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France's "Rebsamen" Law: Substantial Reform of Employee Representative Consultations and Mandatory Collective Negotiations

By Antoine Goux & Pierre-Alexis Dumont

After the Law of 14 June 2013 putting an end to "never-ending" Works Council consultations, a new Law, enacted on 17 August 2015, now substantially reduces the number of periodic consultations. Although its official purpose is to make the industrial dialogue between the employer and staff representatives more efficient, it can be seen as a new step towards the simplification of the employment rules applicable to companies in France.

The Rebsamen Law also amends the company-wide mandatory collective bargaining negotiations with trade unions, which are also merged into three themes.

A reduction from 17 to 3 annual information/consultation procedures with the Works Council

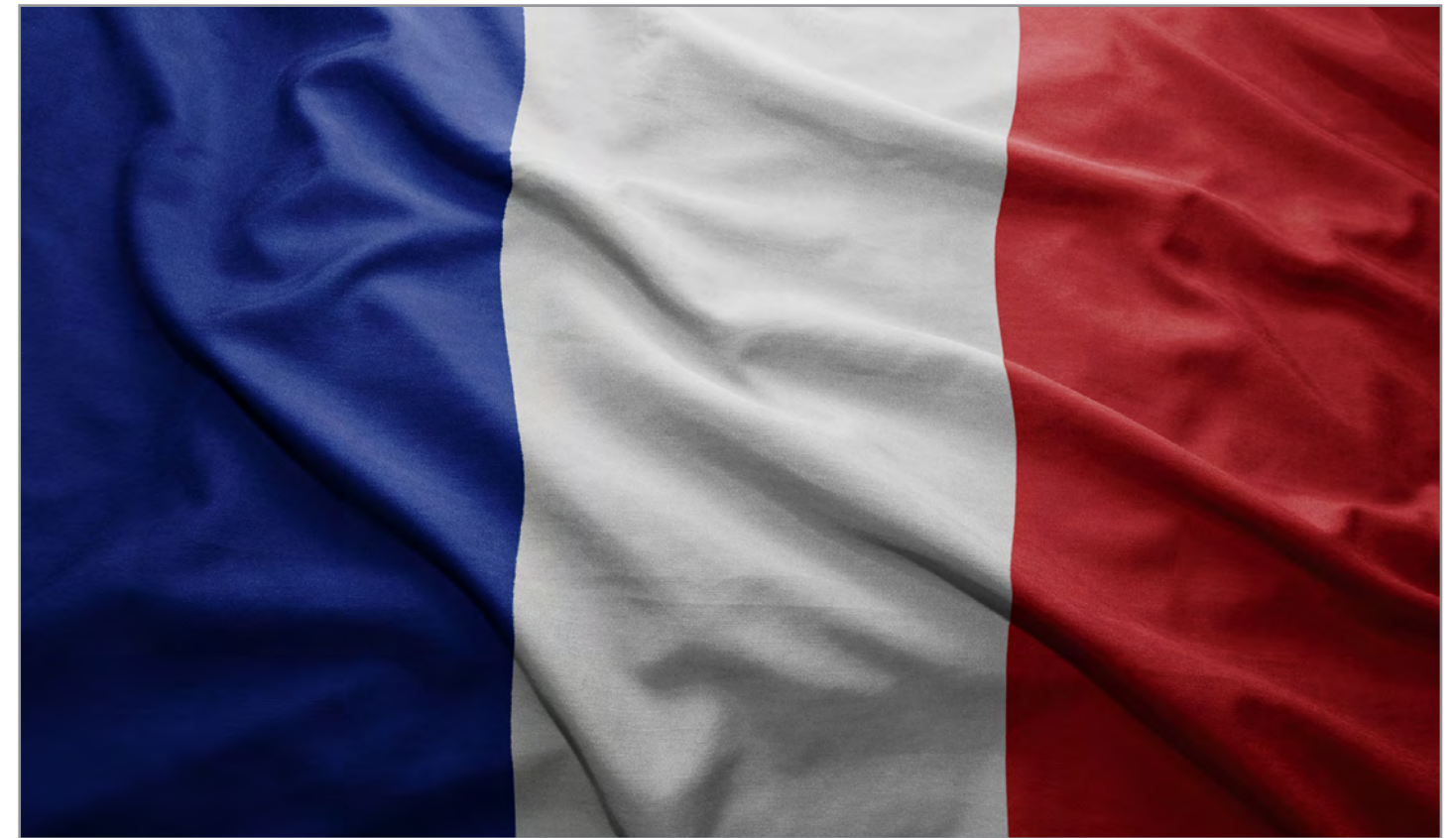
Before the Rebsamen Law, the employer was required to inform and consult the Works Council on 17 recurrent themes each year¹, such as vocational training, economic situation of the company, working time organisation, etc. Some of these consultations were subject to specific rules regarding notably specific information to be provided to the Works Council or specific time periods to comply with its consultation.

