
French View of Sustainable Work in a Context of Work Transformations Discussed as a Part of Social Dialogue

Céline Teyssier*

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Abstract

This contribution aims to explore the presence of sustainable work in the collective bargaining as a new field of negotiation and to identify the conditions and means necessary for a fruitful social dialogue. Putting sustainable work on the agenda of companies contribute to a greater visibility and practical implementation of the concept, in a context of transformations of the world of work.

Keywords: Sustainable work; Collective bargaining; Social dialogue.

1. Introduction.

The world of work is facing many changes. Some of these, such as the digitalisation of work, are already underway, giving rise to new forms of work, new ways of work organisation, changing working conditions and almost systematically giving rise to as many hopes for a better quality of life and promises of increased productivity as risks in terms of health in the workplace. Others, such as climate change, are still to come and raise new questions about greening enterprises,¹ both in terms of safety and health in the workplace and the just transition. Finally, all these questions relate to the overall issue of social justice.

In such a context, the question of sustainable work is at the heart of the issues surrounding worker protection. The concept of sustainable work emerged from an international

* Researcher in Labour Law, Center of documentation and European research (Center of excellence Jean Monet), University of Pau and Pays de l'Adour, France. This essay has been submitted to a double-blind peer-review process.

¹ ILO, *Greening Enterprises: Transforming processes and workplaces*, 2022, <https://www.ilo.org/publications/major-publications/greening-enterprises-transforming-processes-and-workplaces>, accessed 11 Dec. 2023.

collaborative research program.² Starting from the observation that increasing work intensity has major consequences at individual, organizational and societal levels, the researchers explored the development of sustainable work system as a response to intensive work system defining the latter as a system unable “*to function in its environment and to achieve its economic or operational goals*”,³ and setting out the operating principles of such a system, aimed at “*the regeneration of the resources it utilised – human, social, material and natural*”.⁴ In other terms, a sustainable work system is considered from the point of view of preserving all resources, whatever they may be, in order to avoid depleting them.

Following on this initial research, sustainable work has also been approached from a sociological point of view. Sociology has looked at issues of work intensity in relation to the cognitive resources available to workers from a sustainable work perspective. Sociological researchers have identified factors that determine the sustainability of work. They emphasise health, the preservation of which is key factor for a lasting career path, integration into the work collective and the organisation of work, the more or less restrictive dimension of which sets the limits within which the sustainability of work can be constructed.⁵

In addition, sustainable work is a key instrument for integrating environmental issue into labour law. Historically, the links between the environment and labour have not been obvious. According to Michel Despax, “social and environmental concerns were not designed to meet, but to oppose or at least to ignore each other”.⁶ Even today, the European Agency for Safety and Health at Work (EU-OSHA) has highlighted the contradictions between environmental goals and workers health and safety in a context of the working conditions of waste sorters⁷. However, labour law researchers are increasingly discussing the fact that labour law can play a role in environmental issues.

From these points of view, in this contribution, sustainability, is approached in two dimensions, the first looking at the factors needed to achieve it, and the second considering it in relation to environmental issues at work.

All these aspects are likely to be of concern to workers’ representatives. In the past, collective dynamics of work have often played a strategic role in major evolutions in labour law. In France, over the course of labour law reforms, collective bargaining has come to prevail in many areas. In the same perspective, social partners had concluded several national interprofessional agreement (NIA) – in particular one on occupational health⁸ and one on climate change⁹ – that can be linked to the theme of sustainable work.

In this context, the aim of this contribution is to examine how social dialogue can take up the issue of sustainable work in response to the challenge of digital and environmental

² Docherty P., Kira M., Shani R., *Creating Sustainable Work Systems*, Routledge, London, 2002, 2007.

³ Docherty P., Kira M., Shani R., *ibid*, 3.

⁴ Docherty P., Kira M., Shani R., *ibid*, 4.

⁵ Périlleux T., Vendramin P., *Le travail est-il devenu insoutenable ?*, in *Sociétés en changement*, 1, 2017.

⁶ Despax M., *Droit du travail et droit de l’environnement*, in *Droit et ville*, 37, 1994, 9.

⁷ EU-OSHA, *Workers’ safety and health in green jobs*, 2023, in Béguin P., Pueyo V., Casse C. (eds.), *Réflexions sur les liens entre le travail humain et le développement durable*, in *Revue de Droit du Travail*, 2021, 306.

⁸ NIA pour une prévention renforcée et une offre renouvelée en matière de santé au travail et conditions de travail, adopted 9 Dec. 2020.

⁹ NIA relatif à la transition écologique et au dialogue social, adopted 11 April 2023.

transformation and its impact on working conditions and organization, in order to turn it into a new field of negotiation.

This study opens the way to thinking about organisation and working conditions in a context of technological and climate change. To this end, the first point of the contribution focuses attention on sustainable work that could constitute a field of negotiation (I). The second part of the contribution consists in reflecting on the responsibilities of workers' representatives and how they could take on this area of negotiation (II).

2. Sustainable work as a field of negotiation in the context of digital transition and climate change.

Defined as work that allows resources to be regenerated, sustainable work raises questions related to the conditions needed to guarantee this regeneration. Among the areas of negotiation, are measures to ensure that work is bearable, including occupational health, working conditions and working organisation. From this perspective, sustainable work could constitute a key element in thinking about work in a systemic approach (1.1).

Another dimension concerns the trend of corporate greening. It is admitted that companies have a crucial role to play in climate change. Indeed, the ILO report on *Greening Enterprises 2022* states that “for many enterprises and workers, the greening of workplaces can play a meaningful role in reducing carbon emissions”.¹⁰ Obviously, the production of green goods or services and the greener production process can reduce impact on the natural environment. These efforts to make the workplace greener, the emphasis on sustainable commuting, energy and waste management, have an impact on jobs. These new issues mean the need to reflect on how to maintain professional skills that enable people to stay at work and often to stay at work for longer. They must constitute topics that enlarge the traditional areas of negotiation (1.2).

2.1. Sustainable work: a field of negotiation based on a holistic approach.

Before looking at sustainable work as a field of negotiation, it is necessary to examine the content of sustainability as a holistic approach. According to the SALTA research project, sustainable work means allowing resources to regenerate. It targets the organisation and working conditions whose intensive rhythms deplete resources and damage to health. This approach emphasises occupational health policy.

From the sociologic perspective, preserving occupational health is a crucial element in enabling sustainability at work. In a research report, Gollac, Guyot and Volkoff¹¹ identify several occupational health issues that can be related to sustainable work. The results of their study show that an extensive approach to “sustainability for health” enable to combine two

¹⁰ ILO, nt. (1).

¹¹ Gollac M., Guyot S., Volkoff S., *À propos du “travail soutenable”*, in *Centre d'études de l'emploi*, 48, 2008, 8, <https://www.vie-publique.fr/files/rapport/pdf/084000571.pdf>, accessed 11 Dec. 2023.

dimensions, one negative, referring to what is not sustainable, and the other positive, referring to what could be done to promote sustainable work.

