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WORKING TIME POLICY IN FRANCE

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Abstract

Working time has always been considered in France to be an area of responsibility for the State. The Acts on the 35-hour working week come therefore from a long tradition of State intervention to regulate employment and working conditions. This particular configuration is not found in other European countries**.**

In this paper is presented the French specificity: a work sharing logic supported by the State. The aim at generating employment through a legal reduction of working time brought the government to draw up an extremely complex set of Acts. These one are not restricted to defining legal work duration; they also advocate reductions in social contributions and give a precise framework to negotiate collective agreements.

A synthesis of the consequences of the 35-hour Act shows that the effects on employment are limited (creation of 300,000 jobs), that social relations did not improve and that inequalities among employees were accentuated.

Key words: reduction of working time, State intervention, collective bargaining, job creation, living and working conditions, work sharing, 35-hour working week.

Le temps de travail en France

Résumé

La réglementation du temps de travail en France a toujours relevé de la loi. Les lois instaurant la semaine de 35 heures se situent donc dans une tradition française d'intervention de l'État pour réglementer les conditions d'emploi et de travail. Cette démarche distingue la France de la plupart des autres pays européens.

Nous présentons dans cet article les particularités de la démarche française : logique de partage du travail portée par l'État. La volonté de créer de l'emploi par le biais d'une réduction légale du travail a conduit le gouvernement à élaborer une loi d'une grande complexité. Celle-ci ne se limite pas à définir la durée légale du travail, elle prévoit aussi des exonérations de charges sociales et encadre précisément les modalités d'accords collectifs.

Un bilan synthétique des conséquences de la loi des 35 heures montre que les effets sur l'emploi sont limités (environ 300 000 emplois), que les relations sociales n'ont pas été améliorées et que les inégalités entre les différentes catégories de salariés ont été aggravées.

***Mots-clefs** : réduction du temps de travail, intervention de l'État, négociation collective, création d'emplois, conditions de vie et de travail, partage du travail, semaine de 35 heures.*

INTRODUCTION

In 1998 and 2000, two "Aubry Acts" -named after Martine Aubry, the Minister for Employment and Solidarity responsible for them- reduced working time in France to an average of 35 hours per week. Even though the reduction of the length of the working week was the flagship policy of Lionel Jospin's 1997-2002 Socialist government, this was not enough for them to be re-elected, contrary to their expectations. Was this defeat the unexpected consequence of a measure that was not as popular as anticipated, or the penalty for other failures or inadequacies of the Jospin government? Several elements contributed to the rejection of the Jospin administration: the perception of rising crime, increasing unemployment, and the delaying of any decisions related to retirement issues. The 35-hour Acts also doubtlessly contributed to this defeat. This observation is borne out by the personal failure of Martine Aubry, who was the principal author of the Acts, in the May 2002 legislative elections. How did a measure which was, in principle, favourable to workers, end up being judged negatively by many of them? This paper will not try to provide a complete answer to this question. It will be restricted to examining some of the reasons for the Socialists' failure by analysing the methods used in setting up the 35-hour working week, which illustrate a certain preference in France for central State interventionalism, a preference which marks the results of the legislation.

1. THE FRENCH ROAD TO REDUCING WORKING TIME

We have already showed in a previous paper the manner in which the French working time policy is distinguishable from that of other European nations (Boisard, 1998). We highlighted two aspects: the heavy involvement of State in the legislative process, along with the priority given to employment as an objective of the Acts. This particular configuration is not found in other European countries with the exception of Belgium, which has nevertheless been less systematic in its application of a reduction of working time.

1.1. State intervention

Right from the beginning, legislation concerning working time in France has been considered to be an area of responsibility for the State. The first limits, applied to the length of working time per week for children, were introduced through legislation in 1841 (Defalvard, 2003). Of course, other countries also had State provisions to set limits for the maximum lengths authorised. However, in France, State intervention continued and was extended, in particular through the legal definition for the accepted length of working time. Changes in the political colour of governments over the course of the decades have not significantly modified this tendency of the State to be involved (Jefferys, 2002). It was in fact a conservative majority, with the support of modern-thinking industrialists, that passed the law on working time for children. The liberal opposition was weak, even more so since it was not well represented on the Right, which was more conservative than truly liberal. From then on, the reduction in working time and the modification of regulations governing were the result of State intervention, in particular the Acts concerning the 8-hour day in 1919, the 40-hour week in 1936 and the 39-hour week in 1982.

Correlatively, employer and employee organisations have usually been incapable of concluding agreements in this area, or even of beginning to negotiate. Generally, the State is expected by both sides to intervene. Of course, employers would like to limit the introduction of further regulation by the State, yet they would also like the law to help control company policies in this area in order to avoid unfair competition, whereas the trade unions and other employee organisations would like the regulations to be less flexible. The most recent intervention by the government, which introduced the

35-hour working week, was thus part of a long tradition. In this area, even negotiation at the industry or sector level took place under the shadow of legislation, and often followed it, stipulating the specific means of application of any reform within a framework specified by the law itself. This is what happened after the laws of 1919, 1936, 1982, and 1998 were passed. There are hardly any examples of autonomous negotiation by trade unions and employers' organisations in this area, with perhaps the isolated exception of Renault, where agreements were signed that increased the number of paid holidays (Bodiguel, 1968).

