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# **Employment and labour market policy under the Hollande presidency: a tragedy in three acts?**

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## **Abstract**

This article provides a critical overview of labour and employment policy under the Hollande presidency, evaluating the extent of continuity and change between 2012 and 2017. Although the term of office may be divided into three broad phases, with a shift towards more liberalising, business-friendly policies over time, it is argued that the period as a whole shows a high degree of continuity, with liberalising measures evident from 2012. The policy output may be characterised as a project of 'bounded flexibility' in which marketisation is contained within certain limits as defined by trade unions' ability to set the agenda of social partner negotiations. However, towards the end of the presidency the push towards labour law reform, whilst falling short of a wholesale revision of France's protective legislative architecture, ushered in key changes which the Macron presidency intends to take forward and radicalise, leading to a potential 'tipping point' of labour market deregulation. The Hollande presidency therefore holds important lessons for our understanding of social democracy at times of economic crisis and austerity.

## **Résumé**

Cet article présente une évaluation critique de la politique de l'emploi poursuivie sous la présidence de François Hollande, en identifiant les éléments de continuité et de rupture. La période entre 2012 et 2017 se divise en trois phases, qui marquent l'évolution vers une approche plus libérale et dérégulatrice, mais en termes de méthode et de contenu certains éléments de continuité subsistent, notamment l'adoption de lois 'cadres' qui ont pour effet de diluer l'impact dérégulateur des innovations. En ce sens la présidence se caractérise par la volonté de porter un projet de 'flexibilité circonscrite'. L'adoption de la loi travail (ou la loi El Khomri) marque un changement de méthode et porte un projet potentiel, mais inachevé, de refonte plus radicale, ouvrant ainsi la voie à la version 'macroniste' de dérégulation où les limites de la flexibilité, définies par la négociation collective décentralisée, seront assouplies jusqu'à un 'point de bascule' éventuel. La période 2012-2017 met ainsi en relief les difficultés de la social-démocratie européenne en quête d'une conciliation entre compétitivité économique et protection sociale en période de crise.

## Introduction

The gap between public concern about unemployment and politicians' attention to it, in an election campaign dominated by security fears, was the subject of much press comment in 2017 (see for example Ruello 2017). Yet the 2017 presidential campaign was driven by responses to the incumbent administration's failure to reduce unemployment, as candidate François Hollande had promised to do in 2012. Emmanuel Macron's claim to office rested on the twin argument of the need for a clean break with the policies of the past, and for far-reaching structural reform, to the extent that *Le Monde* journalists accused him of exaggerating the scale of the problem, especially his assertion in the first-round television debate that France was the only country in the EU which had not been able to tackle unemployment (Motet and Damgé 2017). In an interview published on 9 April, Mr Macron emphasised the need to move quickly on labour law reform, arguing that if enacted it would bring the unemployment rate down to 7% by the end of the presidential term (Macron 2017).

As is by now well established, the French unemployment trajectory reflects specific weaknesses (see **Table 1**). Although the unemployment rate stands just under the EU average, those countries with a worse record are largely the southern member states at the heart of the eurozone crisis. Since 2013, eurozone countries have seen a reduction in unemployment, whilst France has struggled to contain the rising trend since 2009. Eurostat's figures at 2 May 2017 showed a rate of 9.5% for the eurozone (the lowest since 2009), compared to 10.1% in France (Eurostat 2017). Meanwhile youth unemployment remains stubborn at 23.6% in March 2017, markedly higher than the eurozone (19.4%) and EU (17.3%) averages (Eurostat 2017). Long-term unemployment is also high by European

standards, accounting for 42.7% of total unemployment in 2014, with those registered as unemployed having been so for 14.2 months on average (Insee 2016, 45).

**Table 1 here**

The broad conclusion to be drawn from the long-term trend in unemployment is that both the Sarkozy and Hollande presidencies put in place policy mixes (see Barbier 2008; Milner 2012a, 2014) which had the effect of temporarily slowing down the inexorable rise in unemployment but had little impact on its progression in the longer term, and François Hollande's specific pledge to reverse the tide of unemployment was not met. Ultimately, over and above personal mis-steps, this is what cost the incumbent his re-election and his legacy, and what caused the shock failure and current crisis of the ruling Socialist Party.

