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newsletter

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editorial

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Our Contract Law is at war!

Case law and doctrine appear to have joined forces in an attempt to disrupt our contractual habits. While the Court of Cassation (French Supreme Court) annuls limitation of liability clauses and reshuffles breach of contract, the Chancellery plans to sanction modification for frustration.

Limitation of liability clauses: watch out for the backlash. There was a time when incorporating a limitation of liability clause was the safest way of avoiding the risk of non-performance. That time is a bygone age. Since the precedent established in *Faurecia 2*[1], the Court of Cassation has considered limitation of liability clauses which render the contractual duty meaningless as un-written. Thus, although it is lawful to limit one's liability in case of breach of the essential contractual duty, the ceiling for damages must not be valueless. If a party insists on a ceiling which is too low, the judge could consider the clause as un-written, which would put the party at risk of having to pay full compensation.

Is it still necessary to include cancellation clauses? The inclusion of a cancellation clause in a contract avoids the need to apply to the courts, by allowing the creditor of an unfulfilled obligation to terminate the contract. Nevertheless, such a clause may be redundant considering the decision in *Tocqueville*[2], which established the "unilateral termination at one's own risk" principle. The Court of Cassation has recently held[3] that in the presence of this kind of clause –

1 *Cass.* 1st Civ. Div., 29 June 2010, appeal no. 09-11841
2 *Cass.* 1st Civ. Div., 13 October 1998, appeal no. 96-2148
3 *Cass.* 3rd Civ. Div., 9 October 2013, appeal no. 12-23379

providing for the payment of compensation for termination in the case considered – the creditor could no longer opt for unilateral termination.

However, this answer is not final; it is likely that a decision emanating from the "*chambre mixte*" of the Court of Cassation will be necessary in order to harmonize the case law. As things stand, caution should prevail: inserting a cancellation clause could end up being counterproductive.

Is the precedent established in *Canal de Craponne*[4] about to be overturned? For 150 years, the courts have refrained from revising a contract when the economic circumstances have evolved. Article 104 of the draft reform of the law of contracts, drawn up by the Chancellery, allows for this revision. If an unpredictable change of circumstances has made the execution of a contract too burdensome for a party, both parties will have to renegotiate the contract. In case of failure or refusal, the parties could, by common agreement, ask the courts to adapt the contract. In the event of lack of agreement, either party could apply to the courts for termination of the contract.

These changes in the law of contracts constitute a powerful stimulus for the practitioner, inviting him to find ever new solutions.

PROJECTS (FINANCE & INFRASTRUCTURE)

By Etienne Amblard, Marie Bouvet-Guiramand & Pierre Wiehn

Challenging administrative contracts

The *Conseil d'Etat* (French Supreme Administrative Court) has recently judged[5] that any third party to an administrative contract – signed from 4 April 2014 – can challenge its validity before the administrative courts.

The case law (dating back over 100 years) according to which a third party cannot contest the validity of a contract has known a lot of exceptions. Indeed, since 2007, this case law has no longer applied to unsuccessful bidders in tendering procedures. Nevertheless, such ruling could, theoretically, lead to an increase in the number of potential claimants.

Claims must be filed within two months from the contract's publication. Third parties will only be able to file claims on the grounds of unlawfulness that is particularly serious or that can be proved to be damaging to their interests with sufficient certainty.

Local government reform

The French President has announced an upcoming local government reform. The draft laws published on 18 June 2014 in particular group regions together, reducing their number to just 14, and transfer to them the management of certain sectors (transport, education, urban planning and infrastructures).

Over the long term, the general councils (*conseils généraux de départements)* will hand over a significant part of their functions to the regions or intercommunal cooperation. The *départements* would thus no longer be decentralization relays, but rather actors of "deconcentration".

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4 *Cass.* Civ. Div., 6 March 1876

5 *Conseil d'Etat*, 4 April 2014, *Département du Tarn et Garonne,* claim no. 358994

The bill is now being discussed at the *Assemblée Nationale* (the lower house of the French parliament), after the *Sénat* (the upper house) rejected the new regions map.

Beyond its purely institutional aspect, the announced reform will impact those companies that are co-contractors to local governments concerned by the reform. They may have questions related to the transfer of commitments in the context of transferred competences and, as applicable, to the effectiveness of agreements organizing the financial consequences of such transfers.