1.2. Work through work sharing

The Acts on the 35-hour working week had for their first objective to improve the employment situation at a time when unemployment was reaching high levels and most unemployment strategies seemed to be ineffective. This aim of reducing working time also comes from a long tradition of State intervention. Granted, the first laws shortening the working day did not have this kind of objective, but from 1936, a preoccupation with employment could be seen in the legislation. Before voting on the law, specialists in the "X-Crise" think-tank, who were mostly economists, debated the advantages of reducing working time as a means of generating employment for others. (Fischman, Lendjel, 1999; Chatriot, 2004, pp.85-87). A movement advocating the principle of the reduction of the working week by the State in order to improve the employment situation thus emerged. Under the exceptional circumstances of spring 1936, the Act relating to the 40-hour week was above all oriented towards improving conditions for workers, but when it was presented to the Chamber of Deputies and Senate, the argument for the improvement of the employment situation through the mechanism of work sharing also appeared. The left-wing political parties that supported this project hoped that the Act would contribute to lowering unemployment whereas the Right expressed their scepticism on this point.

The theme of work sharing returned at the end of the 1970s, during a period when there was a rapid increase in unemployment and the government appeared unable to deal with the situation. Supported on the Left by the CFDT trade union and the "Échanges et projets" think-tank founded by Jacques Delors in 1980, work sharing was reintroduced into the Socialist Party's programme and inspired the decree of 16 January 1982 which reduced the length of the working week to 39 hours. The initial objective right from this period was to use legislation to reduce the working week to 35 hours, with the reduction to 39 hours considered as a step towards achieving this. Between 1978 and 1982, a coherent argument was developed to support the idea and to provide it with a theoretical base that was more elaborate than the simple arithmetic of work sharing. The General Planning Commissariat (CGP) played an essential role in developing these ideas by proposing measures and validating them through econometric simulations. This work showed that the reduction of the length of the working week had a positive effect on employment under certain conditions: restraining wage increases, maintaining the length of time that equipment is used and increasing productivity. From then on, the supporters of work sharing on the left of the government adopted these recommendations and tried to integrate them into an Act, which then became more complex as a result. Actually, the legislation no longer merely aimed to reduce the working week for social progress, but also needed to bring together the right conditions for this legal reduction of working time to have a positive effect on employment. This process, which was still in its early stages in 1982, was considered doubtful and went through several phases of being put aside or forgotten. Nevertheless, it was reborn and reinforced at the end of the 1990s. This was the background for the Aubry Acts, which were the result of a long tradition of State intervention and experimentation with the idea of work sharing.

2. PARTICULARITIES OF THE "AUBRY ACTS"

Although the "Aubry Acts" are in keeping with this dual tradition of State control and improving employment through work sharing, this does not mean that they are any less innovative. Analysis can focus on either historical continuity or on innovation, but it is nevertheless difficult to omit mentioning links to the past, whether they are explicit or implicit.

2.1. Genesis of the Acts

The patent failure of the 1982 law sowed the seeds of doubt among its supporters concerning the advantages of reducing working time. Even so, they did not reject it. Instead, they looked for the reasons behind the relative failure of the 39-hour week, which according to estimations at the time had only created approximately 0.2% to 0.4% more jobs, (Marchand *et al.,* 1983), but above all they developed a strategy that was more efficient in providing protection from the pitfalls which had appeared. At the same time, some of the Right became pro-work share and proposed their own solutions, which were more liberal in their inspiration. The main difference between the Right and the Left is found in the role given to the State. For the Right, the role of the State in this area should be limited to providing incentives, leaving the initiative to trade unions, employer organisations, and, in particular, to companies, which should not be forced to reduce their working time. For the Left, the State should impose new norms for everyone and it was legitimate to compel companies through legislation: surely, if they were not obliged to do so, they would refuse to reduce working time. What was advocated, then, were incentives from one side and obligations from the other, but in both cases a central role was assumed by the State. Even on the Right, there was a divergence from their free-market doctrine, which was criticised by their most liberal wing and employer organisations.

2.2. The "Robien Law": incentives

The contradictions of the Right resulted in a first text, article 39 of the Five-year Employment Law, in December 1993. However, this was never put into effect because it was seen as unworkable (Rigaudiat, 1994). Following this, those on the Right favourable to work sharing managed to pass a better-adapted law in June 1996, the "Robien Law", named after its leading promoter. This text did not impose anything but rather tried to encourage companies to reduce working time through granting significant reductions in employer social contributions. Companies were required to commit themselves to a collective agreement to reduce working time by at least 10% and to create the same proportion of jobs (offensive application) or to maintain the proportion of jobs where redundancies were threatened (defensive application). In exchange for this commitment, under the condition that it would stay in effect for at least two years, the companies would benefit from a 40% reduction on their social contributions in the first year and a 30% reduction for the following six years (Chanteau, 1999). Through these reductions, a large part of the cost for the company of reducing working week was passed on to the State.[1]