Given the number and complexity of periodic consultations and the great quantity of information to provide to the Works Council, it appeared that this system was too complex for the employer and employee representatives, since on the one hand, employers had difficulty to comply with all obligations relative to annual consultations, and on the other hand, the Works Council's members were not able to have a clear overview of the company's situation.

In order to simplify these annual consultations and to strengthen their effectiveness, the Rebsamen Law organises these recurrent obligations into three annual consultations, as from 1 January 2016:

1. Annual Information-consultation on the company's strategy, which concerns:

- The company's strategic guidelines defined by the board and its consequences on the company's business, employment, work organization, use of temporary workers or consultants;
- The orientations of vocational training;
- Forward-looking labor force and skills management (GPEC).



2. Annual Information-consultation on the company's economic and financial situation, which also focuses on:

- The research & technological development of the company;
- The use of the "compétitivité emploi" tax credit (CICE).

3. Annual Information-consultation on the company's HR policy, working conditions and employment, which includes:

- anticipating future workforce needs and employment changes, professional qualifications, long-term vocational training program, apprenticeship, internship conditions, working conditions, vacation/holidays, working time duration and organisation, equal opportunities between men and women and employees' right of expression.

For each of these consultations, the Works Council can decide to be assisted by an outside expert paid by the company.

The employer is free to determine the dates of these annual consultations. However, considering corporate company's obligations as well as obligations in terms vocational training, the following recommendations should be observed:

- The annual consultation on company's strategy should be coordinated with the date of the meeting during which budgets are defined by the board;
- The annual consultation on the economic and financial situation should take place concomitantly with the publication of annual accounts of the company;
- The annual consultation on the HR policy should be organised concomitantly with the drafting of documents defining vocational training's main orientations.

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The negotiation on jobs and careers management should take place after the annual consultation on company’s strategy to ensure coherence and efficiency
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It must also be specified that unions may negotiate a company-wide collective bargaining agreement, in order to adapt modalities of annual consultations on HR policy and on economic and financial situation or information to be provided prior to these consultations.

Such an agreement may be useful to adapt these new obligations to the business characteristics of the company, and to coordinate them with the company-wide mandatory collective bargaining negotiation.

Organisation of company-wide mandatory collective bargaining negotiations into three themes

Every year (or every three years depending on the matter), French employers negotiate with trade unions on numerous matters, such as compensation and benefits, equal opportunities between men and women or hard working conditions (arduousness).

Failing to comply with these obligations, employers may be fined by the French Labour Inspectorate, or be sued by trade unions for obstruction of employee representatives’ rights.

In the same way as for the annual consultations of the Works Council, the Rebsamen Law intends to rationalise company-wide mandatory collective negotiations, by gathering these topics in three main themes.

Employers must therefore negotiate with trade unions on the following matters:

- Each year, negotiation on compensation, working time and sharing of added value;
- Each year, negotiation on equal opportunities between men and women and quality of life at work;
- Every three years, in companies whose headcount exceeds 300 employees, negotiation on jobs and careers management.

As for the annual consultations with the Works Council, it is possible and advisable to adapt the mandatory negotiations by a specific collective bargaining agreement, which may modify the frequency and the content of each theme of negotiation.

These mandatory bargaining negotiations should also be coordinated with the mandatory consultations with the Works Council as defined above. The following recommendations should thus be followed:

- The negotiation on compensation, working time and sharing of added value and the negotiation on equal opportunities between men and women and quality of life at work shall take place after the annual consultation on HR policy with the Works Council;
- The negotiation on jobs and careers management should take place after the annual consultation on company’s strategy to ensure coherence and efficiency to negotiated measures.

This coordination between mandatory negotiations with trade unions and annual consultations with the Works Council may also be determined by a collective bargaining agreement.

Eventually, it appears that collective bargaining negotiations tend to become the more efficient way to organise industrial relations within the company. It will be up to the employers to take advantage of the new flexibility granted by the Rebsamen Law.

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Pierre-Alexis and Antoine advise clients in all aspects of labour law, concentrating mostly on:

- Restructurings and downsizing operations, mass redundancy plans,
- Labour consequences of mergers and acquisitions and staff transfers,
- Collective bargaining negotiation,
- Daily assistance to HR departments,
- Litigation: representing employers before civil and administrative courts in all types of labour litigation matters,
- Training HR Directors and managers as well as operational managers of client corporations on all aspects of labour law.”

1. It must be pointed out that these annual consultations have to be distinguished from specific and occasional consultations, which shall be implemented prior to any decision relative to the general running of the business of the company (e.g. merger/acquisition, modification of the working conditions, implementation of a redundancy plan...).