



## **Is a different Labour Code possible in France? Summarized report of the “*Proposititon de Code du Travail*” conference.**

By Silvia Scocca

The aim of this report is to provide a brief overview of the different suggestions that emerged within the GR-PACT\* research group ([Groupe de Recherches Pour un Autre Code du Travail](#)), during their presentation of the «*Proposition de Code du Travail*», a manifesto intended to provide alternative and revolutionary solutions in response to the recent French labour law reform. The conference took place on the 31st of March 2017, at the University of Paris X Nanterre.

### ***Premise***

The Law nr 2016-1088, known as *Loi Travail* (commonly referred to as the 'El Khomri law' after the French Minister of Labour), was introduced on the 8th of August 2016. The law has encountered serious criticisms because of the changes set forth in relation to working hours, collective bargaining and job dismissals. In this context, the increasing widespread dissatisfaction, arising both from academics and ordinary citizens, has fueled a lively debate on about law issues. An example of the ideas and projects generated within this constructive discussion, is the foundation of a research group consisting of nearly twenty labour law experts, called GR-PACT, led by the professor Emmanuel Dockès. The GR-PACT members describe themselves pointing out that they have «*different opinions, but have one thing in common, which is the same idea of a general law that should be comprehensive and protective*». According to this statement, in autumn 2015, they formulated an alternative Labour Code (that could be more appropriately considered an alternative to the French labour law in force), strongly committed to «*taking in consideration employees and their work*».

In the light of the foregoing the pioneering Labour Code was presented by its authors on Friday, March 31, 2017 at the University of Paris X Nanterre. The law experts, together with some labour law scholars, have shown to be open to new ideas, criticisms and discussions featuring essential to address, in the most adequate way, the concerns affecting the labour law theme.

In summary, it emerged that the GR-PACT members and stakeholders all agreed upon one thing: the alternative Code «*can not offer absolute truths or one solution*», but is aimed to inspire consideration and reflection on such a delicate issue.

## *Code du Travail: structure and main principles*

**The proposal for the above-mentioned *Code du Travail* is divided in 8 chapters - which present elements of diversity and reform if compared to the existing legislation- structured as follows: contracts and employer's power, dismissals, Trade Unions, collective bargaining, working time, wages, health and safety at work, labour market, labour inspectorate.**

It has been possible to identify at least ten basic principles set out in the GR-PACT Code which could represent a useful reference point for an interesting comparison with the respective Italian labour law.

1. **To provide a readily understandable labour law**, in the belief that «an incomprehensible law should be considered as non-acceptable in today's democratic society».
2. **To attest a new dignity to the so-called «favor» principle**, by enhancing the importance of both law and collective bargaining agreements, by preventing that an agreement at company level shall not prevail. The GR-PACT proposal states a reversal of the current hierarchy of sources which allows the derogation from *conventions de branche* (only if purposely foreseen). Against this background the new code calls for an enforcement of the collective bargaining in order to establish and ensure a minimum level of protection, equal for all employees.
3. **To protect the rights of all categories of workers** erroneously considered - according to the research group - self-employed workers (e.g.: the Über phenomenon and the gig economy). For this reason, the provisions of the alternative Labour Code are targeted to address all the employees who, although enjoying greater autonomy in the management of their work (in terms both of working hours and working arrangements), are **indeed** subject to the dependence on the contractor. The primary purpose of the GR-PACT group is to downsize the phenomenon known as «*sous-salariat*», responsible for the deprivation of the most elementary guarantees of the employment relations and the erosion of workers' minimum levels of protection and safeguards.
4. **To phase out the fixed-term employment contract** (known in France as CDD), extending rights and protections typical of open-ended employment contract (known as CDI) to a greater number of workers. In other words, GR-PACT, considering the non-renewal of a fixed-term contract like a dismissal, introduces the concept of «*licenciement simplifié*» and the one of «*clause de durée initiale*». Basically, the proposal provides that, with the above-mentioned clause and upon the termination of the contract, the employment relationship does not automatically expires. The employer can initiate a dismissal procedure only if the event considered in the clause of «*durée initiale*» has actually occurred (for example, if an employee was recruited as a substitution during maternity leave or an illness of the other employee). The purpose is «*to make precarious employment an exception*», eliminating the great number of employment relationships attributable to «*contrat de travail spéciaux*» introduced in order to increase both youth employment, and to encourage the entry into the labour market of the other disadvantages categories affected by high unemployment rates (elders, long-term unemployed individuals, etc. with an exception for the apprenticeship contracts and internship conventions).

