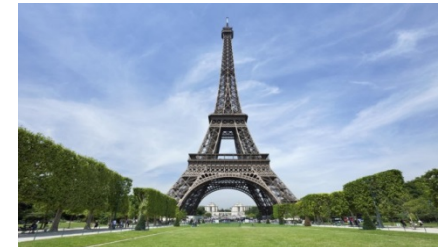


Realities and Myths of Doing Business in France: Employment & Commercial Law







Johannes Jonas / Angéline Duffour / Anna Milleret-Godet

April 23, 2015

Always a good start: what makes France attractive?



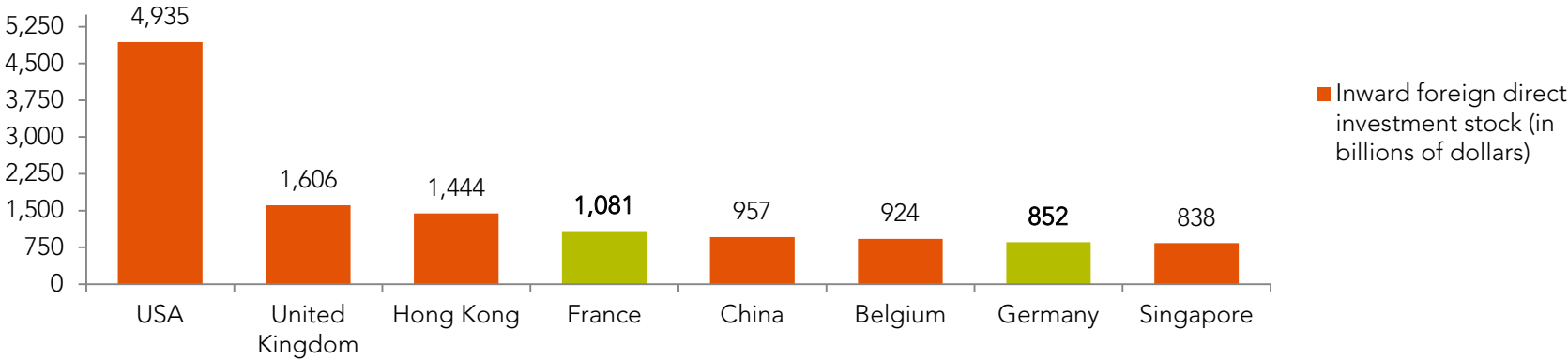
France: 6th largest economy in the world

The World's Largest Economies (by Gross Domestic Product)		
1.		United States
2.		China
3.		Japan
4.		Germany
5.		United Kingdom
6.		France

Source: European Commission, January 2015.

France was ranked number 4 for influx of foreign direct investment in 2013

Inward Foreign Direct Investment (FDI)* Stock in Major Countries in 2013

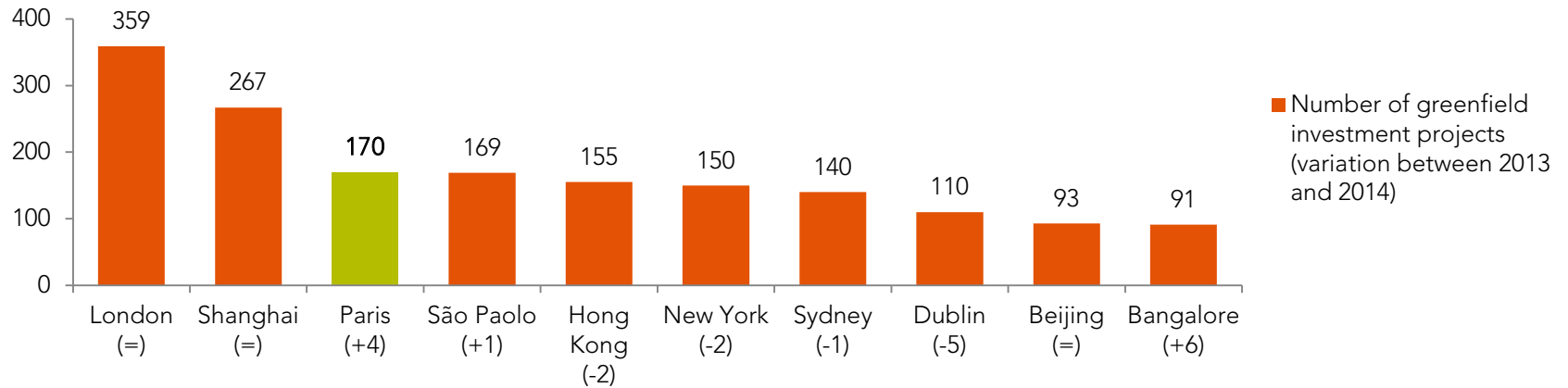


Sources: French Minister of the Economy, Finance and Industry, July 30, 2014; UNCTAD.