Morocco adopts a PPP Law

The final text of Law no. 86-12 relating to public-private partnerships (the "PPP Law") was adopted on 12 February 2014 by the House of Representatives. The PPP Law will enter into force on the effective date of its implementing regulations, which is expected to be in the coming months.

The PPP Law draws heavily on French Order no. 2004-559 of 17 June 2004 on partnership contracts and lays down the principles governing the award of PPP contracts and their content.

Morocco already has a law on delegated management of public services[6], on the basis of which a large number of infrastructure projects have been carried out, but it applies only to local governments and public establishments, and not to the state. Other projects have nevertheless been implemented in the form of concessions or PPPs under either sector-specific legislation or general contract law (ports, water, electricity, irrigation, urban transport).

The adoption of the PPP Law will allow the state, its public establishments and state-owned companies to use PPPs more systematically for projects in which it is not appropriate to allocate the operating risk to the private party, for instance in non-commercial sectors (education, health, etc.).

MERGERS & ACQUISITIONS

By Cira Caroscio, Rym Loucif, Alexis Pailleret & Annabelle Raguenet de Saint Albin

Extension of the scope of foreign investment control in France

In the midst of the battle for Alstom, the French Government issued a decree[7] expanding the list of strategic sectors in which foreign investments require prior authorization from the French Minister of the Economy. The decree, which entered into force on 16 May 2014, is applicable even with respect to on-going transactions.

The French government had previously exercised control on foreign investments in France in certain industry sectors perceived as "sensitive", in particular defence-related activities. This decree extends the scope of such State control to additional activities, defined by their essential contribution to the safeguarding of French interests "on public policy, public security or national defence", and including the following sectors: energy and water supply, transport and electronic communication networks and services, vital installations, facilities and structures (within the meaning of the French Defence Code), and public health.

If necessary, the French government may impose conditions on the corresponding investments. In addition, the aforementioned decree broadens the scope of the authority of the French Minister of the Economy. Whereas previously such authority was limited to cases where a sensitive activity was ancillary to the French business at stake, it has now been extended to all cases, regardless of whether or not the sensitive activity is ancillary.

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6 Law no. 54-05 of 14 February 2006

7 Decree no. 2014-479 of 14 May 2014 on foreign investment subject to prior authorization

Given the extensive scope of the State's control, there are grounds to question the compatibility of this decree with the European treaties.

OHADA corporate law reform

The OHADA Council of Ministers adopted a new Uniform Act on commercial companies and economic interest groupings on 30 January 2014.[8] It applies to any company incorporated in any of the 17 OHADA Member States, as from 5 May 2014.

The main contributions of the reform are the creation of a new corporate form, the *société par actions simplifiée* (equivalent to the French simplified form of public limited company) and the creation of new types of securities, which include preference shares. The new Uniform Act also confirms the validity of shareholders' agreements and clarifies several aspects of the legal framework applicable to *sociétés par actions*.

This reform affords investors greater flexibility in the organization of their projects in the OHADA region, but also requires them to make the by-laws of their existing SAs in the region compliant with the new Uniform Act within two years.

Foreign investment in Algeria five years on from the introduction of the "49/51%" rule

Despite the series of restrictions on foreign investment in Algeria introduced by the Complementary Finance Act for 2009, foreign companies continue to invest in the country, and certain signs of easing are becoming apparent.

For example, the recent Finance Act for 2014 removed the requirement for all foreign investment to be approved in advance by the Algerian National Investment Council (*Conseil National de l'Investissement*).

One of the most notable measures of the Algerian foreign investment regime is without a doubt the rule that prevents foreign investors from holding more than 49% of the capital in any Algerian company (it being noted that the Algerian partner in a joint-venture is never a sleeping partner).

Many contractual mechanisms are nonetheless available, not only to protect the investment of foreign partners, but also to enable them to exercise full control over the governance of their joint-venture and to provide for an exit strategy.

Further measures also apply to foreign investments, such as the infamous right of first refusal granted to the Algerian State, which gave rise to the "Djezzy affair". This dispute ended in the signature by the Algerian National Investment Fund (*Fonds National d'Investissement*) of a share purchase agreement on 18 April 2014 for a 51% stake in Orascom Telecom Algérie (OTA), for USD 2.643 billion. The signature of such SPA suspended the arbitration proceedings brought by Global Telecom Holding against the Algerian State on 12 April 2012, on the basis of the Bilateral Investment Treaty between Algeria and Egypt[9].