The effects of this law continued to provide food for thought for those supporters of a reduction in working time. The law had some veritable, though limited, success and it would appear that incentives alone were not enough to obtain results on a scale commensurate with the employment problem. Three thousand companies signed "Robien agreements", resulting in the creation or saving of some twenty thousand jobs. The companies that reduced working time within this framework generally obtained a temporary freeze on wages and flexible working hours from the unions. These two conditions were considered by several experts as being indispensable for the successful creation

[1] 95% of increased wage costs in the first year and 75% in the following years, according to the OFCE (Timbeau, 1997).

of jobs. The question then arose as to the cost of the measures to the State budget, especially in view of the possible extension of the law, which was called for by some at the time, to make it obligatory for all. Several simulations were carried out in 1997 and 1998 in order to evaluate the effects of, and the cost of generalising, the "Robien measures", or measures of the same type, combining financial incentives, reductions in working time, and employment.

The OFCE estimated the cost to the State for the creation of a job through these measures at 39,000 French Francs (5,945 Euros) per year (Timbeau, 1997), whereas the BIPE consultancy firm estimated it at more than 50,000 Francs (7,622 Euros) (Chanteau, 1999, p.46). In addition to the cost of the reduction of employers' social contributions, the estimation of the final cost of the measures needed to take into account their effects in terms of the growth in the number of wage-earners contributing to the social and welfare funds through their payments, as well as in terms of lowering unemployment. These estimations - and in particular evidence that the cost of lower employer social contributions was partially compensated for by savings accruing from lower rates of unemployment and the increase in the number of people working - were then taken into account by the authors of the laws on the reduction of working time. Their ideas were based on generalising the "Robien measures" while modifying them in the light of past experience.

2.3. Objectives

The objectives of the Acts on the 35-hour working week were on the whole the same as those for 1982: to create employment, to stimulate collective bargaining, and to modernise and improve the organisation of production so as to enhance company competitiveness and improve social well-being. But the order of priorities changed. Employment remained the primary objective, but the question of collective bargaining was placed at nearly the same level.

The first priority was thus to improve the employment situation in France, which continued to deteriorate with a steady rise in unemployment from 1992. Certainly, the Act of 1982 had shown the limits of the effects of a reduction in working time but the causes of this failure were attributed to two factors: an insufficient reduction of only 2.5%, but with no reduction in take-home pay. It was hoped that a reduction four times greater, without maintenance of wage levels, would yield better results.

But this was not the only objective; the government also hoped that the reduction of working time would provide the opportunity and the means to renew collective bargaining, which had shown signs of stagnation for several years. Organisations representing both employees and employers had been in a state of considerable weakness, while collective bargaining during the period preceding the Acts was rare and seldom led to substantial agreements, in particular relating to the question of working time.

Improving the competitiveness of companies was also an objective of the Act, and indeed, a condition of its success. The hoped-for creation of jobs would only be durable if companies improved their levels of competitiveness. For the government, this was to happen through a rationalisation of organisation and the development of more flexible production. It should be noted that the government believed itself well-placed to make suggestions to companies as to how to improve their efficiency, a typically French technocratic approach, where State agents perceive themselves as being more rational than economic actors. This belief allowed the government to promote economic rationality and social progress at the same time, without seeing the contradiction between the two.

Was the reduction in working time the real objective of the Acts? Without a doubt, since they really did concern reducing the length of working time to 35 hours per week. But this avowed objective was above all a means to attain other objectives. The idea of improving social well-being through reducing working week, even though it was emphasised, was not a priority and could be sacrificed for other objectives, in particular for that of employment. Indeed, if one follows the conclusions of econometric models, the creation of jobs depends on an improvement in company competitiveness,

which itself depends upon certain conditions: an increase in the time equipment is used, the lowering of costs, and a greater flexibility in working time. Wanting to combine all these conditions of success, legislators tried to take all of these elements into account when drawing up the Acts, in a wish to foster the necessary conditions for success.

2.4. Mechanisms of the Act

The main innovation of the "Aubry Acts" is to be found in their mode of operation, which is incredibly complex. The complex framework of the Act results from taking into account the lessons of past experience and the work undertaken by economists as well as the different objectives targeted. With a concern for being both successful and efficient, the Act has tried to integrate all of these parameters.

The "Aubry Acts", even though the Minister would never admit it, can be seen in part as "Robien Laws" applicable to everyone. Actually, they take up, while modifying it, the mechanism of reduced employer social contributions as an incentive for reducing working time and job creation. But the idea of generalising the measures introduces a contradiction in terms in the sense that they become obligatory. The "Aubry measures" try to reconcile the irreconcilable, incentives on one side and obligation on the other. Strictly speaking, the mechanism used for incentives relies on a voluntary approval that it is expected to be favourable. It is thus incompatible with a legal or regulatory obligation, which is the only efficient way to apply the Act to everyone. In order to reconcile the two, the government conceived of a two-stage legislative process, the first being one of incentives and the second being one of obligation.

