

The crisis and national labour law reforms: a mapping exercise

Country report: Luxembourg

1. Introduction

The financial crisis has had an effect on the wider Luxembourg economy (the real economy) although such effects have been less severe than in some other countries and limited relative to the scale of the crisis and the size of the sector. Luxembourg's GDP contracted by 3.6 per cent in 2009, rebounded in 2010–2012, fell again in 2013–2014, but recovered in 2015. Unemployment has remained below the EU average despite having increased from a historically low rate of 4 per cent in the 2000s to 7.1 per cent in 2014.¹ In July 2016 the unemployment rate was 6.4 per cent.² According to the OECD Economic Survey, Luxembourg suffered much less than other small OECD countries with large financial sectors, such as Iceland and Ireland.³

Within the framework of the European Semester, the country-specific recommendations (CSRs) for Luxembourg in the social field have remained fairly constant since 2011. For the past six years (CSRs 2011–2016), the European Commission's evaluation has found fault with the national system of wage bargaining and wage indexation.⁴ The EU institutions have been calling on the government to take further steps to reform these systems, in consultation with the social partners and in accordance with national practice, with a view to preserving the long-term competitiveness of the Luxembourg economy. The main emphasis of the repeated advice has been on the need to ensure 'that wages evolve in line with productivity, in particular at sectoral level'. Equally consistently, they have also been advocating pension reform, including the reduction of early retirement and linking the effective retirement age to life expectancy along with improving older workers' employability, and reducing youth unemployment by reforming the systems of general and vocational education and training. For 2016, the only remaining CSR for Luxembourg concerns ensuring the sustainability of public pensions by increasing the effective retirement age, limiting early retirement and increasing incentives to work longer, and by aligning the statutory retirement age to changes in life expectancy.

¹ http://www.indexmundi.com/luxembourg/economy_profile.html (accessed 28 October 2016).

² <http://www.tradingeconomics.com/luxembourg/unemployment-rate> (accessed 28 October 2016).

³ OECD Economic Surveys: Luxembourg 2010, p. 104.

⁴ See the European Commission's recommendations and consolidated versions for the years 2011–2015 at http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm; for an overview see Clauwaert (2015) at 98–99. In 2016 Luxembourg did not receive any more specific recommendations regarding wage setting/developments but was nevertheless warned in the text accompanying the recommendations that 'in some sectors wages were not in line with productivity' and that 'wage developments warranted monitoring' (Clauwaert 2016 at 50).

At the same time and although the economic downturn was fairly modest in Luxembourg (at least in comparison with some other EU countries), the labour law reforms have generally been in the direction of flexibility and deregulation, although some improvements can also be detected.

2. Labour law reforms: 2010–2012

The measures adopted by Luxembourg could be loosely divided into three groups: (i) regulating working time, (ii) addressing unemployment and (iii) affecting wages.

2.1 Working time

At the very beginning of crisis, the government prepared a crisis support plan entitled 'Combating the effects of the crisis – preparing for the post-crisis period'. It contained a number of measures intended to help companies in difficulty, making particular use of state loan guarantees. It also introduced a number of adaptations or temporary measures to facilitate access to schemes intended to keep workers in employment, such as **short-time working** and temporary manpower lending, tools that in most cases already existed before the crisis.⁵

A short-time working scheme was meant to help companies experiencing temporary difficulties to get through without carrying out redundancies. It provided for subsidies to employers who, rather than carrying out redundancies due to the recession, undertake to keep their personnel on and to pay them compensation for lost wages. The compensation, which corresponds to the first 16 hours of lost working time per calendar month, is paid by the employer. The employment fund stepped in from the seventeenth hour of lost working time, paying 80 per cent of the gross hourly pay received by the worker. The amount of time off work under short-time working arrangements could not exceed 50 per cent of the normal monthly hours worked.⁶

