became effective, as part of the economic reforms introduced by the Macron Act. The new rules aligned certain aspects of profit-sharing schemes and measures to make collective pension savings plans (‘PERCO’) more accessible. Employers and employees got new tax and social security breaks for shares awarded to them. The so-called ‘BSPCE’, a type of share option plan designed for growth companies, has been made more flexible to increase incentives for employee share-ownership.

The Macron Act addressed a patchwork of measures on growth, economic activity and equality of economic opportunities. Before its promulgation, several provisions of the law

were reviewed by the Constitutional Council to test their conformity with the French Constitution. On 5 August 2015, the Constitutional Council adopted its decision validating most of the law’s provisions. According to Minister Macron, corporatism presented one of France’s three major ‘maladies’, next to citizens’ lack of confidence in their economic future and the burden of a complex of rules on the economy at large and SMEs in particular. Counting 308 provisions, Law No. 2015-990 intended to simplify and modernise the French economy and help in seizing economic opportunities. With the purpose of ‘rediscovering the general interest’, the law combines a public investment package with various other measures; the following touch on important labour law and employment issues:

- The new law introduced a few procedural changes concerning employment terminations for economic reasons:
  
  • The reform allowed for more flexibility regarding the criteria on the order of redundancies linked to a plan to safeguard employment (PSE). This concerns cases of restructuring in which at least 10 layoffs occur within 30 days in a company with 50 employees or more. These adapted criteria may be laid down in either the collective agreement related to the safeguarding of employment or a document issued unilaterally by the employer. In the latter case, such adapted criteria must not be inferior to those applied within any ‘zone of employment’ in which one or more of the company’s establishments are situated and affected by employment losses. In other words, if the redundancies affect several establishments within the same ‘employment zone’, it is not permitted to adapt the ordering criteria within each establishment. A government decree is to specify more detailed conditions on the application of this provision, as well as the notion of ‘employment zone’.
  
  • In the case of smaller instances of economic layoffs (concerning fewer than ten employees in companies with more than 50 employees), Law No. 2013-504 enhancing the security of employment introduced prior administrative control before the redundancies took place. The Macron Act removed this obligation of prior control, justifying the change as legitimate given that such redundancies would also be subject to a posteriori control.
  
  • Law No. 2015-990 also simplified the procedure of the ‘reclassement à l’international’ (redeployment of employees based abroad in case of economic redundancy) for large enterprises that operate in several countries. Under the Macron Bill, the onus in terms of work abroad is on the employee. 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 only. Furthermore, it loosened the conditions regarding the plan for the safeguard of employment and measures of redeployment for companies facing economic difficulties, paying more regard to the means at the company’s availability. The government further clarified and specified these procedures by a Decree of 12 December 2015.

- The provisions concerning worker information introduced in 2014 were somewhat alleviated by the Macron Act. Pending the adoption of government decrees to specify the application (but at latest six months after the law’s promulgation), the information obligation will apply only to cases of sales, and no longer to all cases of restructuring. The sanction for non-compliance with these obligations is also concretised, amounting to a civil indemnity of no more than 2 per cent of the sum of the sale. Regarding the mode of providing the relevant information to the employees, the employer is free to choose between calling an information meeting or sending a registered letter.

- The Labour Code is being modified in connection with the national cross-sectoral agreement of 8 December 2014 regarding the ‘Securing Career Paths’ contract. Following the reform, the French funding bodies for vocational training (OPCA) may now allocate their resources to vocational training intended to increase professionalisation and to add to the personnel training account (CPF).

- In addition, a decree of 16 April 2015, transposed the national cross-sectoral agreement on the conditions of application of the ‘securing career paths contract’ negotiated by the social partners in December 2014. Concluded for a period of two years (applicable until 31 December 2016), this agreement was approved by a Decree of 16 April 2015. It

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16 Decision of the Constitutional Council, no. 2015-715 DC, 5 August 2015.
applies to employees affected by a procedure of redundancy for economic reasons, who may not benefit from a leave for reclassement, that is, retraining (as granted by Article L. 1233-71 Labour Code), and to procedures initiated since 1 February 2015. Once covered by a Securing Career Paths contract, the redundant employees are entitled to intensified and personalised counselling regarding a range of measures favourable to the employee’s accelerated reclassification or retraining suited to obtaining durable employment. The provisions thus cover, among other things, access to certain training within the scope of the agreement and the creation of a reclassification bonus.