The first Act is not very different from the "Robien Law" from which it has borrowed the general economic framework: the reduction of social contributions in exchange for the reduction of working time and the creation of jobs. The differences concern the amounts by which company social contributions would be lowered. Instead of a proportional rate, the first "Aubry Act" offered a fixed amount of lower contributions in order to favour companies that employed unskilled workers and to minimise the cost of reducing working time in companies with highly skilled workers. Also, the obligations in terms of employment are reduced: 10% more jobs created for a 10% reduction in working time for the "Robien Law", as opposed to only 6% more jobs for the "Aubry Act" (see Table **1**). As it was considered that companies could increase productivity through a reorganisation of production and a higher intensity of work, a declining rate of assistance was introduced. However, the main difference was the prospect of the change in the legal length of the working week to 35 hours on 1 January 2000. This prospect obviously changed the nature of the problem and strongly increased the incentives to act in advance of the legal changes.

Table 1.
Public Financial Incentives for Companies
during the Transition to a 35-hour Working Week.
Comparison of Robien and Aubry Acts

	Creation of jobs required	1st year	2nd year	3rd year	4th year	5th year
RWT by 10% Robien	10%	40%	30%	30%	30%	30%
RWT by 10% Aubry signed 1st semester 1999	6%	9 000 F	8 000 F	7 000 F	6 000 F	5 000 F
RWT by 10% Aubry signed in 2001	6%	8 000 F	7 000 F	6 000 F	5 000 F	5 000F

Is the reduction of the working week to 35 hours an obligation after all, or can companies choose not to reduce their working time? If they are required to apply the letter of the law, then the incentives only provide a motivation to apply the Act and not an incentive to change to 35 hours. The first Aubry Act did not allow companies to come to any firm decision on this, because the future use of overtime was not addressed, and neither was the issue of the level of financial aid, for companies that applied the 35-hour week from 1 January 2000. The overtime system was crucial because maximum working time depends upon it, and it sets the real limit to working time. If four hours of overtime are authorised per week, companies can retain a 39-hour week with only the small increase in wages for overtime to be considered. In 1998, some companies still believed that it was not in their interests to programme a transition to 35 hours in spite of the lowered social contributions offered as an incentive. Nonetheless, the prospect of the 35-hour week reinforced this incentive. Consequently, it was not surprising that a high number of companies chose to benefit from the lowered contributions within the framework of agreements on the reduction of working time.

The incentives are also present in the second Aubry Act, but within a clearly different context. An alternative is established between, on the one hand, the signature of an agreement to reduce the working week to 35 hours, allowing for a partial exoneration from social contributions even if no new jobs are created, and, on the other, only a minimum application of the new legislation. But this apparent choice is not really available, at least not for those companies with more than twenty employees, because the strict application of the legislation in the absence of a collective agreement limits the possibilities of recourse to overtime and flexible working hours.[2] The alternative is therefore between the signature of an agreement to apply the 35-hour working week, which gives access to the lowered contributions, or not respecting the Act. Theoretically, through the 130 supplementary hours of overtime authorised, companies signing an agreement could in fact continue to maintain working weeks that are over 35 hours. Indeed, this possibility allows them to continue to have working weeks of 38 hours. The objective of the legislators is, thus, to use the provisions provided by the Act to compel all companies to sign agreements on the reduction of working time. In fact, practically all companies with more than twenty employees have signed such an agreement.

The lowering of company social contributions contained in the Aubry Acts does not only aim at providing an incentive for companies to reduce their working week. It is also supposed to favour employment by reducing the actual costs associated with employing people. It is in fact this mechanism that is taken up in the second Aubry Act, following research which has attributed a positive effect on employment to the lowering of employment costs (Crépon, Desplatz, 2002). The second Aubry Act thus combines two elements to increase its impact on employment: work sharing and the lowering of costs associated with employment. It can be seen that the impact of the Aubry Act on employment depends as much on the effect of lowering employment costs as on the effect of work sharing. This represented a real recognition by the legislators of the limits of the work-sharing mechanism.

The advantage of this mechanism is that it permits job creation to be attributed to the reduction of working time, at the same time compelling companies to change to a 35-hour week. However, it has a macroeconomic cost that risks undermining economic growth at some point. Indeed, the lowering of contributions to social security funds by companies entails a reduction in revenues for these funds, which needs to be compensated for in some way. The first measures envisaged by the legislators to do this were not accepted, and in the end raising taxes may be necessary to make up the lost revenue.

The Aubry Acts also take into account the lessons learned from both past experience and the econometric simulations carried out since 1978. All of these simulations, and particularly the most recent ones, pointed to the possibility of work sharing under certain conditions, three of which are constantly put forward: wage restraint, increased productivity, and the maintenance of, or increase in,

[2] Companies with twenty employees or less benefit from a transitional period during which they have recourse to a higher number of overtime hours than larger companies.

the time equipment is used. Legislation was drawn up in such a way as to favour these three conditions.