*FDI is defined as "cross-border investment by a resident entity in one economy with the objective of obtaining a lasting interest in an enterprise resident in another economy" (OECD).

Paris is the 3rd most attractive city in the world for greenfield investments

Number of Greenfield Investment Projects in Major Cities in 2014



Sources: KPMG, *Global Cities Investment Monitor 2015, The New Rankings, Trends and Criteria*.
Study Paris-Ile de France Capitale Economique and KPMG.

* In this study from KPMG, a greenfield investment is an investment which creates jobs and new activities in a city. Joint ventures, M&A, privatizations, alliances or purely financial investments are not included.

Realities and Myths of Doing Business in France: Employment & Commercial Law

I. Employment Law

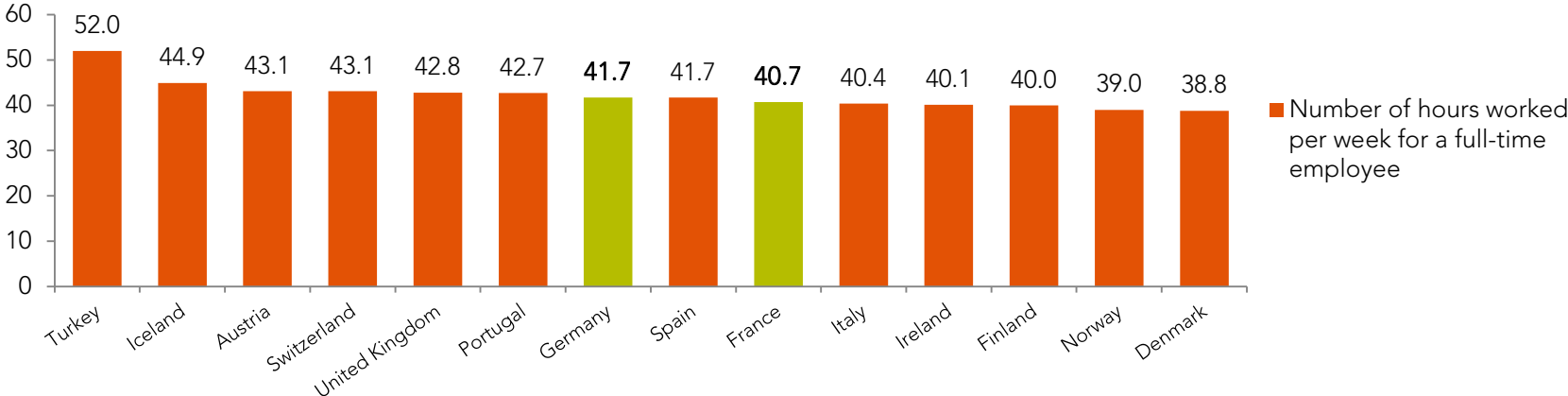
II. Commercial Law

I. Employment Law

French employees work no more than 35 hours per week
Myth or reality?