In order to reduce the complexity that characterises the exemptions to the prohibition on shops opening on Sundays, the Marcon Act reorganised the rules, further extended opening exemptions and strengthened some workers’ rights. Law No. 2015-990 defined the right to remain open on Sundays and evenings until midnight in accordance with three new categories: shopping areas (zones commerciales), touristic areas and international touristic areas:

- **International tourist zones** (Article L. 3132-24 of the Code du travail): these are zones that, given their international reputation, are visited by exceptionally high numbers of high-spending foreign tourists. They will be defined by decree and be located in Paris, Cannes, Nice and Deauville.
- **Tourist zones** (Article L. 3132-25 of the Code du travail): these are zones visited by particularly high numbers of tourists.
- **Commercial zones** (Article L. 3132-25-1 of the Code du travail): these follow from PUCE and are characterised by a particularly high potential of supply and demand, taking into account, as the case may be, of a cross-border zone in the immediate vicinity. Certain stations must be added to this list (Article L. 3132-25-5 of the Code du travail) if they are not already included in one of the three atypical zones. There are twelve stations in total. Additionally, the option of keeping shops open on Mayor’s Sundays (Article L. 3132-26 of the Code du travail) has been extended, by increasing their number from a maximum of five to 12 Mayor’s Sundays (abolishing the prior administrative approval that such an extension would have entailed previously).
- Retailers operating within these areas would automatically be entitled to remain open on Sundays – subject, however, to the existence of a collective agreement under which the workers concerned will be compensated and subject to Sunday work being strictly voluntary. While the increase of compensation (double pay) for those workers affected by these reforms may be laudable, unequal treatment of workers who traditionally work on Sundays in sectors in which Sunday working is necessary or characteristic and who do not benefit from such a pay increase remains a concern.

The one-year prison sentence that could be imposed on managers or company representatives for committing ‘Délit d’entrave’ (obstructing the proper functioning of the staff representative body) was abolished. Although prison sentences have rarely been imposed, this change will ease the concerns of 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, full compliance with the **information and consultation requirements** will continue to be important as the draft law intends to replace the possibility of imprisonment with heavier financial penalties.

Given the considerable length of **labour court proceedings** in France, the new law introduces several improvements. These include:

- improved training of labour court judges with more stringent ethical obligations and an overhaul of the disciplinary procedure;
- a shortening of the timeframes and streamlining of the various stages of the proceedings (for example, the conciliation stage is to be presided over by a smaller adjudication panel, including one judge elected by employers and one by employees, who are to render their decision within three months);
- consolidation of proceedings when this is in the interest of the good administration of justice – notably, to have cases pending before several labour courts within the same jurisdiction of a court of appeals adjudicated together;
- further encouraging amicable proceedings, such as conventional mediation (conventional mediation – not to be confused with judicial mediation – was introduced by the Law of 8 February 1995 and is currently not included in the
framework of proceedings initiated before the labour courts, except for cases of cross-border labour disputes;

- creation of a genuine ‘défenseur syndical’ (trade union 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 fewer than 11 employees, the union representative would benefit from leave authorisations, with the preservation of their wages and related benefits (to be reimbursed by the state), for up to 10 hours per month to properly perform their duties of legal defence.

The Macron Act, adopted on 10 July 2015, furthermore sought to reform the procedure for cases of ‘licenciement sans cause réelle et sérieuse’ (wrongful dismissal). Labour court judges were to be encouraged to use a defined scale with regard to the range of damages to be awarded to employees. During the conciliation phase of such procedures, an indicative baseline for compensation (référentiel indicatif) was to be proposed to the employment tribunal if the dismissal case goes to litigation. A scale of maximum compensation to be allocated by the employment tribunal was developed. This scale would have been compulsory and this legislative change would have had a decisive influence on the amount to be negotiated upon employees’ dismissals and might have been more secure than the current system. However, the Constitutional Council declared this provision to be contrary to the French Constitution, because it differentiated between different types of enterprises – and hence employees – in calculating maximum compensation for wrongful dismissal. The Council considered this an infringement of the principle of equal treatment.