2.5. Wage restraint

It is not written in Act that wage increases need to be restrained in companies that apply 35-hour working weeks. Article 39 of the Five-year Employment Law of December 1993 required companies, seeking to benefit from lowered social contributions, to reduce their working time and to create jobs to reduce wages, which was one of the reasons for its failure. Nothing of the sort is in the Aubry Acts, which stipulate that employees paid at the minimum wage should not suffer any reduction in their wages as a result of the reduction of working time. However, the system adopted for index linking the minimum wage aims at reducing company wage costs related to the transition to the 35-hour week. To compensate for the effect of the reduction in working time while avoiding raising the minimum wage for all workers, the Act has established a guaranteed monthly wage paid only to employees changing to a 35-hour week. This covers the difference between the monthly minimum wage at the time they changed to 35 hours and the wage they would have earned if the hourly minimum wage were applied to the new number of hours worked. It was also planned that increases in the guaranteed monthly wage established by the government would be inferior to increases in the minimum wage. The government is therefore promoting wage restraint for minimum wage earners, and this is thought to have an impact on wages above minimum wage, which the Act does not require anyone to maintain. Legislators assured that wage restraint for those earning above the minimum wage would be a matter for negotiation at the level of collective bargaining. By making collective agreements the necessary mechanism for reducing working time, the government expected that the unions would concede wage restraint in exchange for job creation and reducing working time. This is effectively what has been observed in the majority of cases.

2.6. Increases in productivity and equipment use

To increase productivity and maintain or increase the time equipment is used – necessary conditions for the success in work sharing - legislators have included in the Act dispositions that encourage the reorganisation of production, the flexibility of work schedules, and the possibility of resorting to atypical hours. The points which aimed at attaching companies focused on the numerous possibilities provided by the new Acts for the reorganisation of work. The new legislation facilitated flexible working hours, permitting their adaptation to fluctuations in demand, whatever their economic situation. Moreover, companies were encouraged to re-evaluate their general organisation in order to rationalise and increase productivity. For this, the Act includes provisions for the partial financing of using consultancy firms to assist company reorganisation in the transition to the 35-hour week.

The Aubry Acts push to their limits a kind of logic that began with the 1982 decree which allowed for greater flexibility in the length of working time on condition that agreements were signed with trade unions. In principal, the Act of 1936 forbade variations in the length of the working day. However, since 1982, in order to facilitate adaptation to fluctuations in demand and to increase the time equipment used, legislation has authorised the suspension of these regulations under certain conditions. Since 1982, two different systems have been applied: one that applied the Act of 1936 (constant fixed hours for everyone), and one that permitted flexibility in working time. Companies that wanted to make their working hours more flexible needed to negotiate an agreement with union or employee representatives, and to concede something in exchange. This became generalised; 1936 Act continues to be in effect but does not apply to companies that have signed agreements on flexible working hours. Moreover, the concept of calculating hours annually was introduced into the Act. The new legal duration of work is no longer simply calculated on weekly basis, but on an annual basis: 35 hours per week has now become 1,600 hours per year which can be distributed relatively freely. The possibility of a pluri-annual distribution of working time has even been opened up through time-

worked savings accounts which allow employees to bank vacation time from one year to the next. The weekly framework, which was considered too restrictive by employers, can thus be replaced by a more flexible annual distribution of hours.

2.7. Re-launching collective bargaining

Whether it be to benefit from the reductions in social contributions, to make working time more flexible, or to benefit from a more favourable system of overtime, companies must sign a collective agreement with trade union representatives. Thus, by making benefits contingent on certain arrangements, the Act makes, in practice, the negotiation and signing of collective agreements an obligation. In order to compensate for the absence of union representation in a large number of companies, the first Aubry Act reactivated the "mandate" system of representation. This allows companies without trade union representation to negotiate an agreement with an employee recognised by a trade union for the purpose. This arrangement has allowed thousands of companies to negotiate agreements on reducing working time. Among the agreements on the reduction working time, 60% were signed using the mandate system in 1999, while in 2000 only 48% did so, out of a total of 27,000 agreements for these two years alone (Dayan, 2002, pp.156-157).

2.8. Complex Acts

From these multiple objectives -reducing working time, increasing employment, developing collective bargaining, and rationalising company organisation- the end result is an extremely complex set of Acts. In effect, the Aubry Acts would not only like to establish a legal working week of 35 hours and encourage companies to create jobs, but also to facilitate flexible working hours and stimulate social dialogue. This is far removed from the 1936 Act that established the 40-hour working week and that could fit on two pages of the *Journal Officiel*.[3] It would be erroneous to call the Aubry Acts "35-hour week Acts". It would be more accurate, as far as their primary objective is concerned, to designate them "job creation Acts". But this would bring to light the absurdity of decreeing a reduction in unemployment through legislation. Everyone knows that in a market economy one cannot force companies to create jobs. Therefore, it was more sensible to present the Acts as being designed to reduce working time.