In the first dimension, the negative one, sustainable work can be a standard below which workers' health is threatened taking into account unbearable working conditions. In this regard, it refers to working hours, working postures, professional risks, stress, or more generally arduousness. In addition, it allows to take into account the digital transformation of work, which is often a factor in the intensification of working rhythms. In the same way, climate change will have a major impact on working conditions in particular with high temperatures challenging the protection of workers. In this sense, thinking about working conditions from a sustainable perspective helps to place the reflection in a global context of digital and climate change.

However, improving working conditions is only one aspect of occupational health. In the second dimension, the positive one, sustainable work in terms of occupational health is also work that is organised in such a way that people enable to exercise their know-how and develop their skills. In other words, it is not just only about avoiding the exhaustion of resources, but also about allowing them to flourish. From this dual perspective, sustainable work informs the nature of the preventive measures to be taken and shapes the company's occupational health policy.

From the European Union angle, the sustainable work issue can respond to the challenge of the promoting active ageing. According to EU-27 working-age population trends, "the age group 55-64 years will expand by about 16,2% between 2010 and 2030".¹² In response to this increase, starting with the European Year of Active Ageing 2012, UE has put in place a strategy to promote active ageing in the workplace. Active ageing means "working longer, retiring later and staying active after retirement"¹³. On the occasion of European Year of Active Ageing 2012, UE adopted guiding principles on the theme.¹⁴ Among the principles cited, the declaration highlights that of "promoting working conditions and environments that safeguard the health and well-being of workers and thus ensure their lifelong employability". In other words, the promotion of active ageing imposes taking measures upstream to ensure health and safety at work, combined with bearable working conditions.

The European Union Occupational Safety and Health Agency (EU-OSHA) is also researching how to ensure sustainable work over the life course. According to EU-OSHA "sustainable work over the life course means that working and living conditions are such that they support people in engaging and remaining in work throughout an extended working life".¹⁵ To achieve this goal, a report coordinated by EU-OSHA notes that this concept should be used in a broader framework to provide a holistic approach, based on interactive

¹² Ilmarinen J., *Promoting active ageing in the workplace*, UE-OSHA, 2012:

https://osha.europa.eu/sites/default/files/active-ageing-in-the-workplace_en.pdf, accessed 11 Dec. 2023.

¹³ Jolivet A., *La politique européenne en faveur du vieillissement actif*, in *Retraite et société*, 36, 2002, 137.

¹⁴ Council of the European Union, *Council Declaration on the European Year for active ageing and solidarity between generations: the way forward*, 17468/12, 7 Dec. 2012.

¹⁵ Eurofound, *Sustainable work over the life course: Concept paper*, 2015, 2:

<https://www.eurofound.europa.eu/en/publications/2015/sustainable-work-over-life-course-concept-paper>, accessed 15 Dec. 2023.

aspects coming from inside and outside the workplace.¹⁶ Adding that working conditions are clearly influenced by occupational health policy, the study notices that as part of a holistic strategy “sustainable work consists of [...] ensuring work does not damage physical or mental health across the life course [...]”.¹⁷ In order to put this holistic framework in place, the report stresses the need to mobilise public and private stakeholders through joint work.

Several trends emerge from these different approaches. Firstly, it clearly appears that prevention of occupational health and promotion of bearable working conditions are linked and need to be considered in a holistic scheme. Secondly, this link is causal in nature. Working in harmful conditions creates risks of deteriorating health. Thus, even if bearable working conditions are not the only factor in occupational health prevention, they do play an important role.

Is sustainable work – in all its dimensions – part of the social dialogue, at the present time? To date in France, sustainable work as such has not been covered by negotiations, but it can be taken into account in several themes of negotiation. In the field of occupational health and working conditions, the initial focus was placed on suffering at work, with the theme of well-being emerging later. From the 1990s onwards, the issue of suffering at work emerged in particular with the studies of Christophe Dejours¹⁸ and Marie-Françoise Hirigoyen.¹⁹ In labour law, suffering gave rise to several legislative measures to fight against toxic behaviour²⁰ combined with the adoption of two National Interprofessional Agreements (NIA), one on stress at work,²¹ and one other on harassment and violence at work²².

From 2010s onwards, the discourse on suffering shifted towards a more positive repertoire of well-being at work. This change in perspective was accompanied by the adoption of the NIA on a policy to improve quality of life at work and professional equality. In the NIA, quality of life defined by reference to well-being means

a feeling of well-being at work perceived collectively and individually, encompassing the atmosphere, the company culture, the interest of the work, the working conditions, the feeling of involvement, the degree of autonomy and accountability, equality, a right to make mistakes granted to everyone, recognition and appreciation of the work done.

In order to implement this list as long as it is variable in scope, the NIA emphasises the systemic approach combining the enforcement of working and living conditions and the collective performance of the company.

Following the NIA, the law of 17 August 2017 made this a mandatory field of collective bargaining. Article L.2242-17 of the French Labour Code lists a number of subjects covered

¹⁶ EU-OSHA, Cedefop, Eurofound and EIGE, *Towards age-friendly work in Europe: a life-course perspective on work and ageing from EU agencies*, 2017, 38, <https://www.eurofound.europa.eu/en/publications/2017/towards-age-friendly-work-europe-life-course-perspective-work-and-ageing-eu>, accessed 15 Dec. 2023.

¹⁷ EU-OSHA, Cedefop, Eurofound and EIGE, *ibid.*

¹⁸ Dejours C., *Souffrance en France, La banalisation de l'injustice sociale*, Seuil, Paris, 1998.

¹⁹ Hirigoyen M.-F., *Le harcèlement moral: la violence perverse au quotidien*, Syros, Paris, 1998.

²⁰ Article L.1152-1 of French Labour Code.

²¹ NIA sur le stress au travail, adopted 2 July 2008, extended, JORF of 6 May 2009.

²² NIA sur le harcèlement et a violence au travail, adopted 26 March 2010, extended, JORF of 31 July 2010.

by the topic of quality of life at work and professional equality between women and men, which are mainly characterized by their heterogeneity. The content of area of negotiation is as varied as the balance between personal and private life, the right to disconnect, the integration of disabled workers and social protection schemes. In the midst of all these issues, it is difficult to find a common thread.

However, the study of the content of company agreements linked to this mandatory field of negotiation was disappointing in terms of taking into account of the quality of life at work in a systemic approach.²³

More recently, the NIA of 20 December 2020 on occupational health and working conditions broadened the scope of quality of life at work to include working conditions. In line with an inclusive perspective, the NIA places the prevention of occupational health at the core of social dialogue. From the preamble, the agreement states that “the quality of life at work, of which health and safety at work are an aspect, is a factor in the health and personal development of workers”. In addition, the text enriches the scope of the quality of life by including the quality of working conditions.

The law of 2 August 2021 on the enforcement of occupational health prevention²⁴ reiterates the provisions of the NIA. In this sense, the law creates a new article L.2242-19-1 of the French Labour Code, which provides that “the negotiation can also cover the quality of working conditions, in particular health and safety and work and the prevention of occupational risks”. The text adds that “it can rely on actors in the prevention of occupational risks”. The entire text is formulated in optional terms. Thus, even though, the social partners are encouraged to take into account such an issue, this new topic of negotiation is not binding. Under these conditions, the extension of social dialogue to occupational health and working conditions appears to be rather symbolic.²⁵

This rapid mapping of social dialogue demonstrates that sustainable work appears as an underlying theme of collective bargaining. However, a number of weaknesses have to be underlined. On the one hand, the topic of quality of life at work, as set out by Article L.2242-17 of the French Labour Code is so broad in scope that it appears to be a catch-all concept that is difficult to implement effectively. On the other hand, the attempt to promote a holistic approach remains modest.

