



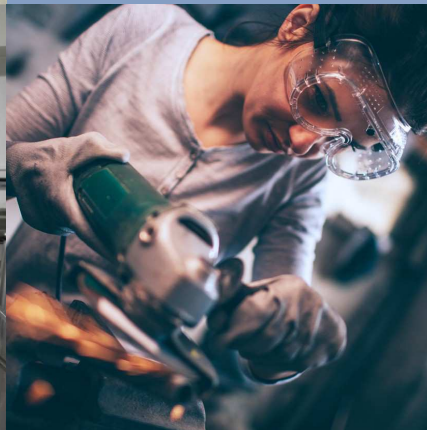
Liberté • Égalité • Fraternité
RÉPUBLIQUE FRANÇAISE

MINISTÈRE DU TRAVAIL



STRENGTHENING
SOCIAL DIALOGUE

PRESS PACK
28 June 2017





Muriel Pénicaud, Minister of Labour



We want to renovate the French social model.

The values that underpin our social model are important to us. It is part of our identity, and yet we have the clear sense that it no longer completely meets the key challenges of our times, the expectations of the labour force or companies' needs. Globalisation, the digital transition, new expectations on the part of employees and the labour force as a whole, companies' needs in terms of growing and creating jobs... these are all topical issues that must be taken on board without delay.

Renovating does not mean destroying, disowning who we are, nor, indeed, adopting a replica of an imported model.

Renovating is about retaining the sturdy core foundations and principles, modernising rights and duties and facilitating their effective implementation.

Our social model forms a coherent whole: work, school, unemployment insurance, social security... When it comes to labour law, we want to renovate the conditions for social and economic dialogue to provide employees and companies with greater equality, freedom and security.

Equality is the keystone of our social model. It guarantees everyone a chance to succeed in life, irrespective of the circumstances in which they were born, their age or their gender: equality before the law, equality of rights, equal opportunities.

Freedom is the condition for everyone to reach their full potential. Choosing their professional career, making a career change, founding, undertaking, working in a different way, striking a work/life balance... Employees would like to be involved in their company's strategic decision-making, play a full part in their company's collective bargaining, and organise themselves more easily on a day-to-day basis... Companies need to be able to restructure swiftly if they are to move into new markets and create jobs, and to negotiate standards that are tailored to their corporate needs rather than having to comply with externally imposed standards.

Security is an essential consequence of freedom. Employees and company managers alike need rules of law that are clearer and more familiar to all; they need to be able to avoid time-consuming, uncertain disputes and instead focus their attentions on collective success, corporate growth and the development of careers and employment.

Providing employees and companies with greater equality, freedom and security through social and economic dialogue: such is the aim of this bill and ordinances we are drafting on the basis of political and social democracy. We firmly believe that social and economic dialogue is crucial to the success of companies and to social progress.





PROVIDING EMPLOYEES AND COMPANIES WITH GREATER FREEDOM AND SECURITY

French citizens are proud of their social model – the two linchpins of which are equality and freedom. If we are to fully adapt to the new challenges of our time, we need to make this model more secure, for the benefit of both employees and companies.

The fact of the matter today is that our labour law is inflexible and a source of inequality, hampering companies' scope for leadership, holding back progress in terms of employment and leaving employees' expectations unmet.

- The economic and social environment in which companies, employees and, more generally, the labour force as a whole, work, has undergone sweeping change over the past thirty years, not just in France but elsewhere too. The lie of the land in terms of the global economy and the way work is organised has altered, bringing with it not only unprecedented levels and types of opportunity but also new economic and social difficulties which need to be addressed in an innovative way: by thoroughly renovating our social model.

"Our challenge is to preserve the values underpinning our social history as we adapt to a changing world"

Muriel Pénicaud, Minister of Labour

- Although 55% of jobs in France are held in small and medium-sized enterprises, labour law is still, for the most part, grounded in the large industrial enterprise model: length-of-service increments, determination of the employer's financial contribution towards employees' travel expenses depending on their company, the

collective bargaining rules... Many of these rules are negotiated and enforced uniformly across sectors by representatives of large enterprises, when SMEs and micro-enterprises need flexibility and employees' expectations or needs are becoming increasingly diverse from one company to the next...