4.2 Rebsamen Act

On the heels of the Macron Act that sought to provide more flexibility to employers, the French government recently enacted the Rebsamen Act, Law No. 2015-994 of 17 August 2015 on social dialogue and employment. Aiming to improve social dialogue and thus the performance of French companies, Law No. 2015-994 essentially reformed the system of employee representation. The French government has endorsed the reflection of the ILO according to which a ‘productive social dialogue’ is likely to ‘favour labour-related peace and stability and stimulate the economy’. The government considered the social dialogue to be deficient in three ways:

(i) in companies with fewer than 11 employees it is non-existent, as the law does not require the election of personnel representative institutions in such small businesses;

(ii) the rules on personnel representative institutions hitherto were considered too rigid and complex to allow smooth operation; and

(iii) it is characterised by a ‘culture of mistrust’.

Employee representation at the workplace level in France is based on a complex system. Both union and non-union representatives, as well as the members of representative institutions (notably, employee delegates (DP), the works council (CE) and the workplace health and safety committee (CHSCT)) are directly elected by the entire workforce. The Rebsamen Act represented an ambitious text aiming to simplify relations between unions and employer representatives. It addressed both the institutions of employee representation and the role of unions within the enterprise. The main features of the reform are as follows:

- Where trade unions are present, the key figure will be the trade union delegate. 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 (see below), unions can appoint trade union delegates in companies with more than 50 employees. These union delegates have a role both within the union and on behalf of all employees.

- The employee delegates (DP) and the works council (CE) are the two main bodies of employee representation in enterprises governed by French law. They are elected either at company level or at plant level and have specific legal rights and duties. The reform introduces the following changes based on the size of the enterprise:

  - In order to ensure access to representation for all employees, the law creates Joint Regional Inter-Professional Commissions (CRPI) for companies with fewer than 11

  

  

  

18 The CHSCT deals exclusively with questions of occupational health and safety.
employees that previously were not obliged to have employee representative institutions. These commissions will consist 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 represent the interests of the employees and management of such very small companies.

- Companies with fewer than 200 employees may unilaterally decide to combine the employee delegates and the works council within one body, the Single Personnel Delegation (DUP). A Single Personnel Delegation will, according to the Rebsamen Law, be conceivable in companies with fewer than 300 employees. As they change in size, they will, in time, be required to include the CHSCT.

- In larger companies, the employee delegates, the works council and the health and safety committee are usually separate, though the same individuals can be elected to both. The new law also enables employers with between 50 and 300 employees (previously 200) to merge the three representative bodies into one (DUP).

- In companies with more than 300 employees, an agreement signed with the labour unions (‘majority company agreement’) is required in order to group the representative institutions within a common body. This body will perform all the duties of the institutions included in the group. All company projects falling under the competence of several institutions will be subject to a single process of notification and/or consultation of the common body intended to reduce the number of meetings and expert assessments. However, such joining of the employee representative bodies may take place only when the employer plans to newly institute or restructure the employee representative institutions (Article L2391-1).

- The law simplifies the process for consulting and informing the works council. Before August 2015, there were 17 obligations of recurrent annual consultations of the works council. These have been reduced to three obligations by the Rebsamen Act. Annual works council consultations will henceforth have to be conducted on:
  - the strategic orientations of the enterprise;
  - its economic and financial situation; and
  - its social policy, including working and employment conditions.

- Furthermore the functioning of works councils has been simplified. To avoid consultations becoming a pure formality due to restrictive procedural rules, the law raises the threshold based on which an enterprise has to hold monthly or bi-monthly consultations:
  - In companies of up to 300 (previously, 150) employees, the works council must meet at least every two months.
  - In businesses with more than 300 employees, works council meetings have to take place on a monthly basis. This frequency may be adapted by a majority company agreement signed with the labour unions without passing to fewer than six annual meetings.

- The law further provides for a pay increase for trade union delegates and employee representatives, whose time off for duties associated with these roles amounts to 30 per cent or more of their contractual hours. The increase must be in line with that received by other employees with a similar status and seniority.