Under the changes to the scheme for employees working half-time (less than or equal to 20 hours per week), the employer only pays for the first eight hours. The plan also provided for temporary measures: for 2009 only, the state was to pay for the first 16 hours (or the first eight hours in the case of half-time work) in situations of short-time working on economic grounds, on grounds of economic dependence and circumstances beyond the company's control, and in cases of short-time working on structural grounds only if an authorised job retention plan has been entered into beforehand; for 2009 only, flexibility was introduced with a maximum reference period of 12 months. This made it possible to apply a reference period during which the company could adjust the use of short-time working, including exceeding 50 per cent per employee. On 1 January 2009, the eligibility period counter was reset to zero for every company. For example, a company that had already used the short-time working scheme on economic grounds for two months would be able to use this scheme for six months in 2009 (and not just four months). Moreover, the level of compensation for employees affected by a short-time working measure was to be raised from 80 per cent to 90 per cent, provided the employees concerned took part in a training measure during the period of time off work.

On 23 December 2010, the government proposed draft Law No. 6234, aimed at introducing **working time accounts** in the private sector. Previously, the Luxembourg Labour Code had provided only for the possibility of allowing employees to save up entitlements acquired from working overtime in an account, if such modalities had been agreed in a collective labour agreement or a company agreement. The proposed 'time savings accounts' (*compte épargne-temps*, CET) were defined as '*accounts allowing employees, at their request, to save up rights*

⁵ <http://www.eurofound.europa.eu/observatories/emcc/comparative-information/national-contributions/luxembourg/tackling-the-recession-luxembourg> (accessed 28 October 2016).

⁶ This measure may be used when all other possibilities within the company have been exhausted: reduction of the use of agency-supplied temporary workers; time off in lieu of overtime; use of remaining holiday entitlement; internal redeployment. Authorisation is granted by the Committee for the Economy (a tripartite body set up within the Ministry for the Economy) (<http://www.eurofound.europa.eu/observatories/emcc/comparative-information/national-contributions/luxembourg/tackling-the-recession-luxembourg>)

to paid leave in return for untaken leave, untaken rest time or part of their remuneration'. The CET was to be introduced either via an internal regulation issued by the employer, after the staff representatives or the employees concerned had given their opinion; or via a collective agreement, in which case it was to be possible to derogate from the legal provisions when allowed. Some of the main elements of the proposal were that only the company's 'permanent' employees would be entitled to CETs, the employer would be in charge of managing these accounts – which would be credited with untaken paid annual leave days, overtime, wage compensation for Sunday and night work and so on – and the withdrawals from working time accounts must be granted unless there were serious grounds for refusal. In addition, the proposal intended that the acquired rights accumulated in time savings accounts be transferred with the employee when changing employers⁷ and, if introduced via collective agreement, the parties would be free to determine ways of securing employees' rights.⁸

However, the draft law never made it through the legislative process. While both sides of industry were generally favourable towards establishing a legal framework for time savings accounts for employees, many aspects of the proposal remained controversial and strongly criticised.⁹ The following government also appeared reluctant to revive the former draft law and planned instead to launch its own project.¹⁰

In May 2011, the government also announced the extension of the law on *short-time working* until 31 December 2011. By the Law of 16 December 2011, the government further extended certain interim measures introduced to deal with the prevailing economic crisis. These involved in particular the provisions governing **short-time working**. The same law also extended certain provisions on the *flexibilisation of working time* by implementing either a work plan (*plan d'organisation du travail*) or a flexible time system (*horaire mobile*), both of which allowed working hours to be shifted within a certain period of time.

Because the economic situation in Luxembourg remained tense, the government introduced a new draft bill in June 2012 aimed at extending specific measures introduced to deal with the economic crisis until the end of 2013, including those on short-time working (Projet de loi No. 6442, submitted on 18.6.2012). Although, the State Council (Conseil d'Etat) criticised the multiple extensions of the special provisions and suggested revising the legislative approach to find a long-term solution, the law was adopted on 31 July 2012.

Also in 2012, the government allowed **shops to implement longer opening hours**. The law previously allowed shops to close at 18:00 before holidays and on Saturdays, although a temporary derogation allowed shops to remain open until 20:00. This derogation, however, applied only from 1 July 2010 to 30 June 2012, a transition period foreseen to give the social partners time to reach an agreement reforming the 1995 Act on retail opening hours. As no agreement was reached and the transition period expired, the government launched new proposals allowing shops to stay open until 20:00 on all weekdays (Monday–Saturday). The adopted law now states that the normal closing time is 19:00, but that the social partners can extend it to 20:00 by collective agreement.

