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New Labor and Employment Legislation in France - Is French Labor Law Becoming More Flexible?

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The combination of the economic crisis and the growth of emerging markets has led to many European governments announcing initiatives to reform employment legislation with the intent of making it simpler and more flexible so as to allow local businesses to become more competitive in the global economy. Given the political sensitivities associated with giving employees less protection, some jurisdictions have not yet implemented their intended reforms.

However, in France, the Government has adopted an innovative approach to tackling the sensitivities of implementing employment law reforms. Instead of seeking to impose its own changes, the French Government threw the gauntlet to employer trade associations and trade unions and told them to negotiate changes to existing law between themselves that would be acceptable to both employers and employees.

After lengthy negotiations between the two sides, on 11th January, 2013, what has already been called an "*historical*" national agreement was reached on reforms to French labor and employment law.

To become enforceable, such national agreement, known under the acronym A.N.I. (*Accord National Interprofessionnel*), needs to be transposed into the French Labor Code. The Bill will be discussed by Parliament very soon.

The proposals in the A.N.I. contain a combination of additional rights for employees (including in relation to health care, training and unemployment benefits) as well as changes intended to make French labor law more flexible in relation to the following four areas:

- the procedures for implementing "mass lay-offs" (dismissals of at least 10 employees over a period of 30 days in companies having at least 50 employees);

- increasing flexibility to change pay and hours to safeguard jobs;
- increasing the mobility of employees to safeguard jobs;
- proposals to encourage claims to settle and to reduce the time limits for bringing claims.

New procedures for implementing mass lay-offs:

At present, carrying out mass lay-offs is regulated by rigid provisions contained in the French Labor Code. These require detailed consultation with works councils and a document containing specific provisions about how the lay-offs should be carried out (such as the timing and selection criteria) and the compensation payable to employees (known as a "Social Plan").

The new proposals are intended to simplify the process by giving employers and employee representative bodies greater flexibility to negotiate how mass lay-offs will be implemented. The new proposals envisage the following:

- **Negotiation of a majority collective agreement with the unions**: Employers will be free to enter into collective agreements which stipulate how mass lay-offs are carried out and the nature of the consultation that must be conducted with the works council. However, in order to have such freedom, employers must enter into a collective agreement with the applicable trade union which is supported by at least 50% of the workforce (which must then be ratified by the French labor authorities within an 8-day timeframe).
- **Unilateral implementation of a social plan by the employer if no agreement**: In the event that the employer and the trade union cannot reach an agreement, the new proposals permit an employer to unilaterally implement its own social plan, which then needs to be submitted to the works council (who can merely offer an opinion on it rather than veto it) and then be validated by the French social authorities ("**DIRRECTE**"). The DIRRECTE will then have a 21-day period within which to approve the document, having regard to factors such as: the content of the social plan, whether the information and consultation process with the works council is sufficient, the compliance of the social plan with legal requirements and custom and practice, consistency between the social plan and the economic and financial situation of the group of which the company is a member. If the DIRRECTE refuses to validate the social plan, an employer can return to the DIRRECTE to seek its approval for a revised version accounting for the

DIRRECTE's recommendations after consultation with its works council.

Flexibility to change pay and hours to protect jobs

One effective strategy to avoid making lay-offs is to seek to reduce pay and working hours for an interim period. For employers, this had the advantage of allowing them to retain their workforce and be in a position to increase productivity rapidly when business improves; for employees this has the advantage of safeguarding their jobs. The draft Bill contains provisions which specifically permit majority collective agreements to include provisions allowing changes to pay and working hours to be made for a period of up to two years in prescribed circumstances in return for a commitment to safeguard jobs.

Any changes to working hours and pay would effectively modify an employee's contract of employment and the new proposals provide that any changes agreed by way of a collective agreement also have to be agreed by individual employees. Although the proposed legislation does not do away with this requirement, it does provide that if an employee refuses to agree to changes permitted in a collective agreement, the employee can be dismissed lawfully on the grounds that the dismissal is for economic reasons. This contrasts with the current position where, if 10 employees or more refuse to comply with the specific provisions of the company collective agreement and therefore refuse changes to their employment contracts, the employer must implement a mass lay-off procedure to dismiss them. Under the new proposals, because employees who refuse changes to their contracts of employment can be dismissed for individual economic reasons, if a company has to make ten or more dismissals, it can do so without having to implement the mass lay-off procedure. However, the new proposals protect employees by requiring a company's collective agreement to contain specific redeployment measures to assist the terminated employees.

It is noteworthy that if the employer does not comply with the terms and conditions of the company's collective agreement and therefore is in breach of his commitment to safeguard the jobs, the employer will have to pay a penalty specified by the collective agreement itself.

Increasing employee mobility to safeguard jobs

The draft Bill also contains provisions giving employers greater flexibility to require their employees to be more mobile through allowing changes to the role carried out by employees and their place of work where to do so will safeguard jobs. This is intended to provide employers more flexibility than they currently enjoy to reorganize their workforces. In order to implement such changes, they must negotiate the following with the trade union:

- measures to facilitate the mobility of the workforce (such as training and incentives to relocate);
- limits on relocating employees;
- measures aimed at balancing the private and professional lives of employees.

However, the proposals make clear that employers cannot use these measures to reduce remuneration or effectively demote employees and that the measures should be used to maintain or improve the professional qualification of employees.

In the event that an individual employee refuses to agree to changes implemented in accordance with these provisions, the employee can be dismissed lawfully on the grounds that the dismissal is for economic reasons (albeit that such employees will benefit from the redeployment measures provided by the collective agreement).

Reduction of time limits for bringing claims and encouraging claims to settle

In order to encourage claims to settle, the draft Bill provides a formula for compensating employees when claims are settled at a relatively early stage before the Conciliatory Board. Under the ANI, compensation levels should be between two to fourteen months' pay depending upon length of service. This contrasts to the current position where, if an employee shows they were dismissed without cause, an employee with at least two years of service in a company with 11 or more employees would be entitled to compensation of no less than six months' pay.

As to the time limits for bringing claims, the draft Bill provides for the following:

- a reduction from five years to two years for employment-related claims, except for discrimination and harassment cases (which remains five years);

- a reduction from five years to three years as to the amount of back-pay to which an employee is entitled.

We will keep you informed about the progress of the Bill through Parliament. If implemented as currently drafted, the changes will have a significant impact on French labor and employment law.