[8] http://www.gide.com/sites/default/files/gide_africa_clientalert_ohadareform_en_14may2014_0.pdf

[9] http://www.gide.com/en/news/gide-advises-vimpelcom-on-the-transfer-of-51-of-orascom-telecom-algerie-djezzy-to-the-algerian

FINANCING

By Thomas Binet, Rima Maîtrehenry & Chucri Joseph Serhal

The *fonds professionnels de capital investissement* can now invest in debt instruments

The transposition into French law of Directive 2011/61/EU on alternative investment fund managers[10] (AIFM Directive) resulted in a comprehensive reform of the financial products existing under French law. In particular, the *fonds communs de placement à risques contractuels* (*FCPR Contractuels*) were amongst the very few private equity vehicles which were allowed to invest up to 15% of their assets in debt instruments issued by non-listed companies. Since the transposition of the AIFM Directive, *FCPR Contractuels* have been subject to the same terms and conditions as are applicable to *fonds professionnels spécialisés*[11] which means that they are no longer bound by any limitation as to the percentage of debt instruments in which they can invest. Similarly, *fonds professionnels de capital investissement* (FPCI)[12], which were not previously allowed to invest in debt instruments, can now, since the transposition of the AIFM Directive, invest up to 15% of their assets in such instruments[13].

This new investment opportunity will be of great interest to FPCIs active in turnaround operations and, more generally, for any FPCI involved in the restructuring of its portfolio companies' underlying debt. However, many FPCIs will not benefit automatically from this flexibility without amending their respective by-laws. Generally, any by-laws drafted before the transposition of the AIFM Directive would restrict the FPCI's investments to operations authorized under French law before such transposition, i.e., investment in equity or shareholder loans. Management companies must therefore amend the by-laws of the FPCIs they manage to permit exposure to debt instruments. This is likely to lead to discussions with fund investors as to the strategy that will be followed by such FPCIs through this type of investment.

Crowdfunding

France has recently implemented a new regulation for crowdfunding[14]. It has created a special status of "crowdfunding intermediaries" for approved platforms offering interest-bearing loans to individuals who are willing to finance a project.

This constitutes a new exception to the banking monopoly, as individuals will now be able to grant fixed-rate loans to legal or natural persons to fund a professional project or for training needs, when the parties are brought together through a crowdfunding intermediary. The ceiling for these loans, initially set at €300,000, has been increased to €1,000,000, making France one of the leaders in crowdfunding.

The regulation imposes several constraints upon the crowdfunding intermediary's executives, such as good-repute and skill-level requirements, rules of good practice, an obligation to inform lenders about the risks they incur, and other safeguards. On the same terms as if they were banks, crowdfunding intermediaries will be able to check the creditworthiness of individuals seeking the funding of their project, through the FIBEN banking database on companies.

The European Commission is planning on developing a common approach at EU level and realizing a number of studies, with the purpose of better understanding the issues and

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10 Directive 2011/61/EU of 8 June 2011 transposed by Order no. 2013-676 and the corresponding implementing decree no. 2013-687

11 The new name for *OPCVM contractuels* (contractual UCITS)

12 The new name for *fonds communs de placement à risques à procédure allégée*

13 Article L214-160(II), French Monetary and Financial Code

14 Order no. 2014-559 of 30 May 2014 on crowdfunding

challenges of this emerging practice and its repercussions upon, *inter alia*, research and innovation. The *Association Française de l'Investissement Participatif* (French Crowdfunding Association) and the *Association Nationale des Conseils Financiers* (National Association of Financial Advisors) are planning on cooperating to regulate the sector.

The impact of a negative Euribor on financing contracts

For the first time in its history, the deposit facility rate of the European Central Bank was lowered on 5 June 2014, making it negative at (-)0.1%. The Euribor rate could therefore also become negative in the coming weeks. In financing contracts, the remuneration of a bank is generally indexed to a reference rate (i.e. EURIBOR [X] months) plus a margin. A negative Euribor rate mathematically reduces the remuneration of a lending bank under a financing agreement.

