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The Macron Bill: Will it help France make its labor market more flexible and reassure investors? Between dreams and realities...

The so-called “economic growth and activity” Bill, commonly known as the “Macron Bill” [1] (the “Bill”) addresses issues as diverse as Sunday working, the reform of the Labor Courts, legal professions, coach transportation, dismissals on economic grounds, and the transfer of State-owned assets and State ownership interests. It was submitted to the Council of Ministers on December 10 and will be discussed by the French Parliament as from January 16, 2015.

The Bill has already been much talked about in the past few months, especially for its most controversial section, i.e. the reform of regulated legal professions (primarily lawyers, notaries and bailiffs).

The Bill is structured around three main axes, i.e. work,work,

remove the brakes on business and invest, and is supposed to symbolize France's capacity to reform itself and is intended to incrementally liberalize the economy.

The Bill drastically disrupts the traditional left vs. right political positions on economic matters: considered as too liberal for the left and too “weak” by the right, the Bill is indisputably a new attempt by the Government to re-assure foreign investors on France's intention to boost its economy and to make the French labor market more flexible.

Bertrand Chokrane[1] declared in an interview published in a French business newspaper *“While the Bill (...) does not include anything that could change the health condition of the French economy, it does constitute an important milestone, a first step, a test. In fact, the challenge is to see if France, and particularly the intermediate bodies, are willing to endorse structural reforms. This Bill is designed to reassure creditors on France' ability to accept reforms and on the Government's ability to implement such reforms”*.

Among the numerous issues that it addresses, the Bill contains an important section on work- and employment-related matters. This article will focus on this particular topic.

The pursued objective is to make the labor market more flexible. Let's see if the major measures that have been announced are likely to contribute to the achievement of that objective[2].

Liberalization of Sunday openings

The Government started from the premise that the current legislation on Sunday working is a complex multi-layer scheme that has become unpalatable and a source of inequality between employees.

The reform works on several axes:

- The number of Sunday openings that may be granted by local councils to non-food retail shops is increased from 5 (mandatory) to 12 (maximum);
- areas where derogations are currently automatically granted to retail shops (i.e. touristic areas and so-called urban areas of exceptional consumption, also known as flea markets) are expanded to:
 - touristic areas zones where there is a particularly high flow of tourists;
 - trading/shopping areas characterized by a strong trade activity and a potentially particularly high demand;
 - international touristic zones (including train stations) characterized by an international reputation and an exceptional influx of tourists who reside outside France (such as the *Champs Elysées*).

In these areas, employers will be entitled to grant to all of part of their staff rest time on a rotational basis. These areas will be delineated by the competent Ministers following the opinion of the local mayor, the chair

of the inter-communal organization, if any, and the social partners.

Retail stores located within international touristic areas should be allowed to open until midnight, without any formality being required, and the night period would correspond to the period between midnight and 6:00 am (as opposed to the currently applicable period between 9:00 pm and 6:00 am).

Sunday working will be regulated by a collective agreement (branch-level agreement , company-level agreement or territorial collective agreement) that must (i) enshrine the principle according to which employees will work on Sundays on a voluntary basis exclusively, and (ii) provide for specific benefits (not defined in the Bill but likely to include higher wages, additional rest time, etc.).

Shops that may already open on Sundays under the current legislation will have three years as from the entry into force of the Bill to enter into agreements with their employees, if such agreements do not exist yet.

Currently applicable sectorial derogations (i.e. derogations granted to shops that are included in a list of specific business sectors, such as Do It Yourself shops, and authorized to grant to their employees rest time on a rotational basis, and not, therefore, necessarily on Sundays) will continue to apply for a while but will be removed in the long term.

As we head towards Christmas, are running around for gifts, and are enthusiastically and frantically enjoying the fact that shops are exceptionally open on Sundays, this is clearly a reform proposal that is announced at the right time! Through this measure, the Macron Bill also aims at boosting France's attractiveness. While France remains the world's No 1 tourist destination, it only ranks third in terms of tourism revenues.

The extension of Sunday shop opening fits the spirit of the times^[3] and it is a good thing that our Government has decided at least to tackle this issue. Yet, we can only regret that such a reform, which has been discussed for many years, cannot be apprehended clearly and pragmatically: at this stage, the Bill is not more than a mere declaration of intention and regulatory clarifications will be required to fine-tune and implement this flagship measure.

Reform of the Labor Courts

Today, proceedings before the Labor Courts are lengthy and the time necessary for cases to be adjudicated are quite substantial.