5. **Invalidation of unfair dismissals and recognition of the right to reinstatement.** The dismissal, in compliance with Art. L 26-15 of the new Code could be of economic or personal nature and, in both cases, shall have a real cause which to be considered real shall meet the following criteria: «objective, established and accurate» (as defined by the Convention n. 158/1982 of the ILO). In case of unfair dismissal, the art. L. 26-23 lays down that the employee is entitled to be reintegrated into the workplace and to receive salaries for the whole period of unjustified termination of the employment relationship. An exception is made for small enterprises with less than ten employees, companies to whom the Court could reduce the penalty, for example in case of company's economic difficulties or crisis.
6. **To protect the free time and the so-called «droit à la déconnexion»** (right to disconnect), namely the right to ignore work emails outside of office hours. It should be noted the evocative choice of the expression «*temps de repos*» (the French equivalent for rest time), in place of «*temps libre*» (free time). Under article L. 43-1, «*during the employee's rest time, any type of employer's influence must be suspended*», the employee has the right to be not reachable by the company he/she works for, nor by colleagues, clients or the employer who shall guarantee that right. Rest break has been defined as well: it includes twenty minutes break on every five hours of work. It should not be forgotten the weekly free time in conjunction with the prohibition of work on Sundays. This said, rest time is subject to reinforced protection under the GR-PACT proposal due to its importance for every individual, from a family, cultural and associative point of view.
7. **To reduce working hours.** The research team advocates for a return to 35 working hours per week and for an increase of the remuneration for overtime. The aim is to encourage recruitments rather than weekly working hours, with a view of the acclaimed «*flexibilité*».
8. **To decentralize the election of worker's representatives**, called in France «*délégués du personnel*». Considering the complexity of the corporate representation system in France, which can be composed of several representative bodies (i.e. business committee, business union sections, trade union delegates, staff delegates), the GR-PACT group encourages a "reconciliation" of the system itself up to the core. To this end, Trade Unions would get the monopoly in presenting their candidates in the first round of elections for those representatives. Moreover, according to art. L. 36-16, the Staff Committee shall be first consulted in the occurrence of any strategic decision affecting the company management.
9. **To fight all forms of gender discrimination**, for example through the recognition of a paternity leave equal to the maternity one in order to ensure equal treatment and therefore preventing employers from considering any pregnancy as an obstacle to recruitments.
10. **To consolidate a more favourable democratic environment inside and outside the company.** The GR-PACT Code proposes the establishment of a Social Court, which should incorporate the expertise of the Court «*du Prud'Homme*», entitled to resolve employment disputes, whether private or public. Furthermore, the Code lays down an innovative procedure regarding the termination of employment, by allowing the employer to address the Court for an opinion on the lawfulness of a specific notice of dismissal.

The aforementioned points provide a brief but significant overview of the main purposes and principles stated by the GR-PACT group in the Code du travail. **Regardless if one agrees or not with the vision of labour law reflected by the document, it is essential to recognize that the debate on employment and work conditions is still a hot topic in France.** Moreover, the new president Emmanuel Macron, has specified several times that the reform of the Labour Code is one of the fundamental and more urgent topic of his mandate, and although he seems to move in the opposite direction of such proposal, **the *modus operandi* of this group of labour law experts could serve as a glaring example of diligence and participation for adapting, through innovation, labour law to the changing world of work in the 4<sup>th</sup> industrial revolution context.**

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