- While employees' and companies' expectations are changing (freedom to choose one's professional career or to make a career change, freedom to conduct a business, etc.), the law is often out of step with social practices and the collective ability to improve the way the company itself is organised, through responsible social and economic dialogue.

Renovating does not mean renouncing or copying a dogmatic or imported model. By preserving and shoring up the foundations and principles forming the backbone of our law, we can modernise the rights and duties of each stakeholder, as well as the context in which social and economic dialogue is practised.

- If we can once again give pride of place to trust in social and economic dialogue and set the stage for a change in mindset, then labour law will be able to support the development of companies and employment and allow employees to rely more on the future of their company and to find or rediscover purpose in their work.

Today's companies are not the same as they once were: whilst it would be absurd to deny the diverging interests they are having to grapple with, today's companies are not likely to prosper over the long term if the employees investing in them do not see what the purpose of their work is.

- Equal protection for employees should they unexpectedly find themselves unable to work, especially because of sickness or disability, is one of the key building blocks of the French social model, and yet the principle of equality should not lead to a blanket standard applicable to all employees of all companies, irrespective of the size or sector.

Indeed, employee protection can be better ensured by standards that are negotiated between representatives of employees and employers in line with intangible principles set by the law: this is a solution where neither the disappearance of protection nor the mismatch of our rules in light of employees' aspirations and companies' requirements need be inevitable.

- Coming up with innovative solutions to coordinate social and economic performance and combine well-being and effectiveness at work is only possible if done at the most relevant level possible, via dialogue between the stakeholders who are directly concerned, under flexible, protective conditions.

This bill forms the first section of the ambitious work programme that the Government is proposing to the nation's trade union and employers' organisations.

- Its intention is to meet this programme's aim of aligning social and economic performance by updating our labour law as effectively as possible, such that the sheer diversity of employees' expectations and companies' needs are taken on board.
- To ensure equality for the whole working population, they must be given more rights to be able to play a confident part in the new economic and social landscape. Globalisation and new technology have made the job market more demanding, more uncertain. The flagship investments for the future plan aims to tackle these very issues, by raising the qualification level of the French population, as does the vocational training reform – which must give each person a broader and more accessible range of individual training rights.

“The number one source of insecurity is unemployment.

The number one source of security is skill.

The first rung on the ladder is training.”

Muriel Pénicaud, Minister of Labour



AN ENABLING BILL

WHICH DETERMINES THE FRAMEWORK FOR DIALOGUE

The text of the enabling bill defines the framework in which the talks currently in progress with the social partners are being held. It does not therefore predetermine the final provisions of the ordinances which will be published at the end of the consultation process with the social partners.