2.2. Greening the world of work: a part of sustainable work integrated into social dialogue.

Long neglected by labour law, the environment and climate change can no longer be ignored, as the consequences that are already coming or already underway, will have

²³ ANACT, *Cap sur l'avenir, analyse de la dynamique de l'accord national interprofessionnel – Qualité de vie au travail – Égalité professionnelle du 19 juin 2013*, 21 Feb. 2019, 14; Héas F., *La négociation d'entreprise sur la qualité de vie au travail*, in *Droit Social*, 2019, 907.

²⁴ Loi n° 2021-1018 du 2 Août 2021 visant à renforcer la prévention en matière de santé au travail et à moderniser les services de prévention et de santé au travail, JORF du 3 Août 2021.

²⁵ Véricel M., *La place de la représentation du personnel et du dialogue social en matière de santé au travail et de prévention des risques professionnels, après les réformes de 2020-2021*, in *Droit Social*, 2021, 904.

repercussions on the entire working environment. In the sense, “labour law can only be considered through the prism of work, i.e. in context. Reality precedes it and, to some extent, influences or even determines it”.²⁶ In a contrary sense, it is impossible to avoid thinking about the impact of work as a human activity involved in climate deregulation. This issue invites to reflect on how work can participate to climate transition. In such a context, sustainable work can be thought in the perspective of green transformation of world of work and constitute a new field of negotiation.

The trend towards greening the world of work can be thought of in two dimensions. On the one hand, greening enterprises and jobs means introducing more energy and resource efficient practices, avoiding pollution and managing natural resources sustainably. In this sense, the target is, by the preservation of resources, minimize the footprint of the work. On the other hand, climate change and environmental transition have repercussions on jobs that can be both negative and positive. Some of them will result in disappearance of jobs, and some other will create new jobs for example in the renewable energy sector.

In all cases, promoting a green transformation of the world of work requires policies engaging companies to adopt sustainable practices and helping workers to adapt skills towards green job.²⁷ In this perspective, the coverage of expenses related to sustainable mobility is an example of the mainstreaming of environmental concerns. The decree of 9 May 2020 on the “sustainable mobility package” sets out the conditions under which the employer must cover the costs incurred by employees traveling between home and workplace. In the choice of means of transport eligible for the flat-rate payment, the emphasis placed on car-pooling and the reimbursement of electricity costs for electric vehicles or bicycles demonstrate the environmental impact of this measure. However, even though only certain means of mobility are eligible, the employer remains free to put this measure in place.

Promoting certain forms of mobility and certain transport choices through a policy of financial incentives is one aspect of the fight to reduce carbon footprint. Choices in terms of sustainable organisation of work is another part of the target. Among all the options for greening the organization of work, remote working is often considered as a solution helping to reduce home-work mobility. Much earlier, even before remote working became a common practice favoured by Pandemic Covid-19, from the 1980s onwards, remote working appeared in public land planning policies as a way of relieving urban congestion and opening up isolated territories²⁸ Even though for employees, remote working often symbolises more as a means of achieving a better work-live balance,²⁹ it remains an opportunity for sustainable mobility both in terms of reducing worker fatigue and environmental pollution.

²⁶ Géa F., *Droit du travail et écologie*, in *Revue de Droit du Travail*, 2024, 17.

²⁷ Van Der Ree K., *Prompting Green jobs: decent work in the transition to low-carbo, green economies*, in *Revue internationale de politique de développement*, 11, 2019, <http://journals.openedition.org/poldev/3107>, accessed 5 Jan. 2024.

²⁸ Gastambide J., *Les politiques d'aménagement du territoire: les technologies de l'information et de la communication, Évolutions de la place et des rôles des techniques de communication dans l'aménagement du territoire, 1947 – 2005*, Thèse en science politique, Université Panthéon-Sorbonne, 2008, 123, www.tel.archives-ouvertes.fr, accessed 5 Jan. 2024.

²⁹ Eurofound, *Living and working in Europe 2021*, 2022, 33: <https://www.eurofound.europa.eu/en/publications/2022/living-and-working-europe-2021>, accessed 5 Jan. 2024.

The greening of the world of work also has to meet of a more sober economy in accordance with ecological imperatives.³⁰ Obviously, this change will have an impact on jobs. Thus, staying in work during this period of transition will mean that workers will have to make major adjustments, and will require policies and resources that enable them to maintain and develop their skills while taking into account environment changes.

Beyond all the measures and actions to promote the green transformation in a sustainable manner, the ILO, in its *Guidelines for a just transition towards environmentally sustainable economies and societies for all* affirms that “sustainable development is only possible with active engagement of the world of work” and adds that

governments, employers and workers are not passive bystanders, but rather agents of change, who are able to develop new ways of working that safeguard the environment for present and future generations, eradicate poverty and promote social justice by fostering sustainable enterprises and creating decent work for all³¹.

In the Guidelines, the ILO emphasises the relationship between environment and work and underlines the role that can be played by the stakeholders in the world of work such as workers and employers.

As an agent of change, the worker has been invested by the French legislator with an environmental monitoring mission. Indeed, the law of 16 April 2013 instituted the environmental alert right. By vertu to Article L.4133-1 of the French Labour Code, “workers shall immediately alert their employer if they believe, in good faith, that the products or manufacturing processes used or implemented by the company pose a serious risk to public health or the environment”. In other words, workers are entrusted with the defence of environmental interests that go beyond the workplace.

The French legislator has also taken measures to encourage companies to take environmental issues into account. With regard to the content of company’s social interest of, Article 1833 of the French Civil Code adds the environmental issues. According to the text, “the company must be managed in respect of its social interest, taking into account social and environmental challenges of its activity”. With this addition, the environmental dimension becomes part of corporate governance.

As green transformation poses challenges for both workers and employers, it seems quite logical that it should concerns social dialogue. The ILO report on *Greening Enterprises 2022* notes that “for many enterprises and workers, the greening of workplaces can play a meaningful role in reducing carbon emissions”.³² To green their workplace, sustainable commuting, energy and waste management, working organisation, sustainable food are topics that enlarge the traditional areas of negotiation.

³⁰ Gondard-Lalanne C., Tomé-Gertheinrichs E., *Le travail en question*, Conseil économique social et environnemental, 2023, 7.

³¹ ILO, *The Guidelines for a just transition towards environmentally sustainable economies and societies for all*, 2015, par. 9, <https://www.ilo.org/publications/guidelines-just-transition-towards-environmentally-sustainable-economies>, accessed 10 Jan. 2024.

³² ILO, nt. (1).

In this optic of broadening the scope of traditional negotiations, the “Climate and Resilience” law of 22 August 2021³³ adds an obligation to take into account of the challenges of the ecological transition to mandatory collective negotiations on forecasted employment management³⁴.