Nevertheless, the true objective was the creation of jobs, and all the measures in the Acts were focused on this. In certain respects, they are the legislative and legal translation of the conclusions of econometric modelling that was used to study the effects of a reduction of working hours on employment and job creation. The 35-hour Acts were thus not limited to establishing a new norm for working time, but also tried to influence the way this norm was to be applied, and its effects. However, the combination of multiple goals within the same text carries the risks of blocking certain effects, complicating the implementation of the Act and making it more difficult to control. This is because the authors of the Act doubted the automatic effects that the reduction of working time would have on employment. Rather, they believed it necessary to add extra dispositions to reinforce the effects that were expected from the reduction in working time, like a medication that combines several active ingredients to combat an illness. Continuing with this metaphor, one could say that from the employees' point of view, the reduction of working time is the flavouring added to a medication to cover an unpleasant taste and make it easier to swallow. The truly active effects are to be found in the reduction of employers' social security contributions and the incentives for increasing working time flexibility.

In the final analysis, the two Aubry Acts form a complex framework of measures that are dense and unusually voluminous because of their multiple objectives and the wish to influence their implementation by prescribing procedures for the social partners to follow, while at the same time

[3] The official publication for French legislation.

attempting to take into account the diverse contexts in which companies operate. This complexity is not without consequences. The more complex the law becomes, the more difficult it is to understand, and for those concerned to apply its measures. Small companies do not have large human resource departments and can find it difficult to grasp all the subtleties of the Act. As for employees, the various provisions for varying working hours may appear incomprehensible.

3. CONSEQUENCES OF THE AUBRY ACTS

The evaluation of the effects of the 35-hour working week has already led to numerous articles and books. Even so, it remains a delicate undertaking for several reasons. First of all, even though five years have gone by since the promulgation of the first Aubry Act, all the effects of changing to a 35-hour working week have not yet surfaced, and certain observations have not even been completed because of the time required for observation with the available resources. But there is another, deeper reason, which impedes analysis. The reduction in working time is not the only change that has occurred during this period, and the changes that have been observed could be attributed to other factors which may explain them. Thus, economic growth could be an explanation for the rise in employment. To distinguish the factors that have had an effect on employment and to separate their individual influences would require the use of hypotheses based on economic theory. We would then enter into debates that would be difficult to resolve. For such reasons, the evaluation of the effects of the reduction in the working week to 39 hours in 1982 continues to cause debate. A recent article re-evaluated these effects and concluded that the reduction in the legal working week resulted in an approximately 2% increase in job losses due to increased employment costs (Crépon, Kramarz, 2002, p.1384), contrary to the hopes of the supporters of the Act. This difficulty in evaluation is the same for the 35-hour week, at least for the most controversial question of its effects on employment. The Acts have other objectives as well: the improvement of living and working conditions for employees and the development of social dialogue. These two points also deserve evaluation even if this is a difficult task.

3.1. The duration of the working week

There is one point where the efficiency of the Acts on the reduction of working time is incontestable and that is in its effect on how long employees work. Companies, whether they are for or against, have been implementing the 35-hour working week. To be more precise, it should be added that the implementation of the new legislation has been essentially carried out by companies with more than twenty employees. By the end of June 2002, 46% of companies with more than twenty employees had applied the 35-hour week, compared to only 12.1% of companies with twenty employees or less. In total, 49% of employees benefit from a 35-hour working week, whereas only 14.5% of the total number of companies have actually implemented it (Sérandon, 2003, p.24). This deviation from the Act requires explanation. Since the decrees of 1938, which adapted the 1936 Act on the 40-hour working week, it has not been obligatory to adhere to the legally defined duration of working time. Rather, this sets a threshold over and above which hours worked are considered as overtime and require compensation through higher rates of pay. Because of overtime, the average working week of employees can be considerably higher than the legal duration. This was the case during the period that followed World War II. The length of the working week at the time was over 50 hours (Marchand, Thélot, 1997, p.140). It was only towards the end of the 1970s that the hours actually worked per week approached the legal limit of 40 hours (Eymard-Duvernay, 1977).

Companies thus have the possibility of offering longer hours than the legal limit if they pay overtime. The Aubry Act of 19 January 2000 allows companies to legally use a maximum of 130 overtime hours annually. Companies with twenty employees or less had a maximum of 180 overtime hours

that were to be reduced to 170 hours by 2003.[4] This possibility of utilising overtime hours explains why companies have not limited their working week to 35 hours and why the average working week is still significantly above 35 hours in France. The reduction of working time has thus been effective primarily for employees in large companies, while those in small companies have not benefited from a reduction to the same extent. The Act is therefore not applied with the same rigour depending on the size of the company.

3.2. Employment

Employment was the primary objective of legally reducing the working week to 35-hours. It is with this in mind that the Acts should be evaluated. The healthy increase in employment between 1998 and 2002 in France appears to bear testimony to the success of the work sharing mechanisms in them. However, everyone agrees that this increase in employment cannot be attributed solely to the reduction in working hours. In addition, if the fall in unemployment were to be attributed only to these Acts, the reversal of the trend with the subsequent increase in unemployment would also have to be attributed to them. Among the two million jobs that were created, a large number was the result of economic growth, some were the result of government measures such as subsidised youth employment programmes (*emplois-jeunes*) and some were attributable to the reduced costs of employment contained in the Acts, although these are often attributed to the reduction in working time. The best way to estimate the consequences on employment of the reduction of working time would be to combine several approaches: a comparative approach highlighting the specificities of the French approach over the 1998-2002 period, and an evaluation based on data gathered from the first companies to introduce the 35-hour week. These approaches do not allow a precise evaluation but would at least provide a reasonable general idea of the impact of reduced working time. Comparative analysis remains to be undertaken; the hasty comparisons that have been presented to date do not allow us to draw any firm conclusions. Nevertheless, they do show that France experienced one of the highest increases in the rate of employment in Europe over the 1997-2000 period, but without being able to specifically attribute this increase to any single variable.