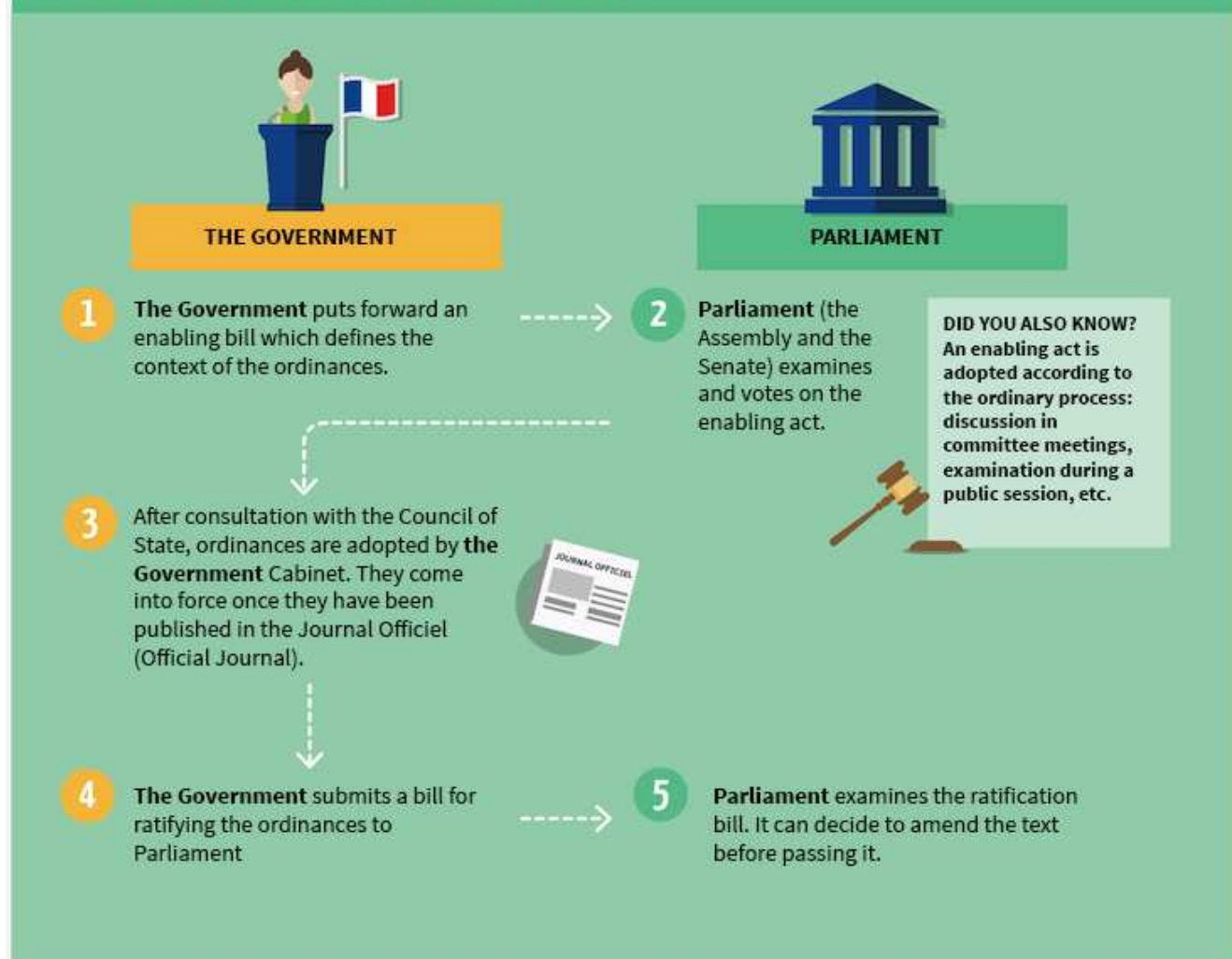
The use of ordinances is a procedure set out by the Constitution, and one that is respectful of democratic debate, all the while enabling the Government to implement its measures more quickly.

- The enabling bill gives rise to a democratic debate: this allows Parliament to define the strict framework in which the Government may have to take legislative measures via ordinances.
- The text must clearly state the overarching aims and the different subjects on which the ordinances will bear. It does not predetermine the final text of the ordinances, which will be written at the end of the consultation process.

"The enabling act is a fully-fledged act of political democracy, and we have decided to make it an act of social democracy too – with intensive consultations with the social partners."

Muriel Pénicaud, Minister of Labour

■ ORDINANCES IN 5 STEPS



Dialogue with the trade union and employers' organisations is continuing

- Bilateral meetings were held by the President of the Republic, the Prime Minister and the Minister of Labour in May with the inter-professional and multi-professional employers' and trade union organisations.
- Over the course of eight bilateral meetings, the Minister of Labour then went on to more clearly define the method, timetable and substantive matters of interest. The trade union and employers' organisations were asked to specify which subjects they would also like to see discussed.
- From 9 June to 21 July, each trade union and employer's organisation are being invited to attend two meetings for each of the three topics underpinning the consultations:
 - from 9 to 23 June : meetings on the topic of the right relationship between the negotiating levels and the possibilities for collective bargaining, to empower companies and employees alike in terms of leadership;

- from 26 June to 7 July : meetings on the topic of simplifying and strengthening economic and social dialogue and its stakeholders;
- from 10 to 21 July : meetings on the topic of shoring up labour relations.



Talks will then resume in August and end, in early September, with the consultation of competent bodies on which the social partners sit in particular, with a view to gathering their opinions and comments on the draft ordinances.

The ordinances will apply as soon as they are published.



