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# Vocational Training in the Context of Law of June 14th 2013 on Employment Security: The “Personal Learning Account”

Nicole Maggi-Germain \*

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## 1. Introductory Remarks

The Senate passed following a forty-hour debate in the Senate and another sixty-hour debate in the National Assembly, the bill on the enhancement of employment security on May 14 2013. This bill was presented at the National Assembly on March 6, 2013<sup>1</sup> after an accelerated procedure was initiated<sup>2</sup>. This is part of a normative process in which, is in conformity with articles L.1 to L.3 of employment legislation, that involves the social partners in law making. This process is preceded by negotiations nationally undertaken at the sectoral level by employers’ associations and workers’ unions. This “conventional precondition”

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<sup>1</sup> Law No. 2013-504 of 14 June 2013 on Employment Security, Official Journal of 16 June.

<sup>2</sup> A project or a bill is examined by the two houses of the French Parliament, that must agree on a single version. Until an identical text is approved by both houses, the text goes back and forth between the National Assembly and the Senate. The French Constitution (art. 45) provides for the possibility that, after two readings of the text by each house or a single reading if the Government has previously initiated the accelerated procedure, by a joint Commission composed of seven members of the Assembly and seven senators. The text is developed and submitted for approval by the Government at both meetings. No amendment shall be admissible without the consent of the Government. The joint Commission has drafted a text (No. 980 and No. 531 of 23 April 2013).

originates from the 2007 Act on the modernization of social dialogue<sup>3</sup>. The reform proposes to connect the law to the concept of social dialogue, more precisely to the “Procedures of coordination, consultation and information.” In addition to being merely considered as a legal concept, social dialogue is depicted as a tool<sup>4</sup> supporting social reforms put forward by unions, which play a relevant role in terms of consensus<sup>5</sup>: “Our reform is a gesture of trust in relation to social dialogue as it rests upon the certainty that social partners are capable of bringing the necessary developments to our social model. We therefore needed to contemplate new game rules”<sup>6</sup>.

The shift in the presidential majority and the appointment of a socialist candidate at the head of the government a year ago did not affect the significance of social dialogue. A guidance document which emanated from the social conference on July 9<sup>th</sup> and 10<sup>th</sup> of 2012 was distributed to the social partners on September 7, 2012, triggered an inter-professional negotiations at the national level that lasted over four months.

On January 11, 2013, these negotiations culminated into the conclusion of the agreement “for a new economic and social model” designed to underpin competitiveness of enterprises on the one hand and security of employment and career paths for workers on the other hand. On the employer’s side, the Medef<sup>7</sup>, the CGPME<sup>8</sup> and the UPA<sup>9</sup> signed it while they were only three out of five trade unions. It’s interesting to note that the agreement did not include a preamble which would have shed light upon its objectives, revealing the parties’ common goals. An analysis of the clauses shows that the agreement proposes to secure employees’ career paths through the establishment of new rights while granting the firm more flexibility in the management of employment. In that way, the

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<sup>3</sup> Law No. 2007-130 of 31 January 2007 on the Modernisation of Social Dialogue, Official Journal 1 February 2007, p. 1944.

<sup>4</sup> G. Larcher, Minister of Labour, speech to the National Assembly, Official summary record 2nd sitting of Tuesday, 5 December, 2006.

<sup>5</sup> See C. Gobin. *Dialogue social*. In P. Durand (ed.), *Les Nouveaux Mots du pouvoir*, Aden, 2007, 300 p. 136-142 ; N. Maggi-Germain, « Sur le dialogue social », In *Droit social*, July-August, p. 798-807 ; A. Supiot, « La loi Larcher ou les avatars de la démocratie représentative », In *Droit social*, 2010, p. 525-532; C. Radé, « La loi négociée : simple marketing politique ou véritable produit de la démocratie sociale » In *Droit ouvrier*, 2010, 319-323.

<sup>6</sup> G. Larcher, speech to the National Assembly, cit.

<sup>7</sup> *Mouvement des entreprises de France*, Movement of French enterprises.

<sup>8</sup> *Confédération générale du patronat des petites et moyennes entreprises*. General Confederation of employers of small and medium enterprises.

<sup>9</sup> *Union Professionnelle Artisanale*.

National inter-professional agreement (ANI) seems to favour a flexicurity approach more than following the French model of securing professional career paths<sup>10</sup>.