The hypothesis of a negative reference rate has not been clearly addressed in the vast majority of financing contracts underway on the market, such that the documentation rarely provides a floor rate for circumstances in which the index reference is negative.

We endorse the recommendations of the Loan Market Association (LMA), which suggests including in contractual documentation a provision to the effect that, if the reference rate falls to below zero, such reference rate will be deemed to be zero, and recommends that an amendment to existing contracts be drawn up to this effect.

FINANCIAL DISPUTES & BANKING REGULATION

By Frédéric Daul, Audrey Kukulski & Laetitia Lemercier

International economic sanctions

International economic sanctions may be taken against natural or legal persons, entities or countries and comprise freezing of funds, assets or economic resources as well as the prohibition of certain financial or commercial transactions.

In France, such sanctions (pronounced by the UN, or at a European or national level) are administered by the *Direction Générale du Trésor* (and the *Autorité de Contrôle Prudentiel* supervises their implementation by banking entities). In the United States, the Office of Foreign Assets Control administers the various economic sanction programmes recognized by the United States.

The American justice system has recently issued sentences involving very heavy fines for non-compliance with such economic sanction programmes.

Any French person or entity established or acting on American territory (or, as the case may be, carrying out transactions in USD) must ensure that its activities are compliant with the economic sanction programmes in force, especially if such entity is involved in a financial transaction. Increasingly systematically, credit institutions ask their counterparts to declare that they comply with these measures, in order to avoid any criminal, financial or reputational risk. A representation relating to these sanctions is included in the contractual documentation where the counterpart represents, for example, that it is not subject to such sanctions and certifies that the funds obtained shall not be used to the benefit of a person or entity subject to such sanctions. Given the scope and diversity of such economic sanctions, it is of interest to pay particular attention to and to negotiate carefully the content of such clauses.

Prevention and resolution of banking crisis

A new step has been taken in the implementation of the banking union with the adoption on 15 April 2014 of three key texts by the European Parliament (Single Resolution Mechanism, Bank Recovery and Resolution Directive ("BRRD") and update of the Deposit Guarantee Schemes Directive ("DGSD")).

The French legislator acted ahead of the finalization of the negotiations on the BRRD last year by adopting the law on separation and regulation of banking activities ("SRBA")[15].

The purpose of this new set of rules is to preserve financial stability and to avoid in the future a situation where Member States, and so the taxpayers, have to come to the rescue in the event of a banking crisis.

One of the key measures lies in the bail-in mechanism provided by the BRRD. Such mechanism, which will come into force in January 2016, will allow the resolution authorities to depreciate or to convert into equity the claims of shareholders and other creditors of an insolvent bank or a bank which may become bankrupt, pursuant to a priority order determined by the BRRD.

Contrary to the SRBA, the BRRD is not limited to subordinated debts. Nonetheless, several types of debts are excluded from the mechanism (in particular deposits protected by a deposit guarantee scheme, secured liabilities (including covered bonds), inter-bank lending that has an initial maturity of less than seven days and liabilities towards employees).

Furthermore, the update of the DGSD provides for an increase in the level of protection of depositors. The latter will be reimbursed within a shorter period of time[16] and their banking deposits remain guaranteed up to €100,000 (per depositor and per bank).

INSURANCE

By Charles-Eric Delamare-Deboutteville & Alexandra Munoz

Enactment of the Consumer Law ("Hamon Law") - Class action and contract termination issues in insurance law

The Consumer Law dedicated to reinforcing consumer rights was passed on 18 March 2014[17]. This law provides a certain number of measures for which the implementation will run up to 2016, especially regarding insurance law matters.

It introduces the possibility of mass-consumption-related class action in order to indemnify economic losses notably caused by the breach of competition rules.

The objective of introducing this class-action into French law is notably to allow legal actions in cases of mass litigation when the losses sustained would have been insufficient for a standard individual claim; as a result, further litigation should arise.

It provides insureds with the possibility to terminate comprehensive insurance and motor vehicle insurance at any time, from the end of the first year of commitment (the new insurer being able to terminate the contract in lieu of the underwriter).

It further enables insureds, within one year from signing a mortgage, to switch to another insurer with the agreement of the money-lender.