A REFORM FOR STRENGTHENING SOCIAL AND ECONOMIC DIALOGUE

Social and economic dialogue in companies must provide employees and companies alike with greater freedom and security. The enabling bill seeks to:

- **shed light on the differences between the law, sector-level agreement, enterprise-level agreement and contract of employment, so that employees and companies have the means to define the rules which best meet their expectations, as closely in line with the needs as possible;**
- **simplify and strengthen social and economic dialogue within companies,**
- **shore up the legal aspects of labour relations, for there can be no sustainable social model with uncertain rules.**

Article 1 bears on the new relationship between the enterprise- and sector-level agreements and the secure broadening of the collective bargaining scope.

- **Nowadays, companies are primarily governed by the law and sector-level agreements. General rules which, in practice, do not adapt well to the diversity of companies out there, their size, the sector or the local social and economic considerations.**

We need, on the one hand, to ease the pressure exerted by standards, so that companies and employees can negotiate the rules corresponding to their situation, and, on the other, to clarify the roles: except on working time, for more than a decade now the rules governing the relationship between the law, the sector, the enterprise and the contract of employment have been piling up without any clear picture emerging of the whole.

“I know from experience that a company’s social success and economic success are closely linked.”

Muriel Pénicaud, Minister of Labour

The law will evidently continue to guarantee such fundamental rights as the right to training and to unemployment insurance, the prohibition of discrimination and harassment, staff representation, health and safety standards and so on.

The aim is to bolster the sector’s role in its economic and social regulation responsibilities and to grant the enterprise-level agreement greater scope for leadership in the other areas. As part of the talks with the social partners, the following topics will be specified:

- those for which the sector must set the collective bargaining standards – and which an enterprise-level agreement cannot adapt;
- those for which the sector can choose to set a peremptory standard which an enterprise-level agreement would not be authorised to adapt;
- and those for which precedence is given to the enterprise-level agreement. When there is both an enterprise-level and sector-level agreement on the same topic, it is the former that takes precedence. But when there is no such agreement at this level, the sector-level agreement applies. This would concern all of the topics which do not come within the first or second categories.

• The current relationship between the contract of employment and enterprise-level agreement is complex and somewhat shaky for employees and employers alike.

Regarding a certain number of points, not least enterprise-level negotiations affecting pay and working time, a clear, harmonised system is required to replace the diversity of systems we have currently, with different consequences for employees in terms of both compensation and support with getting back to work.

Through dialogue it will be possible find the right balance between the contractual freedom of social partners in the company and the stability of the individual contract of employment, and thus to guarantee stronger rights for any employees who would refuse the application of a collective agreement.

■ SECTOR-LEVEL AGREEMENT



It concerns a particular business sector



It is signed for a group of companies belonging to the same business sector



In their particular line of business, the sectors are the most relevant in terms of contributing to economic and social regulation

This is where employers and trade union organisations get together to negotiate a certain number of subjects, for example:



Minimum wages (which cannot be less than the inter-professional minimum growth wage [SMIC] and must be revised upwards at regular intervals)



Additional collective guarantees



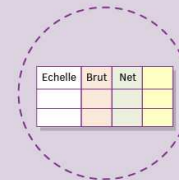
Gender equality in the workplace



Vocational training



Arduous working conditions



Classification

■ ENTERPRISE-LEVEL AGREEMENT



Employer



Employees' representatives



Enterprise-level agreement

The enterprise-level agreement applies either to all of a company's employees or to one category of employees (e.g. executives)

Today it is difficult to understand which rule applies when the same subject is dealt with by both a sector-level and enterprise-level agreement

- **Companies are not sufficiently encouraged to favour standards negotiated with trade union delegates.**

Most of the time, standards negotiated with trade union delegates are more successful than unilateral enterprise-level decision-making. It is usually through such negotiations that plans to improve working conditions manage to be set up within companies: welfare support, communal facilities (childcare centres, canteens, etc.), bonuses and specific assistance, cultural policy and so on.

To boost the confidence of company social partners involved in negotiations or an agreement, current law needs to be made more understandable in terms of the rules governing burden of proof – according to which it is the responsibility of the party contesting the validity of the agreement to demonstrate that one or more of its stipulations is (are) irregular.