There is no consensus among experts or among politicians about the best way to tackle unemployment (see Garner et al 2016). The OECD currently groups aspects of its recommended approach under the heading 'activation', defined as a concern 'to bring more people into the labour force and into jobs' and consisting of four main types of measure: increasing employability through skills investment; expanding job opportunities including for those currently outside the labour market; creating effective labour market institutions; and ensuring that the tax and benefits system creates appropriate incentives to work (OECD 2015). Based on this approach, the OECD analysis sees France as needing to introduce labour market reform, such as measures to simplify redundancy procedures, in order to reduce segmentation (OECD 2016). In the short term the negative impact of such measures could be offset by increased passive and active labour market expenditure, it argues. Most experts agree with this broad analysis based on the need to expand labour market participation and invest in skills training aimed at adaptability, in light of France's relatively

low employment rate (69.5% in 2015). Moreover, job creation has taken place largely at the lower end of the skills distribution.

The European Union has for several years advocated more drastic reform measures and indeed included them in its budgetary surveillance programme, with a concern about public debt rather than with unemployment. Thus in its February 2017 recommendations it urged France, which is currently in the macroeconomic imbalances procedure (MIP), among other things to review its minimum wage and its unemployment benefit. For several years it has also pushed France to reform its complex system of employment contracts and to establish a single, more flexible contract (see Lux 2016).

This article provides a critical overview of the Hollande presidency's policy output on employment and the labour market, in light of policy recommendations by the EU and OECD and of Mr Macron's 2017 campaign. In analysing policy outputs, two key structural institutional constraints must be taken into account. The first is party management in the context of a party which programmatically sticks to the left even whilst the party in government in the Fifth Republic has adapted to changing conditions of globalised capitalism and the strictures of European Union and eurozone membership (Bell and Criddle 2014; see article by Clift and McDaniel in this issue). This disjuncture was exaggerated in the context of the polarising presidential election format and exacerbated in 2012 by the extraordinary circumstances of a need to contrast programmatically and in tone and style from the now unpopular Nicolas Sarkozy. As this article demonstrates, the discourse of a radically different left-wing approach to labour market policy created a political constraint which left the Hollande administration unable to present a coherent programme over its term of office, isolated the flagship measures of the early period from wider policy, and

placed it at the mercy of repeated media boobytraps when each quarter's unemployment figures were announced.

The second is the effect of the 'fast presidency' over five years which means that programmes must make a positive impact in the first six months or so to establish a strong base (Cole 2012), at the risk of destabilising government early on and creating lame duck presidencies. The regular programme of second order elections, which have the potential to destabilise administrations in mid-term or even early on, increase the sense of urgency. At the same time, powerful mechanisms for inertia exist, as President Sarkozy also discovered (see Milner 2012a). In the case of the left, the need to coopt trade unions and bring sceptical employers on board requires strong investment in robust mechanisms of social dialogue which are strongly managed by the state.

As this overview will show, whilst significant overlapping aspects of policy may be observed, President Macron's direct and top-down approach to reform contrasts with the record of the Hollande presidency, marked by a more discontinuous policy development and its presentation to the public. Three main phases of policy outputs are identified here, although as we will see the junctures are often blurred, with policy initiatives presented as new approaches borrowing from and building on initiatives undertaken in previous phases, including during the previous presidency of Nicolas Sarkozy.

In order first to win the presidential race and then to create a climate of political and economic confidence for his reform plans, Mr Macron needed to distance himself from his predecessor and to emphasise the extent of policy change. However, as this article will demonstrate, the reform plan announced in June 2017 (which was adopted in the form of an enabling law at a special parliamentary session on 2 August, to come into force by the

end of September, allowing the president to enact measures by decree, according to a staged timetable scheduled to end by March 2019) may in several respects be seen as the continuation of policies undertaken under the Hollande presidency, albeit in more radical form, and arguably could not have been envisaged without the preparatory work already carried out in 2015-2016. The decision to deploy short-cutting methods such as the use of the 'guillotine' Article 49.3 (see Elgie and Grossman 2016, 188) for the adoption of the 2016 labour law reform and the enactment of further reform by presidential decree in 2017 demonstrates the divisive nature of this policy agenda, although there is an overwhelming consensus on the need for reform. Even after the presidential election and the legislative elections which gave President Macron his parliamentary majority, opinion polls showed a significant minority opposed to the reforms and a majority 'worried' about them (see for example FranceInfo 2017; Observatoire Social des Entreprises 2017; Verner 2017).