Beside law, the social partners adopted the NIA of 11 April 2023 on the ecological transition and social dialogue. The text stresses that companies have a direct interest in the green transition, both because “they are in a position to find solutions and because their future prospects depend on it”. The NIA notes the crucial involvement of employees and their representatives in actions to promote the ecological transition.

Its goal is to promote social dialogue as a tool for envisaging actions geared towards the ecological transition of companies and adapted to its situation. In order to identify levers for change, the agreement advises social dialogue to follow a method based on two points. Before engaging actions, the first step aims to draw an assessment of the company’s situation, then the second is to establish a hierarchy of priorities.

The NIA does not contain any major innovations in terms of scope of negotiations linked to the environmental transition. It mainly reproduces the provisions of the Labour Code in this area (financial contribution to sustainable mobility, remote working, right to environmental alert). The innovation lies not in this, but in the fact that each point of the agreement is illustrated by a long list of good practices, or examples. Finally, this NIA looks like a set of guidelines for social dialogue with a view to environmental transition.

The exploration of collective agreements gives a trend to know whether sustainable work is taken into account through social dialogue. From the *Legifrance* database, the public service for the dissemination of law, two types of agreement deserve particular attention: those containing the term “sustainable work” in the text and those on the topic of ecological transition.

The mapping of agreements containing the term “sustainable work” mainly enables the agreements to be subdivided into three parts. The first part is composed of agreements relating to remote work. The remote work is then presented as a sustainable working organisation³⁵. A second part refers to agreements on life quality at work. In the light of the study of the agreements, it appears that some of these agreements place the life quality at sustainable work under the objective of improvement and sustainable performance which should contribute to a better balance between professional and personal life.³⁶ Others mention life quality at sustainable work to promote respectful behaviour at work.³⁷ In both cases, the mention of sustainable work refers to principles without concrete practical action.

³³ Loi n° 2021-1104 du 22 Août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, JORF du 24 Août 2021.

³⁴ Article L.2241-12 and L.2242-20 French Labour Code.

³⁵ In particular: Enterprise agreement on remote work Thalys France, adopted 6 Dec. 2021: <https://www.legifrance.gouv.fr>, accessed 6 Dec. 2023.

³⁶ In particular: Enterprise agreement on life quality at work Fondation Franco-Britannique de Sillery, adopted 25 June 2019, <https://www.legifrance.gouv.fr>, accessed 6 Dec. 2023.

³⁷ In particular: Enterprise agreement on life quality at work SGF, adopted 21 Dec. 2017, <https://www.legifrance.gouv.fr>, accessed 6 Dec. 2023.

In the last part, sustainable work is mobilised in working time agreement³⁸. In this situation, sustainable work is used to mean something that takes place over a long period of time.

With regard to the topic of ecological transition, the mapping of agreements follows the legal provisions by showing two types of agreements, one on sustainable mobility and one on forecasted employment management. Those on sustainable mobility don't call any observation as they mainly organize the employers' financial participation in the use of sustainable transport. In contrast, those concerning forecasted employment management deserve to be studied. They address the issue of ecological transition on three levels. In some cases, the agreements only state that the company is aware of the ecological transition challenges in terms of employment and professional skills and affirm the wish to develop solutions that accelerate the environmental transition of customers and business sectors.³⁹

Some others focus their attention on greening activities. They affirm their ambition to reduce their carbon footprint packaging, improving waste management. Certain agreements take commitments to eliminate non-recyclable coffee and tea cups, or to ask managers to raise awareness among teams about limiting unnecessary printing, printing on both sides of page and printing in black and white.⁴⁰ While it is understandable that these commitments are intended to make activity greener, it is difficult not to find them surprising that such provisions are included in collective agreements.

Others finally take measures to adapt skills and jobs in the context of ecological transition. Sometimes, with many details, they precise the method to assess the need. The ecological transition is them directly linked to jobs. For instance, an agreement of a company whose activity is restauration provides precisely that achieving ecological transition imposes training on eco-driving, vegetarian cooking, limitation of food waste.

As is often the case in collective bargaining, the content of the agreements varies widely. On the one hand, it reflects the needs of each company, which is the purpose of a collective agreement. On the other hand, it can be far away from the objective of the law. It often depends a lot on the level of awareness of the social partners.

In addition to the national level, the European and international levels deserve attention. Some international company agreements contain social and environmental commitments⁴¹ which rise the question of sustainable work in the background. Following this logic, certain agreements provide for the establishment of an observatory to collect and to analyse data relating to health, safety and the environment.⁴²

To sum up the first part of this contribution, it results from the study that sustainable work is a concept that can be used by social partners as a guideline to harmonise social

³⁸ In particular: Enterprise agreement on working time Les Sources du Chéry, adopted 1 June 2023, <https://www.legifrance.gouv.fr>, accessed 7 Dec. 2023.

³⁹ In particular: Enterprise agreement on forecasted employment management SICRA, adopted 2 March 2022, <https://www.legifrance.gouv.fr>, accessed 7 Dec. 2023.

⁴⁰ In particular: Enterprise agreement on forecasted employment management APLIX SA, adopted 27 July 2022, <https://www.legifrance.gouv.fr>, accessed 7 Dec. 2023.

⁴¹ Héas F., *Le droit du travail est-il ouvert à la question environnementale?*, in *Revue juridique de l'environnement*, 20, 2020, 109.

⁴² Giovannone M., *Perspectives de régulation des liens entre travail et environnement dans l'UE et en Italie*, in *Revue de droit comparé du travail et de la sécurité sociale*, 1, 2021, 58.

dialogue on occupational health and working conditions on the one hand and to extend new area of negotiation on this topic, on the other hand. However, even though sustainable work emerges as an underlying topic of collective bargaining, in practice it remains modest.

Beside collective bargaining, representatives of workers have a role to play as consultative bodies. The question then arises as to the extent to which sustainable work is addressed by them.

3. Sustainability taken into account by social representative.

While social dialogue is often seen as an appropriate room for discussing workers' issues and allowing their needs to be expressed, a contradiction exists between the French legislator's desire to put it at the forefront and, at the same time, to reduce the size of the institutions of representatives by merging them from three bodies to one (2.1).

Within the company, the social partners must consider their role in the context of the transformation of the world of work. This transformation, which is mainly placed at the digital and environmental levels, may have an impact on occupational health and working conditions. In this perspective, sustainable work makes it possible to tackle the digital and environmental challenges from a certain angle, that of protecting workers. Then, the question arises as to the extent to which sustainable work is taken into account (2.2). It seems clear that this question calls for a reflection on the additional means needed to succeed in taking into account sustainable work as a new dimension of negotiation (2.3).

3.1. The merging of the institutions of representatives.

While collective bargaining has an essential place in the French labour law, at the same time, a rationalist purpose has led to a new organisation of workers' representatives. This has led to a transition from tripartite to unitary representation called the Social and Economic Committee (CSE).