French employees work on average 40.7 hours per week

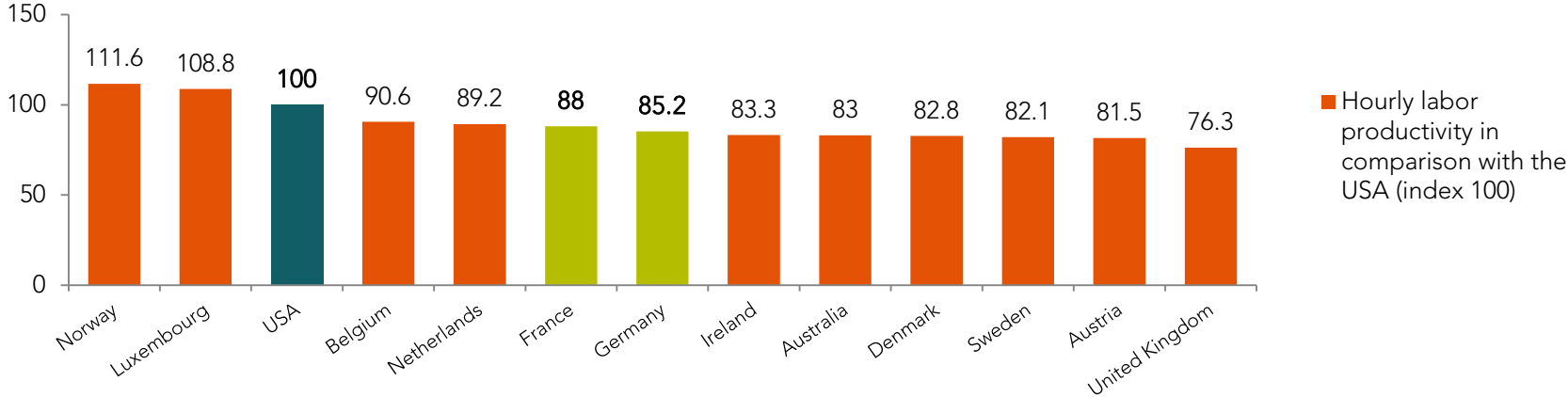
Hours Worked per Week for a Full-Time Employee in the European Union



Source: Eurostat, Hours worked per week of full-time employment, last updated on March 25, 2015.

France was ranked number 6 for labor productivity in 2013

Labor Productivity* in 2013 Compared to the USA



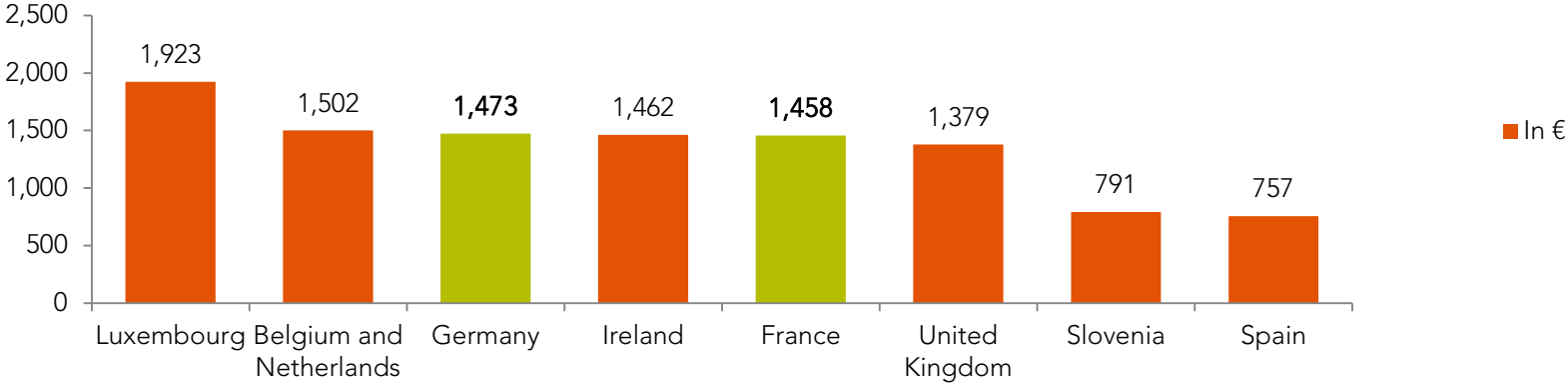
Sources: The Conference Board Total Economy Database™, last updated on January 2014.

*Labor productivity means the amount of goods and services produced by one hour of labor.

- Examples of existing tools that can be used by companies in order to adjust working time to suit their business requirements
 - » Overtime
 - » Lump sum remuneration for a determined number of days worked during one year (“*forfait-jours*”)
 - » Adjustment of working time over a year (“*modulation*”)

French minimum wage is the highest in Europe
Myth or reality?

The French monthly statutory national minimum wage ("SMIC") is not the highest in Europe



Sources: Eurostat, Statistics Explained, Minimum Wage Statistics, last updated on March 23, 2015.