In the following sections, the article identifies key policy outputs from three phases of the Hollande presidency, discussing elements of continuity and change, before categorising the outputs and assessing the overall record in the concluding section.

### **Delivering the 2012 campaign promises: governing on the left?**

Hollande's 2012 manifesto made a series of specific pledges about measures to tackle youth unemployment, notably the introduction of 'generation' contracts and the creation of 150,000 new jobs through 'future' contracts (Pledge 34 of the 60 Commitments), as well as new measures to 'make secure' employment rights, increase investment in training targeted at the less qualified and long-term unemployed, invest in job placement services at Pôle Emploi, create jobs in education (Pledge 35). Alongside these promises was a set of

measures aimed at simplifying procedures for small businesses, the establishment of a public investment bank, and measures to disencentivise ‘race-to-the bottom’ cross-border company relocations and *‘licenciements boursiers’*. Accompanying the package of measures was a pledge about the method of governance, with a commitment to social dialogue as the means of drafting proposals.

The two flagship measures on youth unemployment have been widely discussed (see Milner 2014). Broadly these initiatives correspond to a subsidised employment approach which has been criticised as having little effect on unemployment overall, because it leads to displacement of jobs. However, the French approach which although most strongly associated with the left has also been practised under centre-right governments has two key features which mitigate negative effects largely associated with displacement: first, in emphasising skills development the initiatives aimed to reduce the potential for simple job displacement; second, unlike direct state investment in public sector jobs the measures were intended to boost business confidence by reducing the tax burden through the system of credits linked to number of posts created. Unfortunately for the administration, the latter dynamic did not occur in the context of depressed eurozone economic activity and the promised introduction of high-earner taxes, and the government was forced to resort to a higher than anticipated number of directly subsidised public and parapublic sector job creation.

Just over 40,000 ‘generation’ contracts had been signed between by the end of 2015, fewer than a quarter of the total promised. The Cour des Comptes evaluating the initiative in 2016 recognised its innovative nature (*“un instrument spécifique et original au sein de la politique de l’emploi, dont il n’existe pas d’équivalent ailleurs en Europe”*: p.61) but called it baldly a



'failure', which it attributed to a lack of adequate information and support for companies in the context of a complex policy design (Cour des Comptes 2016). In addition the evaluation highlighted the hasty preparation of the law, which had taken place in national level social partner negotiations which were hurriedly conducted under pressure from the government.

The third plank of this approach was, as pledged in 2012, to bring together the existing subsidised contracts and strengthen their 'active' dimension by investment in skills training. In fact, investment in activation remained stable at 2.4% of GDP in 2013, putting France in seventh position in the EU (Garner et al 2016, 6), so the promised re-activation did not take place, as concern with the two flagship initiatives on 'generation' and 'future' contracts apparently took priority.

Policy outputs depended to a large extent on decentralisation of collective bargaining, continuing a policy method developed since the 1980s by governments of the right and the left. This distinctively French mode of governance has been termed managed bargaining (Groux 2005) or bargained policy (Mias et al 2016). Thus, the generation contracts were initiated at company level by a process of collective bargaining. The accompanying effects of the measures are therefore difficult to evaluate in quantitative terms but they appear to have contributed to a wider process of decentralised, bargained change. However, although this may have led to improvements in local bargaining in some companies (see e.g. Picut 2015), this was not always the case, and in order to access the financial incentives it has been claimed that some companies conducted hasty and ill-prepared bargaining processes (Cour des Comptes 2016, 65-66). This example highlights the ambivalent impact of decentralised bargaining which is of central relevance to current debates about how to conduct labour market reform, as we shall see later.

Meanwhile at national level social dialogue was promoted from the early days of the Hollande presidency, with a series of high-level conferences in the summer of 2012 covering pensions and social protection, training, employment. The pledge to make employment more secure was envisaged within the context of bargained flexibility whereby employers could obtain greater contractual flexibility through local processes of collective bargaining with trade unions, and in exchange for portable individual rights for employees. However such mutual concessions proved difficult to obtain, particularly in the tight timescale imposed by the government. The national agreement of 11 January 2013 and its subsequent transposition into law on 14 June highlight both the strengths and weaknesses of this approach.

