



FLASH INFO

1. Social measures announced by Emmanuel Macron

The new President of the Republic, Emmanuel Macron, has announced in his official program a series of social measures.

About the **social dialogue**, the new President wishes:

- To give more strength to the company-level agreement, in the continuity of the El Khomri Law;
- To amend the staff representatives' rules in order to create a single employee representation body ;
- To reduce the number of professional branches between 50 and 100, in the continuity of the "Professional Training Law" of 5 march 2014 and of the El Khomri Law;
- To encourage Labour-union commitment and prevent discriminations on account of union activities.

In matter of **employment, employee training and unemployment**, Emmanuel Macron wants :

- To create an employment insurance for all economically active persons;
- To give workers who resign the right to entitlement to unemployment benefits;
- To modify the "Compte personnel formation" (professional training personal account) in order to credit it with points and not with training hours and to increase the number of eligible trainings;
- To promote the apprenticeship's attractiveness by creating a unique apprenticeship's contract instead of two.

Regarding **salaries and social charges**, Mr. Macron wishes:

- To restore the social charges exoneration for overtime hours;
- To repeal the "Tax Credit Competitiveness Employment" (Crédit d'Impôt Compétitivité Emploi);
- To reduce employer's social charges by 6 points, and by 10 points on lower incomes;
- To introduce a bonus/penalty system in order to avoid the excessive recourse to short-terms contracts.

Last but not least, the following measures were also announced:

- To regulate the Labour tribunal decisions by creating a compulsory scale of damages for redundancy without actual and serious basis;
- To introduce a unique pension plan in point which takes into account the arduousness work;
- To redefine posting of workers rules in order to protect against unfair competition (detachment with one-year limit and procedures' simplification);

- To combat gender injustice in employment by raising the number of testing campaigns, publishing the companies' identity which do not comply with the wage equality and strengthening the Defender of Rights' role.

2. Whistleblower procedures: new implementing decree

Act December 9, 2016 (« Loi Sapin 2 ») included the obligation of implement intern appropriate whistleblower procedures within firm over 50 employees. As a reminder, descriptions are given to the employee's supervisor or to a referent designated by the employer.

According to the new implementing decree which will enter into force on 1 January 2018, the referent can be "a physical person or any body governed by public or private law, whether corporate or not". The referent must "possess the necessary authority, ability and means to fulfil its mission" and is subject to an obligation of strict confidentiality.

Art. 5 mentions the terms and conditions which have to be stated by the employer at the time of implementing the whistleblower procedure.

The implementing decree specifies the whistleblower procedure must be brought to the employees and external staff by any mean.

📄 Decree of April 19, 2017, No 2017-564

3. New convention on Unemployment Insurance

The Convention on Unemployment Insurance of 14 April 2017 signed by the social partners implement the following changes:

- The method for calculating the unemployment benefits takes working days into consideration in an uniform way, regardless of the duration of contracts;
- The maximum delay before the insured unemployed can receive unemployment benefits is reduced from 180 days to 150 days, in case of supra-legal compensation to dismissal;
- The modulation of unemployment insurance employer's contributions for short-term contracts is repealed;
- Rules applied to seniors are modified in order to allow them to acquire new skills and to take account of the raise of the mandatory retirement age;
- The implementation of a new 0.05% temporary employer's contribution applicable to all contracts;
- The removal of the social contribution's holidays for recruiting young person under 26.

The Convention on Unemployment Insurance will enter into force on 1 October 2017.

📄 Convention on Unemployment Insurance of 14 April 2017

📄 Ministerial Order of 4 May 2017

4. Implementing decree in relation to the « Social Dialogue Instance » in franchise networks

The El Khomri law implemented a “Social Dialogue Instance” in franchise networks. This instance concerns only the franchise networks with at least 300 employees and with a franchise agreement which contains clauses that affect work conditions and organization of franchised companies.

An implementing decree fixes the Social Dialogue Instance’s process establishment and its functioning modalities. Indeed, the decree gives precisions related to:

- The preliminary and mandatory procedure for negotiation of a collective agreement which institute the Social Dialogue Instance;
- The content and the conditions for validity of the collective agreement which institute the Social Dialogue Instance;
- The applicable operating rules in the absence of a collective agreement (instance’s composition, appointment of the members, replacement of the members who leave the instance, status of the members)

The decree also specifies that the District Court (“tribunal d’instance”) has jurisdiction to resolve disputes relating to the Social Dialogue Instance’s establishment and its functioning, and determine mandatory time-limits for contesting.

This decree is supposed to bring details about a bill which is criticized because of the economic and legal independence between franchisor and franchisees. However, many areas are still in doubt: for what type of franchise network this new instance is mandatory? What happen if a franchisee refuses to give information to the franchisor? What is the method for establishing the negotiation group? These inaccuracies will probably slightly overload the district courts because of the upcoming litigations.

Is it not suitable that this Instance goes deeper than the economic and social unit concept between several entities with same directors? Isn’t it an extension to independent employers of a kind of “co-employers” responsibility without a relationship of direct subordination? It remains for us to ask what will Emmanuel Macron’s government do about the Social Dialogue Instance and this implementing decree which is only signed by two ministers.

📄 Decree of May 4, 2017, No 2017-773

5. New measure of the trade unions’ audience

For the second time, in the context of the reform of the trade unions representativeness introduced by the 20 of august 2008 law, the audience of the trade unions has been measured at national and interprofessional level as well as at the professional branches level.

At the national and interprofessional level, five unions reached the 8 % minimum score to be recognized for representativeness:

- **CFDT : 26,37%**
- CGT : 24,85%
- CGT-FO : 15,59%
- CFE-CGC : 10,67%
- CFTC : 9,49%

Despite the recent evolution of the regulation in this area, the five historical trade unions remain the only representative organizations at the national and interprofessional level.