Moreover, Law No. 2015-994 also extended certain limits concerning the renewal of fixed-term contracts (CDD) and temporary agency work contracts of an indefinite duration. Fixed-term contracts can now be renewed twice (instead of once, as previously), while the total duration of 18 months for successive fixed-term contracts has not changed. This change already applies to existing contracts. Equally, the agency employment contracts may now be renewed twice instead of once but also the waiting period between two assignments is abolished and the maximum duration of one assignment is extended from 18 to 36 months.

Last but not least, the Rebsamen Act launched the Personal Activity Account (CPA). This account is to enter into effect from 1 January 2017. It will assemble all of an employee’s social entitlements intended to ensure their professional development. These entitlements include the personal training account, the time savings account and certain related social contributions. The aim of the Personal Activity Account is to make the employee’s rights more visible and to reinforce their personalised and portable nature.
4.3 ‘El Khomri’ Law

In November 2015, the French government started preparations to undertake a more general overhaul of the Labour Code to make it ‘fit for the twenty-first century’. The initial phase defined the main principles and scope of this major reform undertaking, entitled ‘Simplifier, Négocier, Sécuriser’ (November 2015–January 2016). Based on consultations with the social partners and on the reform criteria previously defined, the government then presented a draft proposal to the Council of Ministers (January–March 2016). In addition, a Commission on the Refoundation of Labour Law was instituted from the beginning of 2016. It comprised magistrates and other qualified experts. Its mission is to rewrite the French Labour Code within two years, based on the fundamental principles underlying this law.

The proposed changes to labour law triggered massive demonstrations. In spring 2016, with only 14 months to go before a presidential election, President François Hollande and Prime Minister Manuel Valls faced a rebellion within their own Socialist party and more worryingly, huge street protests. However, the government ignored the protests and pushed forward with the reform.

On 21 July 2016 the government secured the adoption of the labour law forming the first stage in the overhaul of France’s Labour Code, ranging from working time through to the negotiation as well as termination of collective agreements, including employer bodies’ representativeness and covering dual training, posted work, transfers of undertakings and workers’ personal career accounts aimed at catering for discontinuous career paths and linking employment rights that are currently attached to the job instead of to the worker. The main points of the reform were as follows:

- **A rewrite of the working time section** as precursor to the new Labour Code. The end goal is to give company agreements greater leeway when defining working. The law would put a committee of experts in place to complete the rewrite over the next two years.
  - Legal weekly effective working time will remain set at 35 hours. However, company agreements will be able to provide for extending the maximum daily or weekly hours.
  - Overtime pay can be freely determined in a company agreement, although this is subject to a 10 per cent floor. In the absence of such an agreement the legal rate applies (+25 per cent for the first 8 hours and +50 per cent thereafter).
  - Company agreements can specify three years as the reference period for working time calculations (currently, one year).
  - Company agreements can include time needed to change into and out of working clothes in effective working hours’ calculations.
  - Company agreements can derogate from daily rest periods, determine break time lengths (with a minimum of 20 minutes) and public holiday non-working days (except for 1 May), implement on-call periods, have recourse to irregular sporadic work and even regulate certain aspects of part-time working.

- **Generalizing the majority agreement.** The law generalises the principle of majority agreements, while also providing for the possibility of validating minority agreements via referenda. In order to be valid, company agreements must be signed by one or several representative union organisations that received more than 50 per cent of votes cast. In the absence of a majority an agreement with more than 30 per cent of the votes cast has to be validated via a ballot. At the end of eight days following a demand for a ballot, the agreement remains a minority agreement and consultation is set for within a two-month window. The agreement is valid if it is approved by a majority of the votes cast.

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22 Up to a maximum of 12 hours per day instead of the current 10, and 46 hours over a 12 week period instead of the current 44.
24 Ibid.
Redundancy on economic grounds. The government abandoned moves to limit the scope for assessing economic difficulties to France, from what is currently international level. Nonetheless the new law introduces objective criteria for evaluating financial difficulties including either significant changes to at least one economic indicator, such as a drop in orders or sales revenues, operating losses or liquidity problems, falls in gross operating surpluses or indeed changes in any other element that can affect these indicators. Such falls in economic performance are considered to be significant when compared with the same period twelve months prior and once they have lasted at least:

- one quarter for businesses with at least 11 employees;
- two consecutive quarters for businesses with between 11 and 50 employees;
- three consecutive quarters for businesses with between 50 and 300 employees;
- four consecutive quarters for businesses with at least 300 employees.  