In substantive terms, the law introduced a certain number of changes to portability of rights. Whilst it increased health insurance coverage for a much lower number of employees on fixed-term contracts than had been anticipated, it extended benefits for almost a million people who otherwise would have exhausted entitlement, mainly older and less qualified unemployed workers. The creation of a personal training account for all employees from the age of 16, funded by the company training levy amounting to 0.2% of the wage bill, offered rights to up to 100 hours of training and accompanying advice particularly to those coming to the end of employment contracts, but was also slow to get off the ground, due in part to the need for administrative processing arrangements to be set up by local training and job search agencies. It was taken up again later in successive attempts to increase the visibility and take-up of training rights.

The impact of the 2013 law on employer-oriented flexibility was potentially more significant. It allowed sectoral-level bargaining on marginal part-time working (under the legal limit of

24 hours per week), which was taken up in around 50 branches of the economy, particularly health and other care sectors. Most controversially, it authorised companies to impose, subject to collective agreement, internal redeployment of employees, including to geographically remote sites. The labour ministry's own evaluation in 2015 could however not find any cases where mobility had been imposed on staff, perhaps because companies already had the capacity to move their workforce internally without having to formalise the practice through collective bargaining (Ministère du Travail 2015). A more significant change came with the extension of support for short-time working, already developed to some extent under the Sarkozy presidency, which was taken up by increasing numbers of companies, particularly smaller enterprises, and those in the construction and services sectors (see Milner 2012a). In addition, the law brought in 'competitiveness pacts' which President Sarkozy had sought unsuccessfully to introduce, allowing companies to reduce wages or other benefits or working time as a way of safeguarding jobs; around 20 companies in industry, especially automotive and aerospace, used this provision (Ministère du Travail 2015). Finally, the law made regulation of collective redundancies more flexible by removing the need for state authorisation procedures in cases where plans had been approved by collective bargaining. In drafting the law the government had not taken on board the employer position, successfully incorporated into the January agreement, which was to remove legal authorisation procedures entirely. Instead, it opted for a bargained regulation procedure which had the effect of relaxing the existing legal restrictions allowing collective redundancies only in cases of demonstrable economic difficulty.

The 2013 law also sought to strengthen the institutional basis of bargained flexibility, first by requiring companies with a workforce of at least 300 to appoint an employee representative, and second by encouraging businesses to set up employee databases aimed

at planning for workforce support such as training based on real and projected needs.

Reviewing the law in 2016, the thinktank Terra Nova argued that its main contribution had been to promote local dialogue, strengthening a shift away from information and consultation towards substantive bargaining around company restructuring. However it pointed out that institutional change had not been sufficiently robust to effect cultural change in organisations (Terra Nova 2016), despite later incremental additions as outlined below.

Overall, the January 2013 law sent signals about the government's desire for new forms of crisis-induced concession bargaining, and represented a more thorough attempt to balance rights for workers and flexibility for employers at a time of economic downturn than the previous 'secure employment' initiatives undertaken under the previous administration (see Milner 2012b). Although in practice it introduced few substantive changes in the short term, not least because the combination of flexibility and cost savings with formalised processes of collective bargaining appealed in practice to a minority of companies, it established a number of initiatives which were developed in later phases.

Thus, already from the end of 2012, a change of approach had been visible with emphasis on company tax credits and revision of redundancy rules. Faced with the continued rise of unemployment and growing resentment on the right over taxation, and the prospect of municipal and European Parliament elections in the coming year, President Hollande changed tack in January 2014 with a clean sweep of government headed by Manuel Valls. He initially attempted to soften the political rationale for the policy mix, notably in a press conference on 16 May 2013 (Albertini 2013), then emphasised a break with previous policy, as in his new year address which was accompanied by an extraordinary mea culpa,

generating accusations within his own party that the 2012 promises had been broken (see e.g. *The Economist* 2014).