A further draft law (No. 6498) was introduced on 8 November 2012 extending until 31 December 2015 the provisions – adopted in 1999 in the context of the National Action Plan for Employment – on the **annualisation of working time** arrangements. The latter were made more flexible by allowing social partners to agree on reference periods of up to 12 months (*période de référence*) in collective agreements, within which flexible working hours/plans can be established/agreed upon. The provisions adopted in 1999 were limited in time but had been extended repeatedly. Under the most recent extension, this regulation was to end on 31 December 2012 but has been extended again. At a tripartite meeting held on 18 February with a view, again, to extending the period of application no agreement was reached among the social partners and government. The government was thus obliged to table a new proposal for a reform law at the end of March, beginning of April.

⁷ Under exceptional circumstances, a working time account could be paid out, for example on retirement, on the termination of an employment contract or at the latest at the age of 65.

⁸ If introduced as an enterprise-internal CET scheme, the employer would have to safeguard the monetary exchange value of the rights through a contractual agreement with an insurance company.

⁹ <http://www.lesfrontaliers.lu/article/449311/chronique-juridique/le-compte-pargne-temps> (accessed 24 February 2016).

¹⁰ <http://www.lequotidien.lu/grande-region/faciliter-la-vie-des-frontaliers/> (accessed 24 February 2016).

2.2 Addressing unemployment

The law on certain temporary measures to promote employment and adapt the guidelines of the unemployment benefit system (dated 3 August 2010) extended some of the temporary measures adopted previously and introduced some new temporary measures in response to the crisis for the duration of 24 months. The main measures were as follows:

- In the case of **dismissal with a notice period** accompanied by a discharge from work, the Law provided that, if the employee enters into a new contract of employment before the end of the notice period, for the rest of the notice period, the former employer bears not only the costs of the social security contributions connected with the differential supplement, but also the social contributions deriving from the salary paid by the new employer.
- Concerning **partial unemployment** special measures introduced originally by the law of 17 February 2009 were extended to 2011. Thus, the compensation paid by the employer was still to be reimbursed by the *Fonds pour l'emploi* during 2011. For the application of this measure, the reduction of working time could exceed 50 per cent of working time per month, without exceeding, at the end of the year, 50 per cent of statutory working time or working time provided for by a collective agreement.
- Businesses belonging to sectors not officially declared to be in crisis were allowed to be granted cyclical partial unemployment, provided that the business faced a reduction of working time of at least 40 per cent and that it had previously concluded an Employment Safeguard Plan or an agreement between the social partners.
- In the case of **long-term unemployment**, the age at which a person may be granted the extension of six months for receiving unemployment benefits was lowered from 50 to 45 years.

In addition to the aforementioned temporary measures, two permanent changes were introduced to the Labour Code. First, the matter of older employees was added to the list of subjects to be discussed within the framework of establishing an Employment Safeguard Plan (ESP). Thus, from then on, any ESP had compulsorily to record the outcome of the discussions also with regard to special measures for older employees. Secondly, concerning the so-called '*occupation temporaire indemnisée, OTI*' (compensated temporary occupation) scheme, complementary compensation was to be increased and an exceptional extension of the duration of OTI was to be possible in certain cases.¹¹

By the Law of 16 December 2011, the government also extended measures already adopted by the Law of 11 November 1999 specifically **promoting jobs for the young**, such as the Work-Support Contract (CAE) and the Initial Employment Contract (CIE), or established new measures such as the Initial Employment Contract – Practical Experience (CIE-EP).