New rights for employees (the widespread provision for supplementary health coverage, accrued rights to unemployment benefits, the establishment of a personal learning account) are implemented resulting in higher levels of employment flexibility in order to “provide enterprises with the means to adjust to structural problems and to safeguard jobs”<sup>11</sup> (employees’ internal mobility<sup>12</sup>, agreed employment protection with possible temporary reduction of working hours and wages<sup>13</sup>, the provision of casual work, etc). Further, in order to “rationalize the procedures for legal disputes” (Title V of the ANI), the time-limit to make claims that concern the enforcement or termination of an employment contract is reduced from five to two years (Art. 26). At the same time, a fixed compensation award covering damage caused by the dispute on redundancy may be granted during the settlement procedure before the conciliation tribunal (Conseil de Prud’hommes). Such compensation would permanently end a dispute that opposes an employer and an employee (Art. 25).

Given that from a legal perspective, the government is an external agent in this “multidimensional”<sup>14</sup> form of negotiations, it has amended them in order to “lay the foundations of a ‘new economic and social model’ that

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<sup>10</sup> Beyond the semantic distinction, the concepts of flexicurity and the idea of securing career paths are two different systems of values based on different legal principles. While flexicurity is limited to improving occupational transitions, career security seeks to combine legal and contractual terms, by ensuring that individuals can access training regardless of certain risks (job loss or loss of work). From this point of view, career security involves the establishment of a network of contractual obligations but also devices that extend beyond the contractual framework, allowing an extension of the exercise of certain rights previously acquired. See N. Maggi-Germain, *Formation professionnelle continue et sécurisation des parcours professionnels*, in *Semaine sociale Lamy Supplément*, 7 April 2008, No. 1348 (Special issue on securing career paths), p. 21-25.

<sup>11</sup> Session III of the ANI.

<sup>12</sup> Le refus du salarié entraînant son licenciement pour motif personnel et non pour motif économique (art. 15, dernieralinéa). Employee’s refusal leading to the dismissal for personal reasons and not for economic reasons (Article 15, last paragraph).

<sup>13</sup> Lower-wage earners up to 1.2 SMIC (*salaire minimum interprofessionnel de croissance*, minimum wage). Art. 18, footnote on page 11.

<sup>14</sup> Jacques Freyssinet interview with *aef.info*, No. 17633, 18 December 2012.

no longer opposes the competitiveness of enterprises and the security of career paths”<sup>15</sup>.

Based upon the motives outlined in the government bill, enhanced employment security, is, “the affirmation of a new equilibrium whereby one person or the other gains more security without losing its adjustment or mobility capacity.” This is the main challenge: enhanced anticipation and the capacity to adjust earlier, quicker through negotiation, in order to protect employment and consider new rights for employees, both individual and collective<sup>16</sup>.

The act is divided into four chapters. The last chapter involves various arrangements while the remaining three are premised upon the following: “Creat(ing) new rights for employees”, “Striv(ing) against precarity in employment and in accessing employment” and “foster(ing) the negotiated anticipation of economic changes, in an attempt to develop skills, protect jobs and manage economic redundancies.” Having been accused by a communist senator of “selling out employment legislation”, the government has encountered more of a significant amount of opposition from the left than from the right party. In total, out of 5300 amendments proposed only 342 have been declared admissible<sup>17</sup>. Inadmissibility was mainly expressed against the amendments to article 1 on the extension of the transferability of health and accident coverage for employees whose contracts have been terminated<sup>18</sup>. The creation of a universal, individual and integrally transferable personal learning account (Art. 5) remains one of the most relevant measures. Mainly due to the fact that it is one of the most symbolical initiatives agreed in principle by members of parliament. It is expressed in the early draft of a new category of subjective rights: rights attached to the person (I), that are included in a right to vocational and continuing training that remains to be built (II). On December 14, 2013 the Interprofessional National Agreement (ANI)

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<sup>15</sup> Rapporteur of the Committee on Social Affairs, socialists groups meeting of 17 April 2013, Official Journal of 18 April, p. 3375.

<sup>16</sup> Introduction to Bill No. 774 on securing employment, 6 March 2013.

<sup>17</sup> Gilles Carrez, chairman of the Finance Committee of the AN, Second meeting of Thursday, April 4, 2013, Official Journal of 5 April p. 3778.

<sup>18</sup> “Portability” was already provided by the ANI of 11 January 2008 on labour market modernization for employees of companies in sectors represented by MEDEF, CGPME and UPA (industry, trade, services and craftsmanship), excluding the sector of the social economy, agriculture or the professions. The duration of health and welfare benefits provided in the former company is extended by the bill up to 12 months instead of 9.



implemented a procedure on employment training. The agreement was repeated in the Act on March 5, 2014<sup>19</sup>.

## 2. Rights: A New Proposal

The personal learning account brings together different legal perspectives since it is based on two different logics: the asset-based approach (endowment) and the drawing rights approach, leading up to some paradoxes<sup>20</sup>.