### **The responsibility pact with business: more of the same, or different?**

The Valls government from March 2014 set great store by the ‘responsibility pact’ with businesses, already announced by the President in his new year’s address earlier that year. Under this pact, businesses would create new jobs in return for tax credits and reductions, aimed particularly at small companies, in order to kick-start the economy for a limited period. The initiative built on a system of tax credits known as CICE (*Crédit d’impôt pour la compétitivité et l’emploi*) already in place, following the recommendations of the investment commissioner Louis Gallois in November 2012. The CICE cost around 20 billion euros in 2013, funded by an VAT increase, but its employment impact was disappointing: between 50,000 and 100,000 jobs created (Bayardin 2014; Pisani-Ferry 2016).

The responsibility pact extending the CICE continued to form the basis of government policy for the remainder of the presidency, with President Hollande in his new year address in 2016 announcing that the initiative would be continued and deepened as France remained in an economic as well as national security ‘state of emergency’. However, how far this initiative marked a break with earlier policy is debatable and it can be seen as an extension of a long-standing policy under both mainstream right and left. In the recent period, the usefulness of this policy instrument has reached its limits due to the strain it places on the state budget (Garner et al 2016: 8) at a time of deepening debt: France’s public indebtedness reached 99.5% of GDP at the end of 2016. The tax credits system cost an estimated 48 billion euros between 2015 and 2017. The Haut Conseil des Finances Publiques

warned in 2014 that the government's anticipated virtuous cycle of jobs investment through tax credits could run aground if public debt depressed business confidence, restricting the flow of new employment-based receipts. Alternatively, cuts in public expenditure could fund a 'project of capital-friendly austerity' (Lux 2015, 93) but these proved difficult to attain given the 2012 promises to reverse the previous administration's freeze on public sector employment. The main savings were to be gained through reorganisation of territorial administration, and to a lesser extent through attempts to control social expenditure.

As for the earlier period, the intended vehicle for oversight and distribution of the tax credits in relation to their job creation outcome was to be collective bargaining, this time at branch level. However bargaining remained a minority activity. Medef identified 24 agreements: mostly the branches in sectors with the strongest bargaining culture and containing the biggest companies took the lead, leaving many sectors exposed and overall an uneven coverage. Trade unions particularly the CGT and FO highlighted displacement effects, and accused some companies of taking the money to fund jobs which would have been created anyway to fill vacancies left by retirement (see Birchem 2016).

The middle period of the Hollande presidency saw a series of initiatives to tighten labour market policy whilst strengthening local bargaining institutions, in line with the earlier 2013 law. The arrival of Emmanuel Macron at the finance ministry marked a more decisive shift towards a reform agenda, most notably in the controversial law bearing his name which revived the proposals of the 2008 Attali commission on economic competitiveness. The thrust of the law was to tackle regulatory practices seen as restrictive. Protest from the regulated professions and from trade unions opposed to moves to allow Sunday trading meant that the law's passage through parliament became stormy and protracted,

culminating in the use of Article 49.3 to force it through in July 2015. Although economists broadly supported the initiative and highlighted the symbolic value of the deregulatory initiative, many argued that its combination of specific small-scale changes limited its impact (Calignon 2014). The main effect of the law was to deregulate some transport sectors especially coaches, leading to modest job creation; meanwhile those trade unions opposed to Sunday trading could slow down or obstruct local bargaining processes (Bertrand and Chauvot 2016).

The other major initiative of this period was the Rebsamen law, bearing the name of the new labour minister, which brought together measures aimed at building on the 2013 law and innovations from the national-level social dialogue process, particularly the June 2013 agreement on 'quality of working life'. The Rebsamen law too proved difficult to enact, due to successful feminist and trade union mobilisation against the proposed company database to support workforce planning and collective bargaining, which was initially seen as diluting and downgrading employer duties to collect and report gendered data.

Adopted in July 2015 and promulgated in August 2016, the Rebsamen law made two significant sets of changes. First, it clarified employer duties to engage in collective bargaining annually on wages and working time, and on 'quality of working life' (working conditions and qualitative employee rights), and every three years on workforce planning. Second, it introduced new rules on employee representation in the workplace: it required gender parity of candidate lists at workplace elections; it allowed companies to merge representative structures in companies with between 50 and 300 employees (previously 200) and in larger companies by way of a collective agreement signed by unions

representing at least 50% of workers; and it established procedures for electing regional joint representative committees for workers in companies with ten employees or fewer.