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15 Law no. 2013-672 of 26 July 2013 on the separation and regulation of banking activities
16 The repayment deadlines will be progressively reduced from 20 to 7 business days
17 Law no. 2014-344 of 17 March 2014 on consumption, known as the "Hamon Law"

CEFAREA

Specialized in the field of insurance, CEFAREA (the French Reinsurance and Insurance Arbitration Centre) adopted the new CEFAREA-CMAP Arbitration Rules in September 2013 in order to take into account the arbitration reform of 2011. This new set of Rules promotes a secure and rapid procedure as well as reaffirming certain specific features of arbitration in the field of insurance.

For example, the Rules state that the award shall be pronounced in the shortest possible timeframe unless otherwise provided for in the arbitration agreement. Moreover, the Rules assert that the arbitral proceedings shall terminate six months after the date of the constitution of the Tribunal[18]. Accordingly, the procedure is accelerated.

In addition, and contrary to the provisions of Article 1478 of the French Code of Civil Procedure, the Rules contain a specific provision for arbitrators to act as "*amiables compositeurs*" unless otherwise provided for in the arbitration agreement. This permits the Tribunal to rule on the basis of *ex aequo bono*[19].

Addressing professional expectations and taking into account existing practice, the new Rules should permit an increase in arbitration procedures in the field of insurance and reinsurance.

ALTERNATIVE DISPUTE RESOLUTION

By Alexandra Munoz

The new ICC Mediation Rules have replaced, since 1 January 2014, the 2001 ADR Rules. This new text integrates the practices previously developed by the ICC and reinforces the powers of the ICC International Centre for ADR in its administration of procedures aimed at an amicable settlement of disputes.

Despite the change of name, the ICC Mediation Rules maintain significant flexibility in the type of alternative dispute resolution procedure available to parties.

Henceforth, it is of importance to note that parties may apply to the ICC in order to appoint a mediator even if they do not seek to adhere to the ICC Mediation Rules or submit their dispute to an ICC procedure. This opportunity offers parties greater security in the implementation of a mediation procedure and thus promotes alternative dispute resolution.

ENERGY & STATE AID

By Sylvain Bergès & Sophie Quesson

Restructuring of aid in the energy sector

On 9 April 2014, the European Commission published new guidelines, applicable as from 1 July 2014, on the granting of aid for projects in the Environment and Energy sectors. These guidelines have been published in the midst of criticism against the mechanisms available in relation to renewable energies, due to their impact on public finances and potential distortion of competition.

The European Commission thus wishes to promote aid for the development of cross-border energy infrastructures, strengthen European industrial competitiveness, perpetuate investments in new production capacities, by fostering the development of a capacity market, and promote market-based mechanisms rather than feed-in tariffs.

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[18] Article 21.1 of the Rules
[19] Article 23.1 of the Rules

The new guidelines aim to significantly reduce competition distortions between States, as resulting from highly dissimilar State aid programmes. Among the different types of aid available, the European Commission wants to prioritize tendering mechanisms, as well as a "market price + premium" package instead of feed-in tariffs. France and Germany have been working on these new mechanisms for over a year now. In France, the bill on energy transition – due to be discussed in the *Assemblée Nationale* in September 2014 – should lead to a complete overhaul of the existing aid system.

REAL ESTATE

By Bertrand Jouanneau & Nicolas Planchot

The "Pinel Law" definitively adopted

The law on craft industries and trades, commerce and very small enterprises, known as the "Pinel Law", has been applicable since 18 June 2014.

It is one of the most significant reforms of commercial lease status for several years, and aims to substantially strengthen the lessee's protection.

Some of the main changes introduced include the restriction on the possibility to conclude leases for a firm duration, the creation of a list of service charges and taxes that cannot be on-charged to the lessee, the limitation on rent de-capping and the creation of a preferential right in favour of the lessee.

Due to its scope and the specific wording chosen by the legislator, numerous uncertainties remain in the text. Most of all, it calls into question the very concept of investor leases (length, lease net of charges, etc.) and thereby the profitability of real estate assets. The concern is that this reform might affect the value of the underlying assets.

Adjustment on the part of the tax authorities as regards the VAT regime for rent-free periods

For some time now, the French tax authorities have pursued a reassessment campaign under which the amounts corresponding to rent-free periods granted under commercial leases are made subject to VAT.