- **In some cases, referendum can be a way for employees to directly express their views regarding a draft agreement. When it would be useful to hear the employees' point of view, this must be encouraged.**

Recent examples of referendum show how enthusiastic employees are about having their say on the smooth running of the company. They are directly concerned by it. Including sometimes going so far as to reject the agreement if they do not consider it to be balanced. Referendums will of course always be organised on the basis of an agreement which will have been negotiated: they are not a means of negotiation in themselves. As is the case today, they should always proceed by secret ballot, with absolute guarantees of confidentiality for employees.

Article 2 bears on the simplification and strengthening of economic and social dialogue for company stakeholders.

- **If we want employees to be able to get involved in negotiations, social dialogue must be simple. And yet, there are four different employee representative bodies on the scene today.**

What is distinct about France is that the representation of employees is organised between four different bodies at enterprise-level (staff delegates, works committee, occupational health and safety committee and trade union delegates). This is not conducive to either the quality of social dialogue – which is fragmented and cumbersome – or employees’ representatives being able to wield influence, since they specialise in certain matters without any having any clear overview of the situation. France is one of the few countries in the world with this degree of complexity.

This situation keeps employees at arm’s length from the social dialogue process, and takes up a great deal of time and energy where human resource departments and employees’ representatives are concerned.

To achieve greater clarity and effectiveness in terms of social and economic dialogue, we recommend merging three of these bodies (or even four under certain conditions) to create a single body for social dialogue that is clearly identifiable to employees, and in which the company manager is able to invest more.

"Today, staff representatives do not always have a clear overall picture of the company and its priorities.

Tomorrow, they will benefit from a complete overview and greater effectiveness in social and economic dialogue."

Muriel Pénicaud, Minister of Labour

- **In SMEs and micro-enterprises, social dialogue is often informal, with no trade union delegates being more or less the norm.**

It will be necessary to define the role and place of staff representation (including in small- and medium-sized enterprises), strengthen it in certain decision-making processes and regulate the conditions in which it will be possible to factor in the specific aspects of these companies.

Article 3 aims at shoring up labour relations, for both employers and employees alike.

- **The rules are uncertain for employees who, if subject to wrongful dismissal for example, do not benefit from the same damages, in addition to severance pay, for the same loss and with the same length of service under their belts.**



Obviously, the scaling of damages in the event of wrongful dismissal does not change the employee’s entitlement to legal and collective bargaining severance pay. This is foreseeable and known in advance.

The reform, which will set an upper and lower limit for damages – especially on the basis of length of service – will allow for greater fairness between employees (at present damages can range from one to three times the amount – and even higher) and restore confidence to employers, particularly SMEs and micro-enterprises.

The upper and lower limits will be calculated on the basis of the average damages observed today. They will not apply in cases of harassment or discrimination.

“Rules that are clear and known in advance ensure security for employees and security for companies.”

Muriel Pénicaud, Minister of Labour

- **The rules are uncertain for companies, which are not entirely clear on what the rules are when they wish to restructure, or develop their workforce.**

The rules governing dismissal can come across as a protective system for employees today; in reality they are a source of uncertainty for companies, making them reluctant to hire – especially where SMEs and micro-enterprises are concerned – without preventing any dismissals that are duly justified.

We need to update the law with common sense rules.

- A company can be found guilty by the industrial tribunal of having poorly drafted a dismissal letter – even though the reasons set out are legally valid. The rules bearing on justifying form are cumbersome, complex and unfamiliar to SMEs and micro-enterprises. It must be possible for the company manager to provide all justifications of form before the adjudication on the merits, so as to enable employees' rights to be respected across the board and both parties to obtain a decision that takes greater account of the merits.
- Almost one in every five dismissals leads to a legal dispute. To ease tensions associated with contract of employment terminations, it is necessary to encourage disagreements to be settled before they reach the litigation stage.
- For large enterprises, when a company based in France encounters difficulties on the French market and makes a profit outside France, it is unable to restructure in France. This leads to investors – French and foreign alike – investing less in France, to the detriment of domestic employment.

- **New methods of working are gaining traction for many employees.** For example, teleworking needs to be encouraged through clearer rules that allow greater security not just for employees but also their employer.



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