The Rebsamen law also included a move to tighten conditionality of unemployment benefits and social assistance (the more coercive dimension of activation). The controversial activation element of the social minimum RSA (*Revenu Social d'Activité*) (see Vlandas 2013; Windebank 2012) was now merged with the tax credit *prime pour l'emploi*, introduced under the Jospin government in 2001, to form the *prime d'activité* which came into force in 2016. The effect of this change remains largely unknown to date; its labour market expansion effect depends on complex household choices in relation to women returners' labour market position, and may therefore be limited, particularly since the investment in childcare which accompanied the earlier reform under Sarkozy was not replicated under the socialists. The employers' association Medef welcomed the initiative but argued that further measures were needed to reduce the cost of labour, in particular reform of labour law, and reform of the minimum wage to allow lower 'transition' rates for trainees coming into the labour market from unemployment, particularly younger workers.

This review of the major initiatives in the second period analysed here (2014-2015) shows that it is too simplistic to divide the Hollande presidency into three neat phases each with distinct time periods and cut-off dates. Rather it identifies a set of plot threads developing, with the more liberalising threads gaining prominence towards the end of the presidency, and the more overtly social-democratic threads fading out rather early. This is not entirely unexpected as employment and labour market policy in France has long been characterised by a complex set of trade-offs and 'steering' between more classically interventionist and marketising initiatives (Milner, 2012b). Incrementalism and compromise are features of the



specific mode of governance chosen to enact reform, that is, state-driven bargaining in order to achieve managed flexibility.

However, by mid-term the failure to stem rising unemployment had already proved fatally damaging to the executive. By mid-2015, two further reform packages building on the 2013 law provided the basis for a negotiated trade-off between business flexibility and social protection, with the aim of stimulating business confidence, also targeted by the responsibility pact. However the method – ‘fourre-tout’ or catchall packages combining several discrete measures with variable impacts – had by now become widely criticised as ‘too little, too late’. By emphasising the need for a clean start, the socialist president and government opened themselves to two major risks: first, that their claims to reformism lacked credibility; second, that their left-wing electoral base would desert them. The March 2015 departmental elections saw the socialists, who had previously controlled the majority of departmental councils, trounced by the mainstream right and increasingly threatened by the rise of the far right, although the latter had been largely contained by the two-round voting system. Moreover, the social dialogue which had formed a central plank of the socialist governance method in 2012 started to break down in 2014 when three of the main confederations walked out, and the 2015 social summit was boycotted by the CGT and Solidaires, who argued that the government had instrumentalised dialogue and bowed to employer demands (Parsons 2017). The scene was set for conflict in the final act.

### **All-out reform? The El Khomri labour law**

The final Act is dominated by the labour law reform known by the name of the minister who was appointed to introduce it and steer it through, Myriam El Khomri. Before the reform process started, moves had been signalled by a game of words between the prime minister

and the finance minister, the latter suggesting in interviews that the 35 hour law was uncompetitive and required reform, the former agreeing but stating that the law would not be repealed; the latter indicating in interviews that the idea of locally bargained competitiveness pacts could be extended to all companies, the former neither denying nor confirming but welcoming the debate.

The process by which the reform was managed appears to have taken inspiration from the method by which the Hartz reforms were introduced in Germany by the SPD-Green coalition government as a way of tackling rising unemployment. In order to break through parliamentary inertia, the German government established a high-level commission chaired by the former VW executive Peter Hartz. The reforms thus enacted between 2003 and 2005 reorganised public employment services and boosted training content of activation policies, but also tightened conditionality of benefits and deregulated labour markets, creating a secondary labour market of low-paid marginal part-time jobs. Although the reforms succeeded in boosting employment (Jacobi and Kluge 2006), they were highly controversial, causing major protests (see Lahusen and Baumgarten 2010), and later came under fire for trapping many workers in marginal jobs and generating in-work poverty, which led to calls for a minimum wage.

In the French case, rather than setting up a social dialogue process, the government commissioned an expert report and then set about drafting a bill on that basis, defining social partner input as belonging to the implementation stage. The expert report, chaired by senator Jean-Denis Combexelle, built on earlier reports by consultants and legal experts, and in particular from a book published by labour lawyer Antoine Lyon-Caen and veteran socialist constitutional lawyer Robert Badinter in the summer of 2015, which sparked a wide

public debate. The book's authors argued that in order to help businesses create jobs labour law needed to be modernised and simplified, based on fifty key principles which would form the framework for local-level collective bargaining (Badinter and Lyon-Caen 2015). Central to both the book and to the Combrexelle report was the idea that company-level bargaining could become the main vehicle for regulation of workers' rights (Le Goff 2015).

