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The Labor Law reform announced by the Government: The wind of hope and positivism is blowing again on French social partners

Since the election of Emmanuel Macron as President of the French Republic, the whole world has its eyes on our country and one of the issues for which Emmanuel Macron and his Government will be under much scrutiny is of course French labor and employment law. The Government's ambition is to find innovative solutions very quickly, by relying on consultations between social partners (i.e. employees' and employers' representative bodies) in order to articulate social and economic performance.

While it is still too early to tell whether the “*work program to renew our social model*” submitted to the social partners on June 6 will be the launch pad for ambitious and efficient major labor reforms, one thing is certain: The wind of hope and positivism is blowing again on French social partners and actors.

Since the election of Emmanuel Macron as President of the French Republic, the whole world has obviously its eyes on our country, in particular foreign investors who are wondering whether they should come back to France to “*do business*”.

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While this unexpected electoral outcome, this victory of change and this political rejuvenation have assuredly generated a new sense of hope, optimism, faith in the future and also enthusiasm and pride, everybody is now holding his/her breath pending the effective change.

One of the issues for which Emmanuel Macron and his Government will be under much scrutiny is of course French labor and employment law: For about 20 years, successive governments have kept on passing reforms, chopping and changing French Labor Law, sometimes for making French labor law more secure, sometimes for making it more flexible, sometimes for both (cf. the so-called “Work” Law of August 8, 2016). Yet, it is clear that none of the previous reforms has been convincing or has achieved the stated objectives.

Today, the image of French labor law is that of a complex legal system that no longer responds to the diversity of companies and business sectors, and to the expectations of employees. This is the image of a law with a gap between theory and practice; the image of a law that is a brake on the expansion of businesses because it does not rapidly evolve to adapt to the changing reality of business situations and because the cost of labor is too high.

This objective observation that we make as labor law practitioners and legal advisers of corporate clients is the same that has been expressed by the Government and by Muriel Pénicaud, the new Labor Minister.

As such, the Government’s ambition is to find innovative solutions very quickly, by relying on consultations between social partners, in order to articulate social and economic performance.

On June 6, 2017, Prime Minister Edouard Philippe and the Labor Minister have submitted to the social partners a roadmap *“the work program to renew our social model”* that sets forth the forthcoming major reforms and that invites social partners to submit their proposals and to work hand-in-hand.

This roadmap foresees six major reforms within the next 18 months, some of them even to be adopted as early as at the end of the summer: Reforming French Labor Law (1); improving the purchasing power of employees by abolishing the health insurance and unemployment insurance contributions and by funding these contributions through an increase of the *Contribution sociale généralisée* (a compulsory levy that contributes to funding the Social Security, often referred to by its acronym “CSG”), effective as of January 1, 2018 (2); strengthening vocational training with the implementation of the first concrete measures as early as September 2017 and an operational plan from the outset of 2018 (3); extending the unemployment insurance scheme to the self-employed, self-entrepreneurs and employees who resign from their position, effective as of the summer of 2018 (4); recasting the apprenticeship regime (5); and renewing and simplifying the current pension scheme (6).

Regarding the first major reform, the most ambitious one in its wording *“Reform of [French] Labor Law”*, the newly elected President and his Government want to rule by executive decrees. The main objective of this procedure is to speed up the adoption of reforms. This possibility of action is set forth in Article 38 of the French Constitution according to which *“the Government may seek the authorization of Parliament, for a limited period, to take measures by way of executive orders regulating matters normally falling within the*

jurisdiction of Parliament”.

The operating method and the currently envisaged timetable are as follows:

- Consultations between social partners during the month of June and throughout the summer of 2017 (more than 50 meetings are scheduled),
- Presentation of the Bill authorizing the adoption, by way of executive orders, of various measures to the Council of Ministers on June 28, 2017,
- Discussions and adoption of the Bill by Parliament and the Council of Ministers during the summer of 2017,
- Publication of the executive orders before September 21, 2017.

Regarding this first major reform entitled “*Reform of [French] Labor Law*” three main priority areas have been defined – and will be briefly addressed hereafter: Finding the proper articulation between company-level collective agreements and industry-wide agreements to secure the scope of collective bargaining (i), simplifying and strengthening social and economic dialogue and the actors involved in such dialogue (ii), securing employment relationships (iii).

- **Renewing the articulation between industry-wide agreements and company-level agreements**

Consultations between social partners must first help define the proper articulation between company-level agreements and industry-wide agreements. For each area where social dialogue creates standards, the consultations must focus on examining the opportunity to give precedence to industry-wide agreements or to company-level agreements. The underlying idea is that industry-wide agreements would henceforth only prevail in a restricted number of areas: Mutualization of professional funds, minimum wages, classifications, supplemental health, death and disability insurance, professional equality and “*as the case may be, physical strain, depending on the landing solutions that will be devised in the days or weeks to come*”. In all other areas covered by the French Labor Code, company-level agreements would prevail over industry-wide agreements.

In addition, to date, any change to the employment contract must be accepted by the employees through an amendment to his/her contract, which often results in a deadlock situation and which is *in fine* likely to limit employment growth. The Government is reportedly thinking about putting an end to this by adopting a general principle according to which “*the company-level agreement prevails over the employment agreement*”.

- **Facilitating social dialogue**

According to the French Labor Minister, “*we cannot stay with four social dialogue bodies*” (Works Council, Hygiene, Safety and Working Conditions Committee, staff representatives, union representatives). As such, the Government is planning to merge at least the three main bodies and to determine “*under what conditions we can go further*”. It should be noted that the so-called 2015 “Rebsamen Law” has already given companies with 50 to 300 employees the possibility to merge the following bodies: staff representatives, Works Council and Hygiene, Safety and Working Conditions Committee. This possibility would thus be extended to companies with more than 300 employees.

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A surprise: The “*work program*” does not make any reference to the setting up of the Committee for the recast of the French Labor Code that had been established by Article 1 of the Work Law. Does it mean that this recast has been shelved?

- **Making working relationships more secure**

The flagship measure of the last priority area identified for the reform of French Labor Law is the introduction of a sliding scale for damages that French Labor Courts may award in case of dismissals without cause. This new rule is supported by French Labor Minister Muriel Pénicaud who believes that “*it is not normal, fair and sound that the same fact may result in damages that may differ by two to three times throughout the territory*”. As such, this scale would set minimum and maximum amounts of damages that could be awarded by the Court.

It should be noted that there already exists an “indicative” baseline of compensation for dismissal indemnities payable to employees dismissed abusively or without cause, created by the Macron Law of August 6, 2015. Judges are invited to refer to this baseline but are not bound to apply it. As such, the change would obviously be that the new scale implemented in the framework of the reform would be mandatory.

It also seems that the Government is contemplating softening some formalities surrounding dismissals justified by economic reasons, e.g. rules like the obligation to mention in a dismissal letter the elimination of the employment position could be eased.

The Government also would like to modernize some standards, such as the standards that regulate teleworking, which has become quite usual in working relationships. However, these standards are obsolete in the way they are applied and at variance with employees’ practices and expectations.

Securing working relationships should also include issues on access to law. The Government will have to think about how to guarantee to anyone digital access to labor and employment standards that apply to him/her.

It is clear that today it is far too early to know if this “*work program to renew our social model*” is only a “marketing plan” or if it is the launch pad for several ambitious and efficient major labor reforms.

One thing is certain though: Most of the unions seem ready to discuss and to work in collaboration with the Government, which proves that the wind of hope and positivism is indeed blowing again on French social partners and actors.

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