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# Collective Bargaining to Drive French Labour Law Reform

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**Based on the report *Collective Bargaining, Jobs and Employment* by Jean-Denis Combrexelle**

With 3.5 million job seekers and an unemployment rate that has been hovering just over 10% since January 2013, putting people back to work is a top priority for the French government.

Today, the French labour code (*le code du travail*) is seen by many in the country as too unwieldy, putting a drag on job creation and economic growth. President François Hollande said as much in his 7 September press conference: "Making the labour code readable is what will allow us to create jobs."

Specifically, the government aims to make labour laws more in tune with the needs of companies and the aspirations of workers through fostering collective bargaining, particularly at the company level.

## TOWARDS A 2016 REFORM BILL

To do so, President Hollande's administration has launched a consultative process with the aim of introducing a labour reform bill early next year. The first step is a sweeping review of **the role collective bargaining plays in French labour law and in the development of labour standards**.

In the spring of this year, Prime Minister Manuel Valls mandated Jean-Denis Combrexelle, the president of the social division at the *Conseil d'État* (the Council of State, the supreme administrative jurisdiction in France), to carry out such a review.

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## THE REALITY ON THE GROUND

Under the auspices of France Stratégie, the French government policy institute, Combrexelle assembled a team of academics, lawyers, economists and professionals for a series of working sessions, plus interviews with employers' associations, trade unions, academics, professionals and legal experts.

He presented his report, *Collective Bargaining, Jobs and Employment (La négociation collective, le travail et l'emploi)*, to the Prime Minister on 9 September. The government will follow up on it by consulting with trade unions and employers' associations in autumn 2015 in the runup to the draft legislation.

Over the past fifteen years, France has gradually been moving towards strengthening collective bargaining's role in labour relations. **Legislation passed in recent years has extended the scope of collective agreements and increased the participation of both unions and employers in developing legislation** regarding industrial relations, employment and training.

Today, collective bargaining takes place on three levels: nationally, at the industry (*branche* in French) level and at the company or plant level. The intermediate level is the most widespread in terms of the numbers of employees covered. In 2013, for example, 962 collective agreements were signed on an industry level.

Through this reform the French government's overarching goal is **to take collective bargaining a step further and bring it closer to the reality on the ground**, i.e. in the companies themselves. "The priority is company-level agreements," said Combrexelle at a press conference at France Stratégie on 9 September. **"What's important is proximity: the real bargaining takes place within companies."**

More generally, the report seeks to show how employers and trade unions can use collective bargaining to address economic and social issues more effectively. But it stresses that to do so both French employers and trade unions must avoid the legal, formal and institutional approach that has historically prevailed in France. "The role of the state and the labour code has dominated labour relations," said Combrexelle. "Now, we're turning things upside down: companies will be the ones in the driver seat."

Combrexelle points out that both employers' federations and trade unions have been slow to take advantage of

the new possibilities offered by collective bargaining since the turn of the century. The reasons for this are threefold:

- Both employers and trade unions strive to strengthen their legal standing each stage in the legislative process by amending the legislation in question.
- Employers perceive bargaining as more of a constraint and cost than a means to boost performance.
- Trade unions find it difficult to bargain collectively in a recession when they have less leverage.

## PROVIDING AN IMPETUS FOR COLLECTIVE BARGAINING

The report emphasises that in order to bring bargaining to the fore on both an industry and company level the challenge is first and foremost **getting all parties involved to change their behaviour** and take collective action. Bringing about this impetus takes precedence over determining different sources for new labour standards.

To this end, Combrexelle makes several key proposals:

- **Develop educational tools** for collective bargaining to illustrate its effectiveness in increasing competitiveness and helping companies during the economic crisis
- **Train and educate key representatives**, such as HR directors, to make them more aware of the advantages of social dialogue, i.e. communication between employers, trade unions and employees
- **Establish an agreement on bargaining methods**
- **Limit the duration** of industry- and company-level bargaining and review the rules governing how agreements are amended over time, including putting a timeframe on legal recourse against collective agreements
- **Make agreements easier to grasp and foster the sharing of knowledge** on collective bargaining
- **Confirm the state's role as guarantor** in collective bargaining and with regards to the legality of agreements
- **Foster informal social dialogue**



## WIDENING THE SCOPE OF COLLECTIVE BARGAINING

Combrexelle stresses that a careful balance must be struck between the labour code and collective bargaining. In other words, the latter will not be used to the detriment of the former. However, as it stands, the French labour code's complexity makes it difficult to determine the leeway parties at an industry or company level have when bargaining collectively. Strengthening their hands is intended to make labour law more accessible and responsive for both employers and employees.

The reform proposes to do this by clarifying where exactly the labour code ends and collective bargaining begins. Combrexelle emphasises that this alone will breathe new life into the collective bargaining. Concretely, the goal is to move gradually towards a system in four to six years where labour laws provide the framework for core workplace guarantees (*l'ordre public*), such as the maximum number of hours an employee can work per week and the minimum wage, while bargaining or auxiliary provisions (*supplétif*), in the absence of a bargaining agreement, cover the remaining issues.

## GOALS TO BE MET BY 2016

The reports lays out four key areas where collective bargaining could be clarified and expanded and priority given to company-level agreements in 2016: **working conditions, working hours, employment and wages**.

In this initial phase, **company-level agreements will take precedence in these four areas on the condition that the core workplace guarantees have been set out in the labour code and the relevant industry-level agreement**. If no company-level agreements have been reached, the industry-level agreement's auxiliary provisions will apply. In the absence of a collective agreement at the industry or company level, the auxiliary provisions of the labour code itself will carry the weight of law.

Other goals to be met within this timeframe include the following:

- Extend collective bargaining to cover corporate social responsibility and the digital economy
- Define each industry's objectives by stipulating what is included in the minimum guarantees in industry-level agreements and what supplementary provisions apply in the absence of a company-level agreement, draw up collective agreements to serve as templates for VSBs (very small businesses), aid SMEs in collective bargaining and organise jobs and skills planning on an industry level
- Allow for a mechanism to merge industries (*branches*) with less than 5,000 employees within three years\*
- Ensure collective agreements that protect jobs take precedence over individual contracts
- Implement by 2017 the principal whereby unions must have garnered 50% or more of votes in elections to be able to bargain collectively

As mentioned above, the goal is **to reshape France's labour code by 2020**. Again, this is to be done by clarifying what falls within the scope of the labour code, what falls within the scope of collective bargaining and, failing the latter, what is subject to the supplementary legal provisions (*supplétif*).

Combrexelle proposes ultimately **amending the preamble of the constitution to include the main principles of collective bargaining**. "For France this is a minor revolution, especially with regards to the image of the country abroad," he said. "It will take the role of collective bargaining further in France than in any other country. And it will make companies more efficient by allowing them to combine economic performance with good employee relations."

\*This is particularly important for France, as there are roughly 750 industry groupings, a number the reform aims to reduce substantially to facilitate bargaining.

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