Indeed, in situations where the lessee has waived its triennial termination right, tax inspectors now consider that this constitutes an exchange of services between the parties, which should be subject to VAT on both the lessee's and lessor's side (the lessee is deemed to have provided a service to the lessor by having agreed to a fixed-term lease, and the lessor is deemed to have provided a rental service throughout the rent-free period).

We believe that this position can be challenged on various grounds, in particular because the rent-free period is not generally granted in consideration of a service rendered (see, in this respect, the CJEU judgment of 9 October 2001, C-409/98, 6th ch., *Mirror Group plc*).

However, in more recent tax audits, the authorities appear to have adjusted their position slightly, and have not proceeded with reassessments when there is no specific link in the lease between the rent-free period and the lessee's waiver of its triennial termination right.

In practice, lease agreements must therefore be drafted with care to limit the risk of the parties being subject to a VAT reassessment.

INTELLECTUAL PROPERTY / TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

By Marta Lahuerta-Escolano

Personal Data: Ever greater protection

On 12 March 2014, the European Parliament adopted, in plenary session, the proposal for a General Data Protection Regulation. While awaiting the approval by the Council of the European Union, expected in 2015, the draft gives an outline of the main changes this new European regulation is likely to entail.

Where a company is established in more than one EU Member State, all its European data processing activities will be controlled by a supervisory authority acting as a single contact point. Another impact on French companies will be the introduction of a joint liability regime when several companies implement the same processing of personal data.

One of the main developments relates to the territorial scope. From now on, even companies that do not have any establishment or processing means within the European Union will be subject to the European regulation on data protection.

While the European Court of Justice has asserted the strict application of Directive 95/46/EC to non-European Union companies[20], the proposed regulation demonstrates the European Union's intention to reinforce the privacy protection of its citizens.

INDIVIDUAL AND COLLECTIVE WORK RELATIONS

By David Jonin, Aurélien Boulanger & Alain Coeuret

New timeframes for the consultation of staff representative bodies

Over the last few years, the operation of staff representative bodies within companies has given rise to major legislative reforms, the last one dating back to 14 June 2013, itself ensuing from the national multi-industry agreement of 11 January 2013. The main objective of this reform was to provide a structured framework for the staff representative information and consultation procedures.

Concomitantly to this new regulation, whereby, following expiry of the timeframe set by the collective bargaining agreement or the regulation, the works council shall be deemed to have given a negative opinion regarding the management's project, the major decree of 27 December 2013 sets the timetable for delivery of the various experts' reports.

In this respect, new Article R.2323-1-1 of the French Labour Code (paragraph 2) provides that the basic works council consultation timeframe (one month) is extended to two months where an expert is appointed. It would seem opportune to ponder on whether or not it is valid to apply this doubled timeframe to all cases where an expert is appointed, including where the works council appoints an expert that it finances with its own budget, within the meaning of Article L.2325-41 of said Code. In the latter case, the works council is not required to justify its decision to appoint an expert; however, the discretionary nature thereof could incite some to make use of this legal provision with the sole aim of purposely delaying the process.

[20] CJEU 13 May 2014, *Google Spain*, C-131/12

Judicial cancellation of employment contracts: Innovative rivalry between the legislator and the courts

In two decisions rendered on 12 June 2014, the Labour Division of the Court of Cassation ruled that henceforth a unilateral modification of the contractual remuneration without any impact on the amount of salary received or that has led only to a slight decrease in pay will no longer impede the continuation of the employment contract. As a result, the judicial cancellation thereof or the employee's legal cognizance of the termination thereof – these two means of termination being governed by the same requirements – will no longer be possible.

Parliament recently adopted a draft bill that provides that in the event of a legal action before the Employment Tribunal on the basis of a legal cognizance of termination, the case shall directly be brought before the trial board, which will have one month to rule on the matter. Currently, while the parties await the Tribunal's decision, which can stretch out over a period of more than two years, the employee cannot in principle claim unemployment benefits.

In order to offset such a situation, the preliminary conciliation phase is therefore removed (as is the case with legal actions for the reclassification of fixed-term employment contracts or temporary worker contracts, where the solution has recently been extended to internship agreements).

It can legitimately be feared that this simplistic rule will incite employees to mistakenly believe that this now paves an easy path for them to prevail over their employer, but more importantly, there is a real risk of ineffectiveness that threatens the solution thus adopted, owing to the difficulty all too familiar to Employment Tribunals of having to handle summary applications within the time allowed.

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