### 2.1. *The Personal Learning Account: An Overview*

1) The personal learning account: an extension of the individual rights to training (*Droit Individuel à la Formation*, DIF)

By adding it to article L.6111-1 (paragraph 4) of the Labour Code, Article 5 of the law, gives symbolic relevance to the personal learning account (CPF). More precisely it is added to the general principles dedicated to the lifelong vocational training. The choice of this particular codification helps to establish a hierarchy among the different articles.

In regard to the personal learning account, the first part of Article 5 of the law states the following:

“In order to facilitate one’s own access to lifelong professional training, each person is granted a personal learning account since the entering into the labour market, regardless of their status. The personal learning account is calculated in terms of hours and is used by the individual when they access a training course as an individual, regardless of whether or not they are an employee or a job seeker. In the case of a change or loss of employment, the account is transferable and cannot be debited under any circumstances without an explicit agreement obtained from the account holder”.

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<sup>19</sup> Law No. 2014-288 of 5 March 2014 on vocational training, employment and social democracy, Official Journal of 6 March 2014, p. 4848.

<sup>20</sup> For further developments, see Jérôme GAUTIER, Nicole MAGGI-GERMAIN et Coralie PÉREZ (2015), « Fondements et enjeux des "Comptes de Formation" : les regards croisés de l'économie et du droit », In *Droit social*, février, p. 169-180.

However, the advocated universal character of the account<sup>21</sup> appears to be moderated both for account holders and recipients. Even if in the “account holder” category, the text aims at “any person”, there remains the condition that he or she has entered the labour market, in other words, recorded within the active population<sup>22</sup>, regardless of its status. Inactive pensioned are excluded from the system<sup>23</sup>. On the contrary, school leavers or young interns are included in the system. The personal learning account (CPF) is the concern of the continuous professional training, codified in section 6 of the Employment Act and not in initial training, which in turn, is codified in the Education Act.

The advocated universal character of the account is also moderated by recipient categories: hours can be mobilized under the personal learning account (CPF) by “the person when he or she accesses a training course as an individual, as an *employee* or a *job seeker*”<sup>24</sup>. The March 5, 2014 Act stipulates that a personal learning account is open to “all persons that are 16 and older, in *employment*<sup>25</sup> or in search of employment, or who are currently receiving guidance through a professional orientation and integration project”<sup>26</sup>. Therefore, based upon the current state of this right, this list excludes the self-employed and civil servants. The objective is to establish a system linked to employment and more particularly to employees. From this vantage, the philosophy conveyed in the personal learning account, departs from a universal right to individual professional training, which in turn, would benefit the whole population. However, references have been made in the law in regard to person “in employment”, while the December 14, 2013 ANI was referring to employees (wage earners *per se*), may indicate some development perspectives. Furthermore, it is envisaged that “training hours recorded in the account remain acquired in the case of a change in the professional

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<sup>21</sup> It is one of its characteristics as pointed out under 5, 2 of the ANI of 11 January 2013 (the account has a “universal”, “personal” and “transferable” character).

<sup>22</sup> J. M.Germain, Report No. 847 of 27 March 2013 on behalf of the commission of social affairs on the bill regarding securing employment vol. I, 590 p., p. 86.

<sup>23</sup> The account is created just after school, except for those who do not want to enter the workforce that are still present in small proportion in the population, as pointed out by the National Assembly 2nd meeting of 4 April 2013, Official Journal 5, p. 3771.

<sup>24</sup> Italics added.

<sup>25</sup> The personal account can be created for people starting at the age of fifteen if they enter an apprenticeship.

<sup>26</sup> Including workers with disabilities received in centers providing placement services or specific workshops.

status or employment loss suffered by its account holder” (Art L.6323-3 of the Labour Code).

This restrictive approach argues for the maintenance of the Individual Training Leave (CIF). It is a system that gives real shape to the employees’ or former employees’<sup>27</sup> right to training while allowing them to, namely, “open more extensively to the culture, social life and to the exercise of benevolent and associative responsibilities”<sup>28</sup>. One can only regret that the personal learning account (CPF) is not subjected to more significant inspiration from the Individual Training Leave (CIF).

Unlike the National Interprofessional Agreement (ANI), the bill that was introduced on March 6, 2013 at the National Assembly makes no mention of the financing question involved in the personal learning account (CPF). On the contrary, the ANI envisages the transfer of rights acquired under the Individual Right to Training (DIF) in the Personal Learning Account (CPF) while also conditioning its implementation through “an agreement on the funding arrangements between social partners, regional authorities and the State, who will in turn undergo consultation on the topic at issue, as soon as possible” (art 5, paragraph 4). Introduced by the government at the National Assembly on April 3, 2013, amendment no 5562 is the corrective, which stresses that the account is funded by 1. Rights acquired under the Individual Right to Training (DIF), 2. “By supplementary financial provision (*abondements*), provided namely by the state or the regional authorities.” Therefore, contributors who have been directly identified are both the enterprise, in the form of the 120 DIF hours afforded to each employee, and public authorities. However, this is not a limited list given other funding sources can be conceived. They may originate from joint bodies, from the recipient himself, and even from the employer. The March 5, 2014 Act has stated the necessary clarifications: the employer first funds, the personal learning account (CPF) in the form