The shift away from legal to collectively agreed regulation has been underway for several decades in France, under governments of right and left, including in the 2013 and 2015 Rebsamen laws as outlined above, and particularly under mainstream right governments in 2004 and 2008 (Canut and Géa 2016). However, allied to wholesale revision of the labour law, it generated controversy for two main reasons: first, because company-level bargaining puts trade unions in a relatively weak position, in a context where the vast majority of organisations have no trade union presence at all; second, because France's bargaining structure gave sectoral level predominance in order to provide a guaranteed floor of rights and especially wage levels, whereas the new proposals reversed this hierarchy by giving the local level precedence (Canut 2016).

The government chose in drafting the El Khomri law to focus on working time as a test case for wider revision of labour law, because regulation of working time had already been the main focus of bargained flexibility (Favennec-Héry 2016). The bill retained 35 hours per week as the legal reference, but allowed greater flexibility in setting overtime rates at company level through collective bargaining, and in modulating working hours across a period of up to 12 weeks. The company level, rather than the sector, has thus now become the main locus of bargaining.

The El Khomri law did not create a new revised labour code, as Badinter and Lyon-Caen had proposed. Rather it continued the form of the earlier reform packages, with a set of legislative innovations (such as the ‘right to switch off’ outside working hours)<sup>1</sup> and incremental modifications to existing law, such as the tighter definition of grounds for collective redundancies to make it easier to justify redundancy plans at times of economic downturn. It also developed the earlier reforms of 2004 and 2008 on trade union representativeness and the principle of majoritarian agreements by opening the possibility of ‘referendums’, that is, direct electoral ballots of the workforce, in cases where it proved impossible to reach an agreement with unions representing a majority of employees. This innovation aroused opposition by trade unions who not only feared unilateral action by employers to bypass them, but had drawn lessons from recent cases where employee referendums had been used to conclude deals undercutting existing wages and working time arrangements.

By placing new working time regulation within a wider project of revision of the labour code, to be completed by an expert commission with input from social partners by April 2018, the El Khomri law nevertheless sought to create a new ‘grammar’ of labour law with decentralised bargaining at its centre (Canut and Géa 2016). In this way it set the stage for the later revision of the labour code under the Macron presidency.

Faced with demonstrations on the street and opposition in parliament, the government took the fateful decision to push the bill through using Article 49.3, and the El Khomri law was finally adopted in August 2016. However, as noted above, the law continued to divide public opinion, and candidates in the 2017 election positioned themselves clearly in relation to it, with Emmanuel Macron the main candidate staking a claim to carry forward and

extend the reform project, François Fillon articulating a neoliberal abolitionist stance regarding existing legal protections, and the remaining candidates mostly advocating the repeal of the El Khomri law. The divisions of the late Hollande presidency also loomed large in the Macronist project to shorten the national-level social dialogue process as the main vehicle for early policy elaboration; instead, the new president stated from the outset that he would push through reform by decree and with minimal consultation, led by the executive.

## **Conclusion**

At time of writing, the Macronist reform project (which is scheduled to begin with a series of decrees in autumn 2017, once the enabling bill is passed by parliament) radicalises the labour law reform begun with the El Khomri law in 2016, continuing and extending it in three key areas: first, by making decentralised bargaining the focal point of social dialogue, loosening the safeguards provided by sectoral bargaining and allowing standards to be set more systematically at company level where trade unions are weaker; second, by merging the existing workplace representation structures; and third, by relaxing legal protections particularly around redundancy, and possibly also on employment contracts (Ministère du Travail 2017). In all three areas, there is potential for the executive to move beyond the ‘bounded flexibility’ provided by the Hollande-era reforms and take France into something approaching a UK-style neoliberal model of labour market regulation. Following the publication of the government’s enabling law which set out the approach for the reform decrees, *Libération* published a leaked document revealing the ministry’s wish-list, which included proposals to normalise ‘derogatory’ bargaining (by which decentralised

agreements can introduce less favourable terms than those adopted at sectoral level), create a single representative structure, make it much easier for firms to lay off workers and at the same time reduce the opportunities for employees to seek legal redress, and make open-ended contracts more flexible, thus aligning them with fixed-term contracts (Peillon and Eychenne 2017). Already the enabling law as adopted in August 2017 announced the merger of representative structures and the loosening of redundancy law so that profitable firms can close loss-making French operations. Although the labour ministry claims that the decrees will be 'co-produced' by social partners, so far all announcements have been made by the political executive and the timetable for adoption of decrees means that substantive input by social partners, particularly trade unions, will necessarily be limited.