- Social security contributions in France:
 - » Employer's contributions \approx 45% of salary
 - » Employee's contributions \approx 25% of salary
- Reduction of the employer's social security contributions is granted when the salary is lower than 2.5x the French statutory national minimum wage ("SMIC") (\approx 3,642 euros gross/month)
 - » Reduction of the employer's charges (the "Fillon" reduction)
 - » Tax credit for productivity and employment ("Crédit Impôts Compétitivité et Emploi" or "CICE")

Example of an employee paid at the statutory national minimum salary (\approx 1,457.52 euros gross/month since 2015)

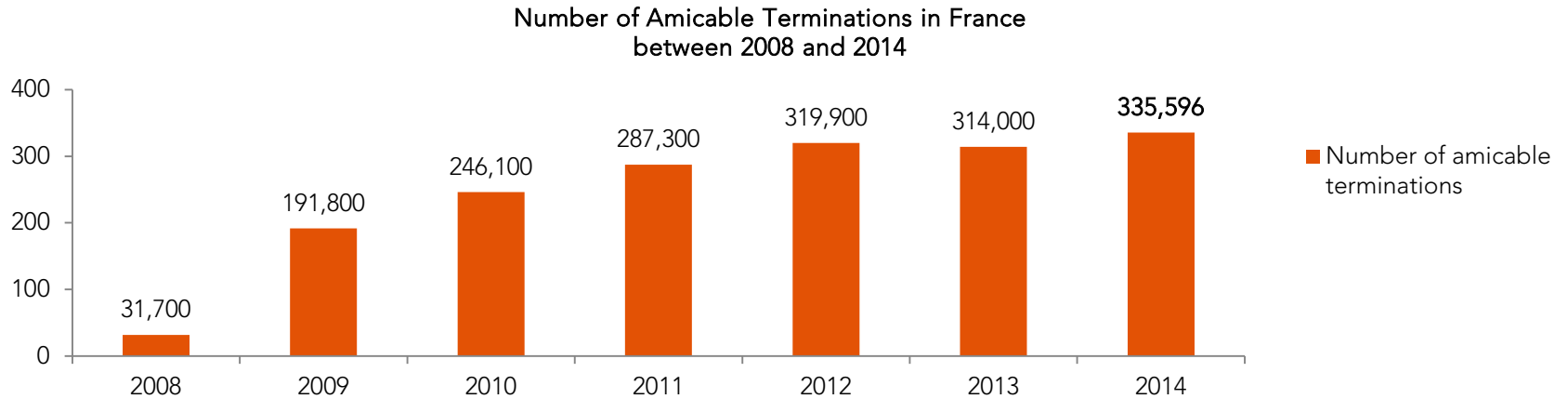
- ✓ Charges for the company: \approx 45%
- ✓ "Fillon" reduction: \approx 26% (depending on the size of company)
- ✓ "CICE" reduction: 6%
- ✓ Total social security charges for the company: \approx 13% (45-26-6)

- High level remuneration (above 25,360 euros gross/month): reduction of social security contribution rates

There is no way to easily terminate an employment
contract in France
Myth or reality?

How to terminate an employment contract in a flexible way

- The trial period
- The success of amicable termination of the employment contract



Sources: Ministry of Labour, 2015; FAIRISE (A), "La rupture conventionnelle a de très beaux jours devant elle", Liaisons sociales Newspaper, March 2, 2015.

- The "negotiated dismissal" (dismissal + settlement agreement)

It is almost impossible to manage relations with staff
representatives in France
Myth or reality?

Employees' representation in France

Workforce	Personnel Delegates	Works Council	Hygiene, Safety and Working Conditions Committee	Union Delegate
11 to 49 employees	✓	—	—	—
50 employees and more	✓	✓	✓	✓

Representative institutions elected by the employees

Representative institutions designated by trade unions

Staff representatives in France have an extremely important role which sometimes enables them to prevent a deal from going through

- Union Delegate: negotiate in-house collective agreements (working time, salary, working conditions, employee's social security coverage, etc.)
- Works Council: "information consultation" prior to any final decision on all issues related to the company's working and employment conditions, major management decisions, and workforce reduction
- **Titan/Goodyear**: our own experience

... but useful for greater flexibility!