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<sup>27</sup> The “training leave” is introduced by Act of 3 December 1966 on guidance and vocational training. It provides for the right to take a leave, which is paid under certain conditions (since law of 16 July 1971); it allows a worker to take an internship of his/her choice, during the working time. The CIF is a “right”: the employer may only delay the exercise of the right to leave (under certain conditions and for a maximum period of nine months, Art R. 6322-7 of the Labour Code). Financial support for the CIF (1 year or 1200 hours) is provided by a joint body external to the company: the OPACIF (Article L. 6322-12). The duration of the individual training leave shall not be deducted from the annual paid leave. It is equivalent to a period of work for the determination of the rights of the persons to paid annual leave with regard to the rights that workers have according to their seniority in the company (Article L. 6322-13).

<sup>28</sup> Art. L. 6322-1, 3 of the Labour Code.

of hours credited at the end of each year (art. L.6323-10): 20 hours per year for 6 years and 10 hours per year in the following three years; in other words, 150 hours for a full time employee (art L6323-11). It can then be supplemented. “In the case where the length of the training course is higher than the number of hours recorded on the account, training can be funded with additional funded hours, upon the account holder’s request” (art L6323-4-II). All of these training hours can be funded by various ways such as the employer, the recipient, a representative training fund organisation (OPCA<sup>29</sup>), the State, regional authorities, the national Job center (Pôle Emploi), the Agefiph - Fund for Persons with Disabilities - and the National Pension fund for employees<sup>30</sup>. Financial provision legally defined as “supplementary” may add to the Personal Learning Account (CPF) in two cases provided in the Law:

-According to a collective agreement<sup>31</sup>, which concerns the definition of eligible training courses and the employees given priority<sup>32</sup> (art L. 6323-14).

-In enterprises with at least fifty employees, where it has been six years since an employee has not benefited from measures<sup>33</sup> aimed at securing his career path<sup>34</sup>: the employer is required to credit the employee’s account by 100 additional hours (130 hours if the individual is a part time employee) (art L.6323-13).

The last case mentioned here aims at penalizing employers’ inertia.

Hypothetically, one can suggest that once enterprises contribute directly to the funding of the Personal Learning Account (CPF), they may aim at “capturing” training, as it happened before with the Individual Right to

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<sup>29</sup> *Organisme paritaire collecteur agréé*, accredited joint collecting fund for training.

<sup>30</sup> If the CPF is filled with the hours accrued by an employee as part of his personal account to prevent hardship, as created by the law No. 2014-40 of 20 January 2014 “to ensure the future and justice of the pension system (Art. L. 4162-1 et seq. Labour Code).

<sup>31</sup> Signed at the level of company, group, sectoral or trade unions and employers’ organizations signed by the agreement constituting a joint accredited collective fund for training.

<sup>32</sup> Especially the least skilled workers, workers exposed to occupational risk factors, employees holding jobs threatened by economic or technological developments and part-time employees.

<sup>33</sup> Interview conducted every 6 years, to make a state of the art analysis of the career path of employees.

<sup>34</sup> Professional interviews conducted every 2 years age and at least two of the following three actions: training, accreditation of prior learning (*validation des acquis de l’expérience*-VAE) or pay or career advancement.

Training (DIF)<sup>35</sup>. A risk exists within this because the purpose of the personal learning account (CPF) is not clearly defined by the legislation and remains vague (“In order to facilitate his or her employee’s access to lifelong professional training, each person is granted with a [personal learning account (CPF)]”).

Could the personal learning account (CPF) be a mere “extension” of the Individual Right to training (DIF)?

This appears to be the philosophy advocated by the ANI. Precisely, the legal regime of the personal learning account (CPF) is modelled on that of the DIF. The employee can only use their personal account upon the employer’s agreement when it is used during working time. However, the December 4, 2013 ANI and the March 5, 2014 Act has stated that the employer’s agreement was no longer necessary given since training courses are conducted outside working hours (Art L6323-17, paragraph 2).

The primary buffer established by the legislation to an eventual “capturing” of the personal learning account (CPF) by the enterprise is no doubt, a qualification requirement as stated in article 5. This is the condition that allows supplementary funding to be mobilized<sup>36</sup>. The fact that the system may be externally managed<sup>37</sup>, as evoked in the report compiled by parliamentary Jean-Marc Germain<sup>38</sup>, may also reduce potential risks.

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<sup>35</sup> Created by the national intersectoral agreement of 5 December 2003, it was taken over by the Act of 4 May 2004 