6. The maintenance of the collective aspect of the insurance scheme in case of one-time errors committed by the employer

According to the French Supreme Court: « the omissions and one-time errors in the implementation of an insurance scheme do not deprive it from its collective and mandatory aspect ». However, the employer must provide the proof of the errors or omissions he pretends to have committed. In this particular case, the errors concerned three employees; regularization occurred for one of them.

📄 French Supreme Court, Second civil chamber, January 19, 2017, No 16-11.239

7. Relative tolerance of coupons and gifts: absence of normativity before the judge

During an inspection, the Social Security Contribution Collection Office (URSSAF) refused to apply its own administrative tolerance regarding gifts and coupons, on the ground that the employer granted gift certificates unequally between the employees by taking into account the number of months of presence.

The French Supreme Court specified that are deprived from normativity and thus inapplicable before the judge:

- The circular letter ACOSS which establishes a presumption of non-taxation for the coupons and gifts attributed to an employee during a calendar year, as long as the amount does not exceed 5% of the “monthly social security threshold” in a one year period.
- The Ministerial Instruction of 17 April 1985 which provides that gifts and coupons offered to an employee may be excluded from the social security contribution base when they are attributed in connection with an event.

📄 French Supreme Court, Employment Chamber, March 30, 2017, No 15-25.453

8. The payment of road fines by the employer is a benefit subject to social contributions

The French Supreme Court declared for the first time that the payment by the employer of the fines punishing a violation of the French Highway Code committed by an employee constitutes a benefit subject to social security contributions. This case-law is in line with the URSSAF's position indicated on its website.

📄 French Supreme Court, Second civil chamber, March 9, 2017, No 15-27.538

9. Only a titular staff representative can be designated to exercise the tasks assigned to the secretary of the CHSCT

In companies with 50 or more employees, in the absence of the CHSCT, only one **titular** staff representative may carry out the tasks assigned to the secretary of the CHSCT.

This solution is justified by the combined reading of articles L. 2313-16 and L. 2314-30 of the French Labour Code. It follows that the substitute staff representative is only intended to replace the titular staff representative and consequently, cannot be appointed to permanently perform the functions of a secretary of CHSCT.

📄 French Supreme Court, Employment chamber, February 22, 2017, No 15-23.571

10. The CHSCT's prohibition to require the recourse to a service provider to write meeting minutes

According to article L. 4614-9 of the French Labour Code, the CHSCT "receives the necessary resources from the employer for the preparation and organization of meetings". According to the French Supreme Court, the CHSCT can't decide unilaterally to grant additional resources such as the use of an external service provider in order to write 92 pending meeting minutes.

Although the French Labour Code has extended the right of the CHSCT to have recourse to an expert in several situations (serious risk, major project), this is not the case in the day-to-day management of meetings where the CHSCT is obliged to solicit the employer to obtain additional resources.

📄 French Supreme Court, Employment chamber, February 22, 2017, No 15-22.392

11. The calculation of the work council budgets

For the calculation of the operating grant and of the employer's contribution to the social and cultural activities of the work council, the specific contractual termination fees, in their part higher than those corresponding to the legal and conventional compensation, shall not be taken into account.

📄 French Supreme Court, Employment chamber, March 22, 2017, No 15-19.973

12. The summary judge has jurisdiction for ordering the pursuit of the fixed-term contract beyond its term

According to the Article R. 1455-6 of the French Labour Code, "the summary judge always can, even if there is a serious contestation, order provisional measures necessary to prevent an imminent damage or to cease a patently unlawful disorder".

Once an employee submitted an application for the fixed-term contract reclassification, the summary judge can, on the basis of this article, ordering the pursuit of the fixed-term contract beyond its term awaiting the substantive judgement.

📄 French Supreme Court, Employment chamber, March 8, 2017, No 15-18.560

13. A human Resources Manager permitted unacceptable management methods: his dismissal is justified

A Human Resources Manager allowed unacceptable management methods from a store Director with whom he used to work closely. The Human Resources Manager's dismissal is justified because his behavior endangers employee's physical and mental health.

📄 French Supreme Court, Employment chamber, March 8, 2017, No 15-24.406

14. The obligation to deliver the attestation for the national employment agency exists in the case of an employee's resignation

The attestation for the national employment agency (Attestation Pôle Emploi) has to be given to the employee in any case of end of the working relationship, including the resignation without right to unemployment benefits.

📄 French Supreme Court, Employment chamber, March 15, 2017, No 15-21.232

15. A stronger role for the Works Council

Two decisions confirmed and strengthened the prominent place taken by the Works Council in the social dialogue:

- The Establishment Works Council can't claim a right to expertise on the basis of the article L. 2323-6 of the French Labour Code relating to the three Works Council's annual mandatory consultations.
- The European Works Council's role is not enshrined. In order to validate the redundancy plan, the Labour Administration (DIRECCTE) don't have to verify the correctness of the procedure for information and consultation of the European Works Council.

📄 Créteil High District Court, January 23, 2017, No 16/10638

📄 Paris High District Court, December 15, 2016, No 16/59957

16. Parent company's tortious liability

The Douai Court of Appeal refused to recognize a "co-employment" situation. Nonetheless, it was decided to recognize the parent company's tortious liability to the subsidiary's employees. The parent company was accused to use the subsidiary company's dependency in order to take harmful decisions which influenced subsidiary company's economic situation to the detriment of employees.

The difficult recognition of "co-employment" situation does not exclude the parent company's tortious liability to the subsidiary's employees.

📄 Court of Appeal, Douai, January 31, 2017, No 15/01578



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