Prior the reform introduced by the ordinance of 22 September 2017,⁴³ worker representatives consisted of the workers' delegate⁴⁴ established by the law of 16 April 1946,⁴⁵ the works council⁴⁶ set up by the ordinance of 22 February 1945⁴⁷ and the Health, Safety and Working Conditions Committee (CHSCT)⁴⁸ initiated by the law of 23 December 1982.⁴⁹ The

⁴³ Ordonnance n° 2017-1386 du 22 Septembre 2017 relative à la nouvelle organisation du dialogue social et économique dans l'entreprise et favorisant l'exercice et la valorisation des responsabilités syndicales, JORF du 23 Septembre 2017.

⁴⁴ In french: délégué du personnel.

⁴⁵ Loi n° 46-730 du 16 avril 1946 fixant le statut des délégués du personnel dans les entreprises, JORF du 17 Avril 1946.

⁴⁶ In french: comité d'entreprise

⁴⁷ Ordonnance n° 45-280 du 22 Février 1945 instituant des comités d'entreprises, JORF du 23 Février 1945.

⁴⁸ In french: comité hygiène sécurité et conditions de travail.

⁴⁹ Loi n° 82-1097 du 23 Décembre 1982, 4^e loi Auroux relative aux comités d'hygiène, de sécurité et des conditions de travail, JORF du 26 Décembre 1982.

mission of workers' delegate mainly was to ensure that labour standards were fulfilled; works council had management powers in social matters and consultive powers in economic matters; the CHSCT was responsible for monitoring and advising on safety, health and working conditions.

One of the purposes of the reform was the despecialisation of responsibilities in order to promote a global approach to labour issues within the same body. This ideal view, whose interest is underlined by certain authors,⁵⁰ is also feared by others who, on the contrary, are worried that certain dimensions of the same problem will be eclipsed for the benefit of others.⁵¹ This fear particularly concerns health, safety and working conditions, which before the reform, were dealt with by the *ad hoc* CHSCT. The existence of the CHSCT made it possible to dissociate the economic aspects from those falling within its responsibilities. However, on the contrary, some authors⁵² emphasise that the merger of representative institutions has allowed health issues to be placed on the same level as the strategic orientations of the company.

Surveys on the social dialogue after the reform confirm that “this phenomenon of concentration of bodies often leads to overcrowding, lengthening and increasing the number of meetings without this improving the overall coherence of social dialogue”.⁵³ “According to the Syndex/IFOP barometer on the state of the social dialogue in 2022, 42% of the workers' representatives questioned pointed out that meeting agendas are too full and that subjects are only dealt with superficially”.⁵⁴

3.2. Sustainable work in mandatory information and consultations.

At company level, the mandatory information and consultations provided by the French Labour Code are numerous, varied and depend on the size of the company. In companies with more than 11 employees and less than 50 employees, the role of the workers' representatives is structured around three missions. By virtue to Article L.2312-5 of the French Labour Code, their first mission consists of submitting to the employer individual or collective complaints relating to wages or the application of the Labour Code or collective agreements. The second one is to contribute to the promotion of health and safety at work and the improvement of working conditions. The third enables them to carry out investigations into accidents at work. In companies of this size, sustainable work can obviously be evoked in the framework of one of the three missions, but the Labour Code does not provide any consultation.

⁵⁰ Lanouzière H., Odoul-Asorey I., Cochet F., *La fusion des institutions représentatives du personnel porte-t-elle atteinte à leur capacité d'intervenir en matière de santé et sécurité au travail*, in *Revue de Droit du Travail*, 2017, 691.

⁵¹ Loiseau G., *Le comité social et économique*, in *Droit Social*, 2017, 1044; Verkindt P.-Y., *La bête noire est morte. À propos de la Commission santé sécurité et conditions de travail*, in *Semaine Social Lamy*, 1790, 2017, 67.

⁵² Lanouzière H., Odoul-Asorey I., Cochet F., nt. (50).

⁵³ Naton J.-F., *Travail et santé-environnement: quels défis à relever face aux dérèglements climatiques ?*, Conseil économique social et environnemental, 2023, 94.

⁵⁴ Naton J.-F., *ibid.*

The mandatory information and consultations concern companies employing more than 50 employees. They are numerous. Once a year, the CSE is informed and consulted on the company's strategic orientations, financial and economic situation, social policy and working conditions.⁵⁵ In addition, according to Article L2312-8 (II) of the French Labour Code, the CSE is informed and consulted on questions concerning the organisation, management and general running of the company, in particular on measures likely to affect the size of the workforce, changes to the economic or legal organization of company, working conditions, introduction of new technologies, any major modification of health and safety conditions or working conditions, and measures taken with view to facilitating the entry or re-entry of people injured in the course of their work. To complete this list, and despite the weaknesses of the new organization pointed out by several surveys, the French Climate and Resilience law adopted in 2021 extended the responsibilities of workers' representatives to include environmental issues for companies employing more than 50 workers. For each measure on which the CSE is informed and consulted, it also must be informed and consulted on environmental impact of those measures. With this additional dimension, the responsibilities of workers' representatives form a triptych: economy, health, environment. To put an end to recurring consultations, in the field of health, the CSE analyses the occupational risks to which workers, particularly pregnant women, may be exposed, and the effects of exposure to occupational risk factor listed by the Labour Code.⁵⁶

Information of CSE is provided by a database which is supplied by the employer, and the content of which is detailed in the Labour Code.⁵⁷ It contains indicators on fields as varied as employee and management wages, cultural activities, working time, professional gender equality. Since the law of 22 August 2021 on combating climate change and strengthening resilience to its effects, the database contains the environmental consequences of the company's activity. The information mentions how the company is organized to take into account any environmental issue, the prevention and management of waste production, the sustainable use of resources such as water consumption and energy consumption, the greenhouse gas emissions balance sheet.

In the absence of a company agreement concluded by the social partners defining the content, frequency and procedures for recurrent consultations of CSE, as well as the list and content of the information required for these consultations, the mandatory information are enforced. In addition to the database, the employer is required to provide a written annual report summarizing the general situation regarding health, safety and working conditions in the company and the actions taken during the past year in these areas, as well as an annual plan for the prevention of occupational risk and the improvement of working conditions.

On an *ad hoc* basis, the CSE is informed and consulted when an event can affect the company such as economic and financial difficulties or mass redundancies. In addition, prior to its implementation, the CSE is informed of the use of any recruitment assistance methods or any automated personnel management processes. Prior to the decision, it is also informed,

⁵⁵ Article L.2312-17 French Labour Code.

⁵⁶ Article L.2312-9 French Labour Code.

⁵⁷ Article L.2312-36 French Labour Code.

but this time also consulted about the means based on data processing used to monitor employees' activities.

In that framework of numerous mandatory information and consultations, to what extent are digital and environmental transformations, which affect jobs, organisation and working conditions and provoke consequences on professional skills and occupational health, taken into account in the social dialogue? Beside climate change and environmental impact, the digital transformation has a major impact on working relationship. Ultimately, these two aspects lead back to sustainable work.