In this article I have argued that the Hollande administration sought to develop a project of bounded flexibility in which employer discretion is increased but subjected to collective bargaining processes which can allow legal challenge. If enacted, the more radical Macron reform works within this approach but extends it to a point where the legal safeguards are significantly relaxed and employer discretion substantially increased. In other words, a tipping point towards a neoliberal mode of regulation will be passed. Experience of other countries such as Germany under the Hartz law suggests that the effect will be to increase marginal jobs, wages will be depressed, and social inequality will rise: a new form of labour market adjustment to crisis which will bring France into line with its European neighbours. In line with the OECD reasoning outlined above, the negative impacts of reform may be mitigated by significant investment in activation, retraining and other forms of social infrastructure.

The socialist project of bounded flexibility failed to gain traction, and promises to bring unemployment down were not met, although by the end of the presidency business confidence and French export competitiveness were at last starting to recover, thanks at least partly to the extensive tax credits system. In this respect the Hollande presidency reflects a wider malaise of social democracy in current global capitalism (Rhodes 2013), but it also reveals specific institutional and political constraints and tactical mistakes. The two major structural institutional constraints identified in the introduction all played a part in destabilising the Hollande presidency from an early stage. Having identified unemployment as the main yardstick for effectiveness, the executive had to face local elections in March 2014 with nothing to show for the flagship policies introduced a year earlier, and European elections a couple of months later. A factor in the president's unpopularity (which dipped below 50% as early as October 2012, and never recovered) was his inability to project a coherent credible plan on employment. In this he may well have been hampered by inconsistency within his own government during the early period which highlighted the gap between party rhetoric and government action.

Today, President Macron can confidently accept the label 'social liberal' in the context of a self-defined centrist programme and outlook (even if historians may balk at this label and prefer to see him in the tradition of nineteenth-century European radicalism: see Meuwly 2016). In 2012, it was still an insult, especially for a Socialist president elected on a social-democratic manifesto which was deliberately designed to contrast with the record of the outgoing Nicolas Sarkozy.

At the same time, a certain amount of weakness in policy planning and delivery is evident with hindsight. As noted above, this applies to the two flagship policies and especially the

generation contracts which were not fully worked through and certainly not delivered adequately to ensure business buy-in. The available evidence suggests more could have been achieved through better relationships with business and better management of processes. The same applies more generally to the rushed process of social dialogue. In this sense, the five-year presidency worked as a powerful constraint, but weaknesses in policy management must also be recognised. More generally, the Hollande presidency failed early on to embed the flagship policies in the kind of social investment programme needed to achieve significant results: specifically, apprenticeships and investment in active labour market policies. This left them vulnerable to a perception that nothing was done and the heavy work of investment still needed to be done in 2017.

## Notes

1. The right to 'switch off' outside working hours (*'droit à la déconnexion'*) has been a trade union demand for some time, particularly among unions representing technical and managerial staff. Its inclusion in the 2016 labour law bill thus typifies the 'conglomerate' nature of package initiatives in the employment policy field, as demonstrated in this paper, whereby legislators seek to offset the liberalising impact of measures by concessions to union demands. At the same time, it nods in the direction of modernising labour law by adapting it to changing world of work, in this case by paying attention to the prevalence of mobile digital technologies and the way they have blurred the frontier between work and home. However, evidence to date suggests that the potentially innovative new right is little known and is likely to have only a very weak effect on employers' labour practices.



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**Table 1:** Unemployment in France, 1980-2014 (%of active population) (Insee 2016, 45)

	1980	1990	2000	2010	2016
Total	5.1	7.6	8.1	8.9	9.9
Men	3.6	6.0	7.0	8.7	10.2
Women	7.3	9.7	9.5	9.1	9.6
15-24 year-olds	11.6	15.1	16.1	22.6	23.4