The DARES has tried to evaluate the impact on employment of the reduction of working time resulting from the Robien and Aubry Acts (Jugnot, 2002). For this, a calculation was made of the number of jobs created or saved in the companies concerned, minus the number of jobs they would have created in the absence of a reduction in working time. This latter number of jobs was estimated from observing the jobs created in comparable companies which stayed at 39 hours during the same period. Comparable here means companies which have a similar profile in terms of size, sector and previous history of employment growth. In this way, the net effect on employment of the Robien Law (offensive application) is evaluated at 7.2%, and that of the first Aubry Act at 7%. In other words, these companies experienced a differential increase in their employment of 7.2% for some and 7% for the others due to a reduction in working time. By using this method, the DARES estimated that the changeover to a 35-hour week "would have been directly responsible for approximately 300,000 jobs in the non-agricultural competitive sector over a five year period, or 18% of the jobs created between 1997 and 2001" *(ibid.*, p.260). If we accept the validity of this evaluation, one still needs to take into account that this data was gathered at the end of 2001, and the effect is likely to have been subsequently modified, either for the better or for the worse. Besides, the calculated net effect conflates the effects of two measures in the Acts: the reduction of working time and the reduction of company social contributions. We do not know what would have been the net effect if there had simply been a reduction of working time without any reduction in these employment costs, or, conversely, the effect of reducing costs without reducing working time. For

[4] The "Fillon Act" of 17 January 2003, named after the Minister for Employment, François Fillon, raised the amount of legal overtime to 180 hours a year. This will allow companies to maintain, of the foreseeable future a working week of more than 35 hours (Boisard, 2003).

some, simply lowering social contributions without changing the length of the working week would have had a greater effect (Cahuc, 2001).

3.3. Social relations

One cannot deny the increase in the amount of negotiation between employee organisations and employers, or the number of signed collective agreements on the reduction of working time. From this point of view, the incentives to negotiate contained in the Aubry Acts have been effective (Erhel, Gavini, Lizé, 2003, pp.29ff.). The number of agreements rose from 13,300 in 1998 to more than 35,000 in 1999, when 80% concerned working time (CGP, 2001, p.254). The number of branch level agreements is also considerable: 218 in total. However, this incontestable success needs to be regarded with circumspect for one essential reason: trade unions, employer organisations and, in particular, companies, had little choice in the matter. If they had not negotiated and come to an agreement it would have meant that companies, among others, would have had to forego reductions in their social contributions and the possibility of flexibility of working hours, and would have been more restricted in their use of overtime. They were forced into negotiation. Has this increase in social dialogue had a durable effect on social relations in companies? It is unlikely to the extent that the structural causes of the weaknesses of social dialogue are still present, in particular the weakness and divisions of trade unionism in the private sector. It was, moreover, paradoxical to ask of the law to promote negotiation while the government demonstrated its wish to reduce working time without first taking into account the views of employer organisations and unions, and without allowing them time for prior negotiation.

3.4. Living and working conditions

By reducing the legal duration of working time by 10%, the socialist government could quite rightly claim to be improving the quality of living and working conditions for employees. Who is going to complain about a shorter working week without any reduction in wages? This goes in the direction of social progress and prolongs the long-term trend of reducing working time. However, much to the surprise of the socialists, some employees do not consider that this reform has improved their situation. Of course, some employees said they were satisfied with the reduction of working time, but others considered that their living and working conditions had deteriorated because of the 35-hour week. These contrasting opinions can be explained by the diversity of employees' situations and by the multiplicity ways in which working time has been reduced.

The reduction of working time has taken different forms: a decrease in weekly hours; extra days of paid leave chosen either by the employee or the employer, to be taken every month or distributed throughout the year and planned in advance or at the last minute; flexible hours according to demand. As it turns out, some employees have benefited from reduced working time in a way that is compatible with family and social life and that has allowed them to organise their personal schedule, while others have seen their employer impose upon them hours that are incompatible with their personal lives and do not allow them any control of their time. In terms of time spent at the work place, the reduction in working time has often resulted in faster work rates, and the obligation to complete, in 35 hours, work that had previously required 39.

The diversity of working conditions naturally leads to different perceptions. According to available studies, 59.2% of employees considered that the transition to a 35-hour week had improved their daily lives (Méda, Orain, 2000). However, irregular hours are less appreciated than reductions of regular hours. A significant percentage of workers indicated that their daily life deteriorated when the reduction in working time led to irregular hours. These statistics should be interpreted with caution because they do not take into account all employees affected by the reduction of working time. The survey they originate from was undertaken at the end of 2000, among the first companies to implement a 35-hour week. However, reductions of working time since then have occurred under

less favourable conditions. A survey carried out today would certainly find significantly lower levels of satisfaction.