The digitalisation of the company and its effects are still ongoing. After computers, smartphones and the internet, collaborative robots, exoskeletons, connected objects, artificial intelligence (AI) form the new age of digital change. To support this process, the European Parliament and the Council adopted a decision (UE) 2022/2481 of 14 December 2022 establishing the Digital Decade Policy Program 2030.⁵⁸ With this decision, the European Union fixes a series of targets among which the digital target of businesses to be achieved is that at least 75% of the Union enterprises have adopted cloud computing services, big data or AI in line with their activities and that more than 90% of EU SMEs reach at least a basic level of digital intensity.⁵⁹

The question of technologic choices in terms of organisation and working conditions is cut across all areas of consultation. It can be addressed at the stage of the company's strategic orientations in particular with regard to their consequences on activity, employment, development of professional skills and the working organization.⁶⁰ It can also be addressed at the level of the annual consultation on the company's economic and financial situation insofar as the Labour Code provides that this consultation also covers the company's research and technological development policy. And obviously it can be discussed during the annual consultation on the company's social policy.

Beyond all these theoretical consultation possibilities, the only consultation provided for by the Labour Code occasionally concerns the phase of introduction a technology in the working relations. Introduction implies change or novelty. While consultation is important at this stage, the issue is not limited to it. The impact of the introduction of a new technology is measured over time and varies according to the extent to which users accept it.

Adding to the occasional consultation, regular consultation enables to monitor the effects on health and working conditions following the introduction of a new technology. In this sense, a report of the Strategies Analyses Center (SAC)⁶¹ sets out recommendations for integrating the consequences of ICTs on working conditions and calls for workers' representatives to be involved in this process. For its part, an EU-OSHA report *Artificial intelligence for worker management*⁶² stressed for the need of a "strong prevention through

⁵⁸ OJEU L 323., 19 December 2022, 9.

⁵⁹ *Ibid.* article. 4, (3), (a), (b).

⁶⁰ Article L. 2312-24 French Labour Code.

⁶¹ Centre d'analyse stratégique, *L'impact des Technologies de l'Information et de la Communication sur les conditions de travail*, in *Rapports & Documents*, 49, 2012, 276.

⁶² EU-OSHA, *Artificial intelligence for worker management: implications for occupational safety and health*, 2022, <https://osha.europa.eu/en/publications/artificial-intelligence-worker-management-implications-occupational-safety-and-health>, accessed 15 Jan. 2024.

design approach”⁶³ when introducing AI work management system. In this perspective, the study recommends integrating a “human-centred” approach based on an effective dialogue between workers, employers, developers. To this approach, the study calls for “ensuring workers’ involvement and participation in all stages of design, development, implementation and assessment of AIWN systems at work”.⁶⁴ The evolving nature of AI system in particular for those based on machine learning requires that they be assessed to ensure that they fulfil human rights throughout the life cycle. In this perspective, a regular assessment should be carried out to ensure that they remain compliant with a “human-centred” approach.

Given to the high level of risk, the involvement of workers’ representatives is crucial, and the scope of their consultations should be broadened. To dialogue on AI, the European social partners’ autonomous framework agreement on digitalisation⁶⁵ proposes a method enabling to take into account the major challenges such as the principle of keeping human control on machine and the respect of human dignity. A just transition based on sustainable work requires a discussion on transformation of work by AI involving all stakeholders. To this end, the European framework agreement constitute an interesting methodologic tool.⁶⁶ However, despite the significant consequences on professional skills, organization and working conditions caused by digital transformation in particular in the field of AI, the involvement of workers’ representatives on this topic through consultations remains modest.

Since of the “Climate and Resilience” law, under general responsibilities, the CSE is informed and consulted about the environmental consequences of the measures taken on questions related on organisation and management of the company.⁶⁷ In addition, at the level of the three recurrent consultations on the strategic orientations of the company, on its economic and financial situation, and on its social policy, the CSE is informed about the environmental issues of the activity of the company.⁶⁸

This measure retakes directly a recommendation of the Citizens’ Climate Convention. This Convention set up in October 2019 by the Economic, Social and Environmental Council at the request of the Prime Minister. Composed by 150 French people have been selected by random, the Convention aims to propose measures to achieve the reduction of greenhouse gas emissions by at least 40% compared with 1990 levels by 2030, while respecting social justice.⁶⁹

The goal of the provision is to encourage companies, both employers and employees, to anticipate the consequences of ecological transition, particularly in terms of changes in jobs and skills.⁷⁰ The legislator has not chosen to institute a specific topic of consultation, but to

⁶³ EU-OSAH, *ibid.*, 5.

⁶⁴ EU-OSAH, *ibid.*

⁶⁵ Signed on 22 of June 2020 by employers’ organizations: BusinessEurope, SMEUUnited, CEEP and by workers’ organization: ETUC.

⁶⁶ Amauger-Lattes M.-C., *Le dialogue social: outil de régulation de l’intelligence artificielle dans l’entreprise*, in *Droit Social*, 2021, 146.

⁶⁷ Article L.2312-8 French Labour Code.

⁶⁸ Article L.2312-17; Article L.2312-22 French Labour Code.

⁶⁹ Convention citoyenne pour le climat, *Les propositions de la Convention Citoyenne pour le Climat*, 2021, <https://propositions.conventioncitoyennepourleclimat.fr>, accessed 20 Nov. 2023.

⁷⁰ Étude d’impact, *Projet de loi portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets*, 2021, 153.

place the environmental question in watermark of each information-consultation. In this sense, the parliamentary report on the law notes that “the cross-cutting impact of the environmental on companies’ activities is now a fact, both in their overall strategy, for which the environmental has become a criteria of performance and attractiveness, and in their social policy, through training and the transformation of jobs”.⁷¹ However, the difference between information and consultation concerning general responsibilities and only information for recurrent consultations creates a blur that is a source of tension.⁷² In the same sense, regarding the lack of definition of the concept of “environmental consequences”, this information, although relevant, risks being subject to contradictory interpretations, which are another source of tension. To mitigate this risk, the NAI of 11 April 2023 on ecological transition and social dialogue lists practical benchmarks to serve as a guide for reflection, such as energy audits and greenhouse gas emissions assessments.

The “Climate and Resilience” law enlarges the social dialogue to the environmental issues. The opening is a first step towards building a bridge between labour and environment. At the same time, it demonstrates that companies cannot remain indifferent to these concerns.

Socially responsible companies are therefore required to take social, environmental and even ethical concerns into account in their actions, which purposes that they enter into dialogue with all stakeholders, i.e. those who are likely to suffer the consequences of their activities.⁷³

Finally, even though there is no historical link between work and environment, climate change imposes its agenda, and it cannot be ignored because as François Ost observes, “the unheard-of idea is emerging that the future may not happen – because of our own choices”.⁷⁴

Taking account of sustainable work in the context of the transformation of the world of work can also be envisaged through the analysis of occupational risks carried out by the CSE as part of its responsibilities.⁷⁵ On the basis of the general principles of prevention, the employer, who has to avoid risks to the safety and health of workers and assess those that cannot be avoided,⁷⁶ carried out this assessment that is recorded in the Single Occupational Risks Assessment Documentary.⁷⁷ Since 2021,⁷⁸ the CSE is consulted on this documentary. With regard to the strengthening of the responsibilities of the CSE in relation to occupational health and risks, in order to take account of all the measures set out by the French Labour Code, it is necessary to combine the reading of two articles. On the one hand, the CSE takes a part to analyse occupational risks (L.2312-9 Labour Code), and on the other hand it is

⁷¹ Cazeneuve J.-R., *Rapport fait au nom de la commission spéciale chargée d'examiner le projet de loi portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets*, 2021, 100.