The Bill identifies several sources of improvement:

- better train the Labor Court judges, impose more stringent ethical obligations and overhaul the disciplinary procedure;
- shorten the timeframes and better regulate the various stages of the proceedings, including as from the conciliation stage, provide that the adjudication panel of the Labor Court should sit in small committed

(one judge elected by the employers and one judge elected by the employees) and render its decision within a period of three months;

- consolidate proceedings when it is in the interest of a good administration of justice to have cases pending before several Labor Courts within the same jurisdiction of a Court of Appeals be adjudicated together;
- further encourage amicable proceedings, such as the so-called conventional mediation (indeed, conventional mediation – not to be confused with the judicial mediation – was introduced by the Law of February 8, 1995 and is not at present available in the framework of proceedings initiated before Labor Courts, except if case of cross-border labor disputes);
- Create a true status as “*défenseur syndical*” (i.e. union’s legal defender) who could represent employees not only before Labor Courts but also before Court of Appeals in Labor disputes. In addition, in companies with less than 11 employees, the *defenseur syndical* would benefit from leave authorizations – with preservation of his/her salary and related benefits (to be reimbursed by the State) – up to 10 hours per month maximum, in order to properly perform his/her duties.

Applicable sentences when the employer obstructs the proper functioning of the employee representative bodies

Prison sentences are rarely imposed when the employer obstructs the proper functioning of the employee representative bodies (so-called “*délit d’entrave*”). Yet, the Government considers that the mere existence of this type of sentence acts as a deterrent to foreign investors. The Bill aims at abolishing prison sentences on the one hand, and increasing the financial penalties that may be imposed on the other hand.

Dismissals on economic grounds

The Bill provides clarification on a number of provisions introduced by the Law on securing employment of June 14, 2013[4] with respect to dismissal on economic grounds:

- It allows companies to set forth in a collective agreement or unilateral document the scope of application of the criteria to be used to determine the order of dismissals at a lower level than the one of the legal entity, i.e. at the level of an establishment.
- It remedies some undesirable effects of Court decisions. In particular because today, when collective lay-off plans validated or approved by the French Administrative Authorities are subsequently nullified pursuant to a Court order, such nullification entails either the reinstatement of the dismissed employees, or the payment of an indemnification to such employees. In this case, the Bill provides that the French Administrative Authorities will be requested to issue a new decision that must be sufficiently reasoned. If this obligation is met, the nullification would have not impact on the validity of the collective lay off plan and would no longer entail the reinstatement of the employees or the payment of an indemnification by the employer.
- The obligation to search for redeployment opportunities outside France, a true headache for companies, should be simplified. The search process should henceforth be started at the initiative of the employee,

and no longer at the initiative of the employer. It should be up to the to-be-dismissed employee to request the employer to be granted access to the list of employment positions outside France available within the company or the group to which the company belongs. As such, if the employee does not make such a request, the employer would be entitled to limit its search for redeployment opportunity to the French territory.

- The Bill also repeals the Labor Authorities' control over contemplated dismissals of at least ten employees over a period of thirty days within companies with at least 50 employees. Indeed, currently this control cannot *de facto* be performed for this type of dismissals since the *Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi* (Regional Directorate for Companies, Competition, Consumption, Labor and Employment) is informed of the dismissals *a posteriori*, i.e. after the dismissals have been notified.

While the clarifications on the provisions introduced by the Law of June 14, 2013 are welcome, doubts may be expressed as to whether it was really appropriate to include them in this Bill which already addresses so many issues.

So, is the Macron Bill just another bill that is “*much ado about very little*”, to quote the words of Alain Juppé, one of the future candidates in the next French presidential elections?

Whatever the adjectives used to described the Bill and regardless of whether it is considered as a considerable progress, a significant regression in time or a new declaration of intent that will have no practical effect on our economy, one thing is for sure: the Bill is truly a catch-all omnibus that addresses so many issues (no less than 106 Articles, fifteen or so contemplated ordinances, not to mention the implementation decrees that will need to be published) that it conveys, once again, the impression that our governments in France are definitely unable to act pragmatically and with simplicity...

[1] Bertrand Chokrane is an economist who graduated from the MIT and the *Ecole Normale Supérieure* (Ulm). Before setting up his own consulting firm, Bertrand Chokrane Consulting, he served as Strategic Planning Director at the Renault and Dassault Systèmes groups.

[2] This Article is not intended to provide an exhaustive presentation of the all the employment-related measures included in the Bill. Only the measures that we believe are the most substantial are addressed in this article.

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[3] More than six out of ten French citizens (66%) are favorable to shops opening on Sundays, according to a CSA survey conducted for the magazine *Direct matin* and published on December 9, 2014.

[4] Cf. our articles of [March](#), [May](#), [June](#) 2013 and [January](#) 2014 outlining the main provisions of the Law of June 14, 2013.

[1] Named after Emmanuel Macron, Minister of Economy, Industrial Renewal and Information Technology

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