2.3 Wages and promotion of employment

In terms of concrete **anti-crisis measures**, tripartite negotiations on the *issue of wage indexation* were launched on 17 March 2010 but failed in the course of April. As a consequence, bipartite meetings (government–trade unions; government–employer organisations) were held, although without any agreement being reached. As an intermediate solution, a draft bill (No. 6265) was introduced aiming to postpone the next general wage increase (for 2011) for four months until October 2011, as – according to the government – this postponement meant savings of 160 million euros for employers. On 5 May, the government proposed a set of economic and social initiatives to stabilise the country's finances and relaunch the economy. One proposal consisted of adjusting 'the index' by modifying the shopping basket used as a reference for indexation (neutralisation of the regulated prices of fuel oil, alcohol and tobacco). It also proposed putting a ceiling on wage indexation to twice the minimum wage, that is, 3365.52 euros. But these proposals were considered unacceptable by the trade unions and the government expressed its intent to relaunch tripartite negotiations, probably during the autumn. Alongside the indexation

¹¹ <http://www.allenoverly.com/publications/en-gb/Pages/Temporary-measures-to-promote-employment-in-Luxembourg.aspx> (accessed 28 October 2016).

initiative, the government also announced the extension of the law on *short-time working* until 31 December 2011; the reassessment of the reemployment assistance to counteract abuse; the suppression of family credit to young people above 21 years of age in return for an increase in certain university grants; the reassessment of parents' right to take time off without pay after 2011 considering its use for job creation; a 10 per cent reduction of subsidies to firms; and an increase of the solidarity tax for companies from 4 to 5 per cent.

At the end of the day, a bipartite agreement was reached on the *automatic indexation of salaries* for 2011 on 29 September 2010 between the government and the national trade unions OGB-L, LCGB and CGFP. This agreement meant that the government agreed, in principle, to the indexation of wages for 2011, while trade unions agreed to the postponement of pay rises to the third quarter of that year. The parties also agreed to increase the minimum wage by 1.9 per cent, starting in January 2011. Following this, the employers' organisation UEL and the government concluded a second bipartite agreement on 15 December. To compensate employers for the cost of automatic indexation and its effects on labour costs, the government agreed to a 20 million euro increase in state funding of vocational training. However both the latter and the increase in the minimum wage were restricted to 2011.

3. Labour law reforms: 2013–2014

3.1 Working time

In 2013, the temporary provisions of bill No. 6594 concerning the extension of particular changes to the Labour Code, including short-term working schemes for periods up to 10 months for structural sources, were again prolonged until 31 December 2014.

In December 2013 the legislator adopted an Act to comply with the formal notice issued by the European Commission on potential non-conformity with Clause 6 of the Framework Agreement on **Fixed-Term Work** (Directive 1999/70/CE). National law now provides that: *'In case an employer opens a permanent post in the undertaking, the employees working in that undertaking under a fixed-term contract must be informed about the vacancy as soon as it becomes available.'*

In addition, in 2013 the reform was adopted to implement Directive 2010/118/EU on **parental leave**. The reform did not modify the entire legal framework as the basic legislation in Luxembourg already largely complied with the orientations of the directive. However, two elements were modified, the first regarding the duration of parental leave (Luxembourg's law already offers a duration of six months) and the second regarding a possible change in the working time of wage earners. Concerning the latter workers now had the opportunity to ask for a more flexible working time scheme for a fixed time, even though the employers maintained the right to refuse. In addition, non-compliance with these new legal elements could entail sanctions for employers.

Finally, since 2014 employees over 50 years of age with at least 10 years' service with the company have had the right to ask their employer whether they can work **part-time**.¹² If the employer hires a job seeker to fill the remaining hours of the post, the Employment Fund will subsidise the employer's social contribution for this employee for up to seven years.¹³ When workers are entitled to draw their pension they are now permitted, with their employer's permission, to continue to work part-time while receiving part of the pension.¹⁴ The reference period, previously four weeks, over which the average working week is calculated for part-time work, has been changed to four months.

3.2 Atypical work

New legislation was introduced in August 2013 that sought to address (repeated) non-compliance criticism from the European Commission over Luxembourg's implementation of EU law, especially with regard to the regulation of **fixed-term workers**. The new law was

¹² Article L. 526-2 (1).

¹³ Article L. 526-2 (2).

¹⁴ Paragraph 2 Article L. 125-3.

adopted in December 2013 and was intended to remedy the issues related to employers' obligation to notify fixed-term employees about job vacancies.

Another concern of the Commission was the exclusion of staff in the entertainment sector, working on an intermittent basis, from the legislation on fixed-term employment (Article L.122-1 (3) of the Labour Code), thus leaving them without sufficient protection against abusive practices. In April 2014, the State Council (*Conseil d'Etat*) issued its opinion on a Bill amending the status of professional artists (independents) and the '*intermittents du spectacle*' (subordinate employees in the entertainment industry without stable employment). Eventually, the new Act was adopted on 19 December 2014, mostly affecting independent artists and cultural funding. The new law redefined the concept of the subordinated '*intermittent du spectacle*'. It created a right for the members of these occupational groups to receive compensation for periods of inactivity, limited to 121 days in a period of 365 days. Due to its potential conflict with EU law, the condition of residence for receiving the compensation intended in the initial proposal was removed.¹⁵

On 29 March 2013, the government passed new legislation aimed at targeting **youth unemployment**. Bill No. 6521 proposed modifications to special subsidised contract schemes for young people seeking employment. Although such schemes had existed previously, they underwent reform in 2006 and special provisions were included during the economic crisis. The main aspects of such contracts are: the loss of unemployment benefits in case such a contract is terminated and the fact that it is not considered a formal labour contract, even though the workers are entitled to vacation benefits and are guaranteed the minimum wage, with a higher pay rate for graduates.

The new bill modified the existing system through lowering state subsidies and increasing employers' contributions, thus incentivising the full-time hiring of employees. It also extended the timeframe for such contracts. Previously, such contracts could be concluded only for three months. The amendments extended the time limit to 12 months. Working time under such arrangements was previously limited to 32 hours in order to allow looking for a job during the week, but with the amendments it was raised to a full 40 hours per week. The changes were also aimed at addressing skill training by introducing individual performance reviews, with certificates granted after a contract is terminated that indicate the skills acquired during the employee's time of service. Finally, after amendments subsidised contracts are now available only for those unemployed for three months or longer, because the previous one month threshold was deemed too low as individuals still have a good chance of obtaining a new work contract.

3.3 Other measures

From 2014 the **education allowance** meant for parents who decide to interrupt their career to raise children was abolished. The legislator also abolished the maternity benefit for pregnant women with no occupational activities. In addition, the reimbursement of the wages of employees benefiting from special leave to acquire or perfect their language skills in Luxembourgian (*cong  linguistique*) will no longer be reimbursed by public funds at 100 per cent, but only at 50 per cent; the employer is thus obliged to bear the additional costs.

4. Labour law reforms: 2015 onwards

4.1 Social dialogue reforms

At the beginning of 2013, a draft bill was introduced to **reform social dialogue procedures**. The changes sought to streamline employee representation with business needs by phasing out joint committees and introducing staff delegations that were given the co-decision-making powers that previously had been held by the committees. Influenced by the German works council model, the proposed system created directly elected staff delegations that will have more direct access to employers and will work more closely with management.

¹⁵ It has been replaced by two conditions to determine the Act's personal scope of application, namely (i) an affiliation with national social security for at least six months and (ii) a real activity (engagement) in the national artistic and cultural scene.

The old committee system was to be entirely removed, along with divisionary delegations and youth delegates. From now on health and safety delegates and equality delegates will be accompanied by a newly created staff representative body for economic and social matters. At the same time, co-decision-making remains available only to delegations in firms with staff numbers above the 150 employee threshold.

The proposed amendments were also aimed at clarifying and expanding information and consultation rights. The delegations were also given new authority concerning vocational training, prevention of harassment at the workplace, organisation of working hours, retirement and age planning, internal reassignments and work–life balance. Delegations' co-decision-making powers extend to employee discipline, criteria for hiring and performance evaluations. The proposal was also intended to create a new method of **conflict mediation**, through sector-fluid negotiations, either through collective agreements, inter-professional agreements or having an ad-hoc mediator for a group of individuals.

The reform was eventually adopted seven months later by the Act of 23 July 2015, which then substantially redefined the existing rules on collective labour relations within companies.

The aim of the new law was to 'simplify and modernise social dialogue', especially by adapting it to the new structure of companies. However, it does not affect social dialogue structures above company level (notably, trade unions, collective agreements, right to strike) and board-level employee representation mechanisms for co-determination (for example, in the administrative board (*conseil d'administration*) or the supervisory board (*conseil de surveillance*)). The former system of employee representation at company level – which included employees' delegates (*délégués du personnel*) in any establishment with more than 15 employees and joint work committees (*comité mixte*), mandatory in undertakings with at least 150 employees – was restructured. The reform came into force on 1 January 2016 and brought about the following modifications:

- The joint work committee was abolished. The law transferred the competences and co-decision-making powers of the committee over to the employees' delegation. This is expected to be of limited impact because in practice the membership of the committee and the delegation often overlap. But also the scope of co-decision-making has been extended to cover all collective activities for occupational training.
- Whereas the previous legislation located the employee delegation mainly at the level of the establishments (*établissement*), the new law shifted that representation to the level of the 'undertaking'. Several undertakings may be considered to operate as a socio-economic entity (*entité économique et sociale*) and an additional type of delegation can be set up but with only limited information powers. However, in practice the differentiation between 'undertaking' and 'establishment' is no longer made in most companies, therefore the impact might be limited, even though from a legal perspective it is important.
- The categories of delegate representation (besides 'regular' employee delegates, there are specific delegates for young workers, health and safety matters, and gender equality) were amended, with some changes in rights and competences according to responsibilities.
- Hitherto, numerous problems occurred with the regulation protecting employee delegates against dismissal. After the amendment, the delegate is automatically entitled to wage continuation for three months. After that, the delegate may request additional continuation, with the risk of reimbursement if serious misconduct is confirmed (however, this may be offset by the [retroactive] entitlement to unemployment benefits).
- In addition, most procedural deadlines were increased.
- The right of an employee delegation to invite external advisers (including union representatives) to their meetings previously existed only for delegations of bigger companies (at least 150 employees). Now also delegations in medium-sized business (with more than 50 employees) have obtained the right to call in external advisers.
- Pre-trial out-of-court procedures were strengthened, as the amendment introduced a new mediation procedure.
- Other additional rights of employees' delegates were extended, including the right to mandate-specific training (in social and economic matters) – notably, for delegates elected for the first time (right to additional training leave of 16 hours). Also, especially in larger undertakings, the number of 'delegation hours' (*heures de délégation*) was extended: for undertakings with 250 employees, the delegation is now entitled to one

- delegate who is fully released from work or an equivalent time credit to be shared among all delegates (that is, 40 hours a week per 250 employees).
- Eligible electorate: reduction in the voting age from 18 to 16 years.

4.2 Reversing crisis measures

In November 2015 the government tabled a new legislative draft for **labour market measures** (*Projet de loi* No. 6904), which was adopted in December 2015. Some of the amendments seek to terminate measures that were especially enacted to mitigate the effects of the economic crisis. The proposal addressed the following changes:

- It aimed to improve the regulation of *special contracts tailored to the professional (re-)integration of unemployed persons*. The current government was not satisfied with the ‘professional reinsertion training contract’ (*stage de reinsertion professionnelle*), in particular for its bias towards younger age groups and limited incentives for the training to be combined with long-term employment prospects. Therefore, the draft law was intended to replace the reinsertion contract with two new types of contracts that aim to increase labour market participation of particularly vulnerable groups of jobseekers (aged 45 or older; with reduced working capacity; or with a disability):¹⁶
- A short-term ‘professionalisation training’ (*stage de professionnalisation*) with a maximum duration of six weeks (nine weeks for job-seekers with a higher education). Employers who offer their trainees a suitable job will be entitled to subsidies. If the job-seeker is hired under an open-ended contract, the employer will receive half of the annual minimum wage as a subsidy after 12 months.
- A long-term ‘employment reinsertion contract’ (*contrat de reinsertion-emploi*) with a maximum duration of 12 months will be based on the elaboration of a special ‘training plan’. The ‘promoter’ (employer) has to pay the Employment Fund half of the annual minimum wage. After completion, the trainee should benefit from preferential treatment three months after the end of the reinsertion contract in the employer’s recruitment for suitable positions.
- The number of applications for *short-time working schemes* has dropped substantially (reaching pre-crisis levels). Hence, the bill aimed to re-enact the former legislation.
- During the financial and economic crisis, the *rules on unemployment benefits* were temporarily modified as well. In this case, though, the government chose to extend the measures for two more years to help particularly fragile job-seekers who still have difficulties finding employment.
- The provisions for flexible working time schemes, introduced (for a test run) in 1998 and which have repeatedly been extended since, were extended by another year. Given the social partners’ consensus that change is needed but agreement on a common position was still lacking, the provisions were now to expire at the end of 2016, instead of 2015.

4.3 Parental leave

Of a complete different order was Bill No. 6935 on parental leave reform, which was submitted to the Chamber of Deputies on 15 January 2016. The main objectives of the parental leave reform are to encourage reconciliation between family life and working life; to create a solid relationship between children and their parents; to respond to parents’ needs better; to increase the proportion of fathers benefiting from this in order to foster equal opportunities; and to increase the number of people using it in general.

The key changes introduced by the reform are as follows:

- Raising the age of children with regard to whom there is an entitlement to parental leave: it is thus possible to be able to claim parental leave provided the child is under the age of six, or 12 in the case of adoption.
- New durations of parental leave: the new parental leave allows both parents to stop working for:
 - four or six months on a full-time basis or,

¹⁶ For both contracts, the trainee/job-seeker will be paid monthly compensation of 323 euros (in some cases in addition to unemployment benefits). Job-seekers have to accept these contracts, unless they have valid grounds to refuse them; if not, their unemployment benefits can be suspended.

- eight or 12 months on a part-time basis with the employer's consent.
- Introduction of divisible parental leave for people working full-time: the Bill provides the possibility of split parent leave:
 - with a reduction of working hours of 20 per cent per week for a period of 20 months, or
 - over four one-month periods for a maximum period of 20 months.

These arrangements require mutual agreement between the employee and the employer, and must be set out in a parental leave plan, to be submitted together with the request to the 'Children's Future Fund' (*Caisse pour l'avenir des enfants*).

If the employer refuses parental leave part-time, they should present the employee with an alternative proposal. If the employee does not agree to the employer's alternative proposal, they continue to be entitled to full-time parental leave, as they choose, of four or six months.

- Introduction of a real replacement income: the fixed-rate allowance is replaced with a real replacement income with a lower limited of 1,992.96 euros a month (statutory minimum monthly wage to unskilled employees) and with an upper limit of 3,200 euros a month (based on a full-time schedule).

It is hoped that the new law will enter into force by the end of 2016 or the beginning of 2017.

4.4 Working time

In July 2016 a draft law concerning **working time organisation** and proposing to amend the Labour Code was adopted by the Council of Ministers and delivered to the Chamber of Deputies. The main measures in this draft law provide for the following:

- Lengthening of the legal reference period for calculating average working time from one to four months; thus following an information and consultation procedure with notice, businesses can extend the reference period from the current one month; previously any extensions required authorization from the labor inspectorate.
- Limiting of overruns on normal monthly working time to 12.5 per cent and to 10 per cent when reference periods extend beyond three months (on the basis of 40 hours this is the equivalent of 45 and 44 hours, respectively, on average). Any time worked beyond this will be treated as overtime. The goal is to restrict recourse to overtime hours, which 'must remain the exception and be used to manage ad hoc variations in work activity.'
- Modifications to the organisation plan, which allows businesses to change their employees' daily and weekly working time in line with the business's needs, can be effected up to three days prior without affecting the hours worked regime. However, the changes must extend for a minimum of three days. For changes that occur after the notice period, hours worked beyond normal working time will be treated as overtime hours. The draft law now sets an objective criterion, whereas the current law provides for a contentious 'unpredictability' criterion. In addition the plan can be modified on agreement with the employee delegation, or failing that, directly with the employees.
- Additional time off for employees working under legal working reference periods that exceed one month: 1.5 days a year for situations in which the reference period is longer than a month, 2 days for a reference period longer than two months, and 3.5 days a year for reference periods greater than three months but less than four months.
- Extending the reference period beyond four months (with the possibility of up to 12 months) will be possible only with a collective agreement (and failing an agreement, with authorisation from the labour inspectorate). If a collective agreement extends the reference period then the collective agreement can also more freely fix arrangements and compensation.¹⁷

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