⁷² Naton J.-F., nt. (53).

⁷³ Dirringer J., *Les voies vers une démocratie sociale et environnementale ou l'illusion procédurale ?*, in *Droit Social*, 2015, 326.

⁷⁴ Ost F., *À quoi sert le droit de l'environnement?*, in Misonne D. (ed.), *À quoi sert le droit de l'environnement? Réalité et spécificité de son apport au droit et à la société*, Bruylant, Bruxelles, 2018, 350, cited in F. GÉA, *Droit du travail et écologie*, in *Revue de Droit du Travail*, 2024, 17.

⁷⁵ Article L.2312-9 French Labour Code.

⁷⁶ Article L.4121-2 French Labour Code.

⁷⁷ L.4121-3-1 French Labour Code.

⁷⁸ Loi n° 2021-1018 du 2 Août 2021 pour renforcer la prévention en santé au travail, JORF du 3 Août 2021.

consulted on the Single Occupational Risks Assessment Documentary (L.4121-3 Labour Code). Those two texts reveal that certain companies are excluded from those measures. Indeed, the consultation of the Single Occupational Risks Assessment Documentary covers all companies with a CSE, which excludes companies employing less than 11 employees, whereas the contribution to the analysis of occupational risks concerns companies with more than 50 employees. The involvement of workers' representatives therefore remains uncertain while the direct involvement of employee is never envisaged.

In addition, the contribution of the analysis targets occupational risks and effects of exposure to the occupational risk factors listed in the Labour Code. Even though the technical and environmental factors are not mentioned in the list, they can be taken into account towards "hostile physical environment", "extreme temperatures" at the environmental level, and towards "certain patterns of work", "repetitive work" at the technical level. However, listing them as such would highlight them. Working with AI raises question at the level of relationship between human-machine; working in the context of climate change raises question of future of humanity. These issues go far beyond the occupational risks' factors listed by Labor Code. However, in the context of transformation of the world of work, taking into account technical and environmental risk factors is a condition to enable sustainable work and seems to be unmissable. This enlargement of occupational risks through technical and environmental risks is an opportunity to strengthen the preventive approach of occupational health and safety (OSH) policy in the perspective underlined by the report of the Economic, Social and Environmental Committee.⁷⁹

Over and above the legal measures and their weaknesses, studies highlight difficulties either because preventive measures are often perceived only from the angle of both mandatory constraint and unproductive costs,⁸⁰ or because numerous employers have not implemented the Single Occupational Risks Assessment Documentary.⁸¹ On this point, it will be interesting to see whether the CES's new responsibilities encourage this practice.

In this perspective, the last part of the contribution aims to reflect on the needed conditions for a fruitful social dialogue.

3.3. Sustainable work in mandatory information and consultations.

In order to ensure that sustainable work issues are taken into account within companies, social dialogue is an instrument which, to be relevant, presupposes certain conditions to be met.

At first, to act as counterweight, the social partners must have the knowledge and skills needed to grasp the issues in all their complexity. Foremost, information is a decisive factor in the social partners' consideration of the sustainable dimension of work. Access to a

⁷⁹ Naton J.-F., nt. (53).

⁸⁰ Hocine M.N., Perozziello A., Jean K., Godon A.-S., Temime L., Dab W., *Measuring the involvement of companies in prevention: setting a conceptual framework*, in *Archives des Maladies Professionnelles et de l'Environnement*, 82, 2021, 565.

⁸¹ Véricel M., nt. (25).

sufficient level of information to make a properly highlighted decision applies to all stakeholders. The information provided by the employer results mainly from the company database. The initial economic and social database (BDES), which emerged from the interprofessional national agreement of 11 January 2013 and was included in the law on securing employment,⁸² has been enlarged with an environmental dimension since the “Climate and Resilience” law. Since then, the database currently known as Economic, Social and Environmental Database (DBESE), contains not only a range of economic and social indicators, but also the environmental consequences of the company’s activity. On environmental issues, the information provided covers three topics. The first one refers to the company’s environmental strategy and must mention how the company is organised to take account of environmental issues. The second is about circular economy, which aims to prevent and manage waste production and the sustainable use of resources such as water and energy consumption, and the last concerns in particular climate change, including indicators related to greenhouse gas emissions.

It is clear that the French legislator aimed to force companies to carry out an analysis of the impact of their activities on the environment. However, even though the database provided a large scope of information, to be relevant, it must be linked to working conditions, occupational risks and employment.

On the contrary to environmental transition envisaged as a specific topic, regarding digital transformation, specific information and its consequences are not included as such. They can only be contained in the background in the annual plan of occupational risks prevention or in material and immaterial investments such as measures concerning the transformation of production methods and their consequences on working conditions.

Environmental and digital transformations are not placed on the same level. While the first one can be perceived as a threat to companies’ activities and requires adaptation from outside, the digital transformation can be regarded as a means of achieving productivity gains and generating choices of production methods and tools that are a matter of freedom of enterprise. However, from a sustainability perspective the rise of AI at the workplace should not only be envisaged as a productivity gain despite what the first massive redundancy plans suggest.⁸³

To make an “informed decision” the question of the relevance of information is crucial. One avenue of improving information is to negotiate the specific information required. In this sense, article L.2242-11 of the French Labour Code provides for such a possibility. Under this article, the social partners can conclude an agreement on methods specifying the themes to be negotiated and their content, the negotiation timetable and the information required. In theory, it is therefore entirely possible for workers’ representatives to add to the information in the database. In practice, the study of the agreements on methods shows that this point is rarely considered. When it is mentioned, it most of the time refers to mandatory information provided by the Labour Code. Certain agreements sometimes stipulate that the

⁸² Loi n° 2013-504 du 14 Juin 2013 relative à la sécurisation de l’emploi, JORF du 16 juin 2013.

⁸³ Chabran J.-B., *Chez Onclusive, un des premiers plans massifs de licenciements dus à l’IA en France*, in *Libération*, 14 September 2023, <https://www.liberation.fr>, accessed 20 Oct. 2023.

content of the information provided may be subject to change “in the event of legislative changes”,⁸⁴ which demonstrates that the agreement only complies with the Labour Code.

This first lever is also an opportunity to promote employee participation, on one hand by informing them on the issues of transformations, and on the other hand by gathering their own point of view on sustainable work.

Then, the technical nature of the issues to be consulted on, combined with the wide range of areas subject to consultation, often impose that the workers’ representatives need to request expert services. Expertise is the procedure by which one or more experts give an opinion on elements presenting technical aspects. As a “tool for appropriation of scientific and technological knowledge by a community or a decision-maker”,⁸⁵ expertise provides insight in order to constitute a decision-making aid. Therefore, expertise, which lies at the intersection of power and knowledge, contributes to the balance of power between employers and employees.

The French Labour Code provides for the possibility of using experts. Indeed, in the context of the recurrent consultations, the expert’s mission includes all the economic, financial, social or environmental elements required to understand the subject. In the field of technology, the Labour Code only makes provision for expert advice on the introduction of new technologies. In these two cases, the cost of using expert opinion is financed, in whole or in part, by the employer. In all other cases, if the use of expertise is unrestricted, it is financed solely from the CSE’s own funds. While the use of an expert is a necessity to provide workers’ representatives with insight into often very complex issues, funding is a crucial challenge.

In addition, the requirement of loyalty needed for the conduct of quality social dialogue demands trustworthy behaviour on the part of both the employer and the workers’ representatives. While the Labour Code requires a serious and loyal commitment on the part of the employer,⁸⁶ the Civil Code states that the negotiation process must “satisfy the requirements of good faith”⁸⁷ on the part of all the bodies involved. The issue of trust is crucial in the context of expertise. Litigation on this subject shows that this issue raises suspicions, illustrating that social dialogue sometimes takes place in a tense climate. The neutrality of the expert, the transparency of the process and the independence of the representatives regarding the expert’s opinion are all essential conditions for the duty of loyalty.

At last, training is another decisive element in understanding the concept of sustainable work. Like information, training concerns all stakeholders. Often aimed at employees and workers’ representatives, it should also be aimed at company directors. Whatever the level of decision making, it is crucial to train decision-makers to enable them to grasp the many dimensions of this concept. However, the benefit to an economic training which can be

⁸⁴ Enterprise agreement on organisation and timing of mandatory negotiations GSF TRANSNORD, adopted 23 December 2023.

⁸⁵ Caron M., Verkindt P.-Y., *Laisser sa chance à l’intelligence collective dans l’entreprise: regards sur les rapports entre l’expertise et les instances représentatives du personnel*, in *Droit Social*, 2009, 425.

⁸⁶ Article L.2242-6 French Labour Code.

⁸⁷ Article 1112 French Civil Code.

completed with the environmental consequences of company's activities is submitted to several conditions. It only concerns enterprises employing more than 50 employees. It is only organised at the beginning of mandates' representative⁸⁸ or when they take on union responsibilities.⁸⁹

This is clearly not enough to keep up aware with the constant transformations in the world of work, all the more as the abolition of the Committee on Health, Safety and Working Conditions decided with the reform of representative institutions, has meant the disappearance of representatives specializing in occupational health and safety issues.

In this sense, the report of the Economic, Social and Environmental Committee ranks "the lack of training at the top of the list of obstacles to the development of social dialogue on environmental issues".⁹⁰ With regard to the topic of environmental consequences of company's activities, the results of the Social Dialogue Monitoring Barometer in 2023⁹¹ show that 74% of the representatives consider that the CSE has not yet taken up the subject, 49% consider that it is a subject that requires specific expertise and that no training has been organized in the company and finally 26% felt well or very well informed on this field.

Beside knowledge needed, time devoted for each topic contribute to the quality of social dialogue. The enhancement of social dialogue is a major concern for the French legislator, who see it as a means of improving the social climate and working relations. It inspired the recent wave of reforms designed to give to collective bargaining, and in particular enterprise bargaining, a greater role, culminating in the concentration of responsibilities within a single body following the ordinances of 22 September 2017. In addition to this reorganisation of institutions and responsibilities, the CSE has been invested with new responsibilities on environmental issues.

In order to carry out their responsibilities, the employer must allow free and dedicated working time.⁹² The employer may not introduce a system of prior authorization insofar as the use is presumed to be in accordance with the purpose of responsibilities. It is therefore up to the employer to demonstrate misuse. Obviously, the freely used of this time is crucial.

Beyond this freedom of use, another element determinates the quality of the representatives' work. This is the number of delegation hours, the volume of which varies according to the size of the company. To remain in the spirit of enhancement of social dialogue, this volume should be proportional to the responsibilities exercised. In the same sense, the issue of sustainable work, which cuts across all areas of consultation, presupposes that delegation hours must be dedicated to it.

However, in companies employing less than 50 employees, the new responsibility to promote occupation health, safety and working conditions had not been coupled with an increase of means. The same applied to environmental consequences. With regard to the enlargement of field of consultations, the weakness of resources, in particular in terms of

⁸⁸ Article L.2315-63 French Labour Code.

⁸⁹ Article L.2145-1 French Labour Code.

⁹⁰ Naton J-F., nt. (53).

⁹¹ Barometer Syndex/Ifop, 5è ed. January 2023, 28-29, <https://www.syndex.fr/actualites/etude/etude-syndex-ifop-le-barometre-du-dialogue-social-en-2023>, accessed 20 Jan. 2024.

⁹² Article L.2315-7 French Labour Code.

delegation hours, is apparent from the surveys.⁹³ The lack of time to deal with complex issues is seen as a barrier to the quality of social dialogue.

Finally, to guarantee a counterweight role, the degree to which the social partners are involved in decision-making within the company determines a model of corporate governance which enables social dialogue to influence the company's strategic policy to a greater or lesser extent. In that sense, the study of the role of representatives in company decisions raises several questions: in what type of bodies are workers' representatives invited? Are decision-making bodies linked by the workers' representative's opinion?

Paragraph 8 of the Preamble to the 1946 French Constitution states that "every worker participates, through his representatives [...] in the management of the enterprise". The scope of participation in management will depend on the evaluation of its content. While a broad interpretation would require the presence of workers representatives in all company management bodies, whether decision-making or consultative, a restrictive interpretation would confine this principle to the presence of representatives in representatives' bodies only.

While the constitutional judge admits that thinking the logic to the extreme would impose "a real form of co-decision"⁹⁴ he points out that "this is not the meaning given to them by constitutional case law".⁹⁵ In the judge's view, "it does not result from the 8 paragraph of the 1946 Preamble that this participation must be implemented under the same conditions depending whether it applies to company's management bodies or worker representatives bodies". In other words, while the participation of worker representatives in management bodies is possible, it is not mandatory.

Without having a strong position on this point, the law of 14 June 2013⁹⁶ takes a timid step forward by introducing consultation on the company's strategic orientations. Then, the question arises of the scope of the opinion given by workers representatives during the consultation. Here again, it is possible to emphasise the modest role of workers representatives in company decisions. Indeed, even though the consultation is mandatory, the employer is never linked by the opinion of the representatives.

To sum up, this contribution demonstrates that sustainable work could be a relevant approach to take into account the change of the world of work in the context of digital transformation and climate change. Designed as a holistic approach, sustainable work concerns occupational health, organisation and working conditions. However, even though sustainability is emerging from the French social dialogue, it remains modest both in the fields of negotiation and at the level of information and consultation of work bodies and can still be significantly strengthened.

⁹³ Barometer Syndex/Ifop, nt. (91), 6-7.

⁹⁴ Cons. const., 4 août 2017, QPC n° 2017-652, commentaire 10, https://oos.cloudgouv-eu-west-1.outscale.com/ccqpc-drupal-prd/dqpc/commentaire/commentaire_Décision-n°-2017-652-QPC-du-4-août-2017.pdf, accessed 28 Jan. 2024.

⁹⁵ Cons. const., *ibid.*

⁹⁶ Loi n° 2013-504 du 14 Juin 2013, nt. (82).

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