- Flexibility via the negotiation of in-house agreements that are better suited to the company's business (working time, job security agreement ("accord de maintien dans l'emploi"), etc.
- Simplified procedures for collective dismissals for economic reason: rules governing timing of reviews by Works Council of the job preservation plan ("plan de sauvegarde de l'emploi" or "PSE")
- Draft bill on relations with the staff representatives currently being discussed: a new step in modernizing social dialogue

Quick overview of good practices that need to be implemented
to prevent issues when you have employees in France
Prevention is better than a cure!

- During the hiring process
 - » Top management's employees
 - » Written employment contract (specific clauses, reminder of the employees' obligations, etc.)
 - » Use of the French language (or a French translation)

- During the execution of the employment contract
 - » Annual performance review
 - » Company's internal rules and regulations
 - » IT charter : question of personal data protection (personal emails, text messages, etc.)

II. Commercial Law

When you buy a Warhol painting and the seller has second thoughts, don't count on a French court to get you that Warhol!
Myth or reality?

— Draft for revised sections 1217 and 1221 of the French Civil Code

- » Article 1217: The party which has not received what was promised under the agreement, or which has only partially received it, can:
 - stop the execution of its own obligation;
 - request and enforce specific performance;
 - request a price reduction;
 - cause the termination of the contract;
 - ask for money damages compensating for the consequences of the breach.

Any remedies which are not incompatible with each other are cumulative; money damages can be awarded in addition to all other remedies.

- » Article 1221: The creditor of an obligation can, after having given notice, obtain specific performance except if the latter is impossible or if its cost is blatantly unreasonable.

When a management package defines you as a “bad leaver,”
French law will treat you as a “good leaver” anyway
Myth or reality?

— Draft for revised section 1124 of the French Civil Code

- » Article 1124: The unilateral promise is a contract under which one party, the promisor, grants to another party, the beneficiary, the right, for a certain time, to conclude a contract the essential elements of which are determined, and only the acceptance by the beneficiary is necessary to make that contract binding.

When you sell your business in March and reinvest the funds in April because in that case the tax rules exempt you from capital gains tax, you can still learn in December that the tax rules have changed retroactively and that you were not exempt from capital gains tax

Myth or reality?



In France, the personal income tax rate is 75%
Myth or reality?



France to end 75% tax rate on high incomes as year ends

Reported by: Customs Today Report March 23, 2015

France forced to drop 75% supertax after meagre returns

Hollande's measure was meant to force wealthiest to help dig country out of economic crisis, but was accused of being anti-business



(the Guardian, 31 December 2014) by Anne Penketh in Paris

François Hollande announced plans for the controversial supertax during his 2012 election campaign. Photograph: Stephane De Sakutin/AFP/Getty Images

Reuters Business | Tue Dec 23, 2014 11:23am EST

France waves discreet goodbye to 75 percent super-tax

PARIS | BY HANNAH MURPHY AND MARK JOHN



France's President Francois Hollande is seen through a camera filter during a news conference at a European Union leaders summit in Brussels December 18, 2014.

REUTERS/PASCAL ROSSIGNOL

When you try to acquire a family business in bankruptcy, Aunt Joséphine with her 0.1% participation can block that purchase
Myth or reality?

— Summary of Section 70 of the draft “Macron” act

Under Section 70 of the draft for the “Macron” act, shareholders can be forced by the Commercial Court to sell their shares or get diluted, if the company in which they hold the shares is in financial difficulties.

This measure previously only existed regarding managers (Article 631-19-1 of the Commercial Code).

Far-reaching new rule, and therefore subject to a number of restrictions:

- Only applies to companies with at least 150 employees;
- Only if otherwise risk of shutdown of the company, with as result a serious disturbance of the national or regional economy and of the local job market;
- Implementation must be *ultima ratio*, i.e., the only valid solution to avoid those risks and to allow the company to continue operating.

When US investors and French ministers write to each other, the tone is along the lines of “How stupid do you think we are?” and “Rest assured that you can count on me to have the tires you import to France examined by the relevant parts of the French administration with twice the usual scrutiny”

Myth or reality?





COHEN & GRESSER LLP

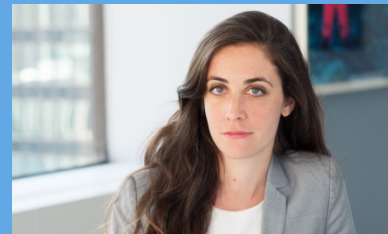
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