Working time packages and the right ‘to disconnect’. The law intends that in order to give the annual working days system agreed with the employees individually (forfait jour) more legal security, representatives in the company agreement should be able to determine arrangements for the right of employees to disconnect from work, evaluating and regularly monitoring workloads, navigating the lines between professional and private life, remuneration packages and for organizing work within the company. Negotiating over the right to disconnect will become mandatory. The annual ‘occupational equality and quality of life’ negotiations will also have to address arrangements for the right to disconnect and ‘for company implementation of provisions regulating the use of digital tools with a view to ensuring rest and leave times are respected as well as personal and family life’. In the absence of any agreement employers will have to establish a charter to the same effect.

First social rules for online platforms. Labour law intends that when online platforms set the contours and processes for services and goods sold, even when a worker is freelance the platform should manage:

- employee contributions (up to a ceiling amount) towards workplace accidents when the worker has an insurance policy or is covered by a voluntary insurance scheme (except for membership of a collective contract taken out by the platform);
- professional training contributions.

Calculations for contribution amounts are based solely on the sales revenues produced by the online platform workers. Finally, workers can defend their professional claims, within the framework of refusing to carry out the service, without incurring liability or penalty. Workers can also enjoy the right to establish and join a union organisation.

Personnel representatives at franchise units. The law introduces personnel representation for employees at franchise units. A common social dialogue forum for the network of franchisees will be implemented via a company collective agreement once the franchise network in France comprises at least 300 employees in France and the franchise contracts contain clauses addressing working organisation and working conditions in operation at the franchise companies. The franchisor is required to negotiate such an agreement if a union organisation so requests.

4.4 Other developments

In June 2015 France’s National Assembly adopted a proposed law for anti-discrimination action groups. The law allows for associations that have been officially engaged in combatting discrimination for at least three years, as well as representative union bodies to take legal action in order to secure compensation for people placed in ‘similar or identical’ situations, but who suffer damages through discrimination vis-à-vis others ‘in a comparable situation’, based on: their origin, gender, family situation, pregnancy, physical appearance, family name, address, health, disability, genetic characteristics, morals, sexual orientation of identity, age, political opinion, union activity, ethnic origin, nationality, race or religion. Parliament also aligned the 27 May 2008 law’s definition of discrimination with the definition contained in Penal Code Article 225-1.

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25 Ibid.
26 Ibid.
27 Ibid.
28 Planet Labor, 11 June 2015, n° 9131 – www.planetlabor.com
In December 2015 the government clarified the procedures concerning the rules on redeployment of workers introduced by Macron Act. According to the government’s decree employers must inform employees of the possibility of redeployment opportunities abroad. Employees will have seven working days to send a written request for information on these job opportunities, including associated conditions (remuneration, geographical location and so on). After the employer finds redeployment opportunities that match the conditions, the employer will send the job opportunities to the employee in a written form indicating the period of acceptance (not less than eight days) during which the employee can either accept or refuse the position. Similarly, employers must inform employees of the absence of any job offers that match the employees’ demands.

Other measures in this period included:

- Ordinance No. 2015-82 on the simplification and guarantee of the modalities of application of rules on working time was adopted on 29 January 2015.
- From 1 January 2015, temporary work agencies are obliged to issue an exposure prevention card to their employees. This card must detail the occupational risk factors the employee will be exposed to during their assignment to a user company. Based on Article L. 4161-1 of the Labour Code, Decree No. 2015-259 of 4 March 2015 outlines the conditions of transmission of this information and the modalities of establishing this card for the prevention of occupational risks.

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29 The job offers must include information on pay, the nature of the employment contract and the language used at work. If the employee does not reply within the period stated then this is taken to represent a refusal on their part to pursue the position offered.
30 When an employer has to establish a social plan, either the collective agreement or the company's unilateral document setting out the details of the plan should clearly set out arrangements for informing each individual employee of the possibility to receive redeployment job offers abroad; the conditions (and deadlines) about which the employee must reply, arrangements for communicating job offers to employees and the time period accorded to employees to consider these job offers (Planet Labor, 14 December 2015, n°9414- www.planetlabor.com).

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