Table 2.
Employee Assessments of the Effects of the 35-hour Act on their Living Conditions by Mode of Implementation (%)

Mode of implementation	Daily life		
	Improvement	Worsening	No change
Change in break times	52.9	19.3	27.8
Reduction of working time through varying work patterns	53.6	17	29.4
Days off on a regular basis	70.7	9.5	19.7
All employees	59.2	28.0	12.8

Source: The Reduction of Working Time and Lifestyles Survey, MES-DARES, 2001.

The changes in working conditions have been judged less favourably by employees. According to the same study, 28% considered that their working conditions had deteriorated, 26.4% believed that they had improved, while 45.6% thought that there was no change. A deeper analysis of the data from this study and further monographic studies (Pélisse, 2002) show that the application of a 35-hour week has accentuated inequalities among employees. On one hand, the most well-qualified employees, and in particular, the majority of managerial staff, have seen an improvement in their living conditions because they have managed to keep some control over their working hours. On the other hand, a large proportion of lesser-qualified employees, in particular young women, have suffered deterioration in their living conditions because of the imposition of irregular hours that disrupt daily life.

3.5. French Specificities

The process of reducing working time in France over the past few years distinguishes it from most of the other European countries (EIRO, 2003). Today, France is the country where average working time is the shortest in Europe. According to data provided by Eurostat for 2002 (Franco, Jouhette, 2003), the average length of the working week in France for full-time employees was 38.3 hours, while it was 43.5 hours in the United Kingdom and 39 hours in the Netherlands. But this is not the main French peculiarity. Instead, this can be found in the methods used and the objectives of this process.

France is the only European country where the State has intervened to reduce working time by using the law as a means to change the employment situation. In other countries, there are two routes to the reduction of working time. Firstly, it takes place through trade union action at the branch or company level, combining the reduction of working time with the struggle for employment, which is particularly the case for Germany. Secondly, as in Sweden, the State intercedes with the aim of improving social well-being, and notably of fostering greater gender equality and reconciling professional obligations with family life.

Traditionally in France, the law is considered as a powerful and multifaceted tool for social change and all social issues are treated through legislation. This attitude, pushed to the extreme by the last socialist government, bears witness to a severe mistrust of the various social actors, including the trade unions. Before launching the process of reducing working time, the government summoned the organisations representing employees and employers for a summit on 10 October 1997 in order to discuss its proposals to fight unemployment and, in particular, possible State intervention on working

time. In reality there was no debate but rather a presentation of government policies without any account being taken of the objections expressed by the organisations that were present. This provoked determined hostility from the main employers' organisation, the CNPF, later renamed the "Medef". The abrupt way in which the socialist government proceeded, and the refusal to submit its proposals to prior negotiation, is the opposite of the Dutch method used during the 1982 Wassenaar conference (Bastian *et al.,* 1989). The argument that the different trade unions and employers' organisations would be incapable of reaching an agreement does not justify a government attitude that marginalises the social partners instead of bringing them together to reach agreement.

Another peculiarity of public action in France consists in the attempt to codify everything through legislation, thus overloading it, again through mistrust of the unions and employer organisations. Thus, Acts are not only generalised, applying to everyone without exception, but also take into account specific situations through a series of arrangements, the conditions of implementation of which are carefully stipulated.

This way of doing things has two main problems associated with it. Firstly, it is absurd to apply the same length of working time to a construction worker, a supermarket cashier and a marketing consultant. The egalitarianism proclaimed in the Act actually reinforces inequalities in working conditions. Secondly, attempting to take into account the different contexts within which companies operate complicates the Act to the detriment of its overall clarity and any capacity to control its application, without necessarily managing to take all possible situations into consideration. This view of the law illustrates a strong illusion in France, in particular among the parties of the Left, concerning the possibilities of controlling social and economic reality through legislation. This illusion, inherited from authoritarian socialism, mixes belief in the absolute power of public action and in the rationality of the avant-guard, and a mistrust of social forces due to assumptions of the hostility of employers on the one hand and wage earners' ignorance of their own true interests on the other. Under these conditions, sure of the correctness of its analysis and its cause, the government has no need to take into account any criticism directed against its action. It only needs to constantly communicate its success to obtain the backing of its citizens.

The strength of government convictions over the reduction of working time rested on two foundations. On the one hand, it was supported by the historical myth that assimilates the reduction of working time to social progress and to a form of social justice conquered by the forces of progress against reactionary forces allied to Capital. To oppose this, would automatically invite being called an enemy of social progress and a supporter of reactionary politics (Cahuc, Granier, 1997, p.4). The second foundation was that of the economic expertise provided by successive econometric simulations, which showed the effectiveness of reducing working time to create employment, and which dictated the conditions for its application. The modern allegory of social justice guided by the Science of economics comforted the Socialist government in its certainties but made it deaf to any criticism and blind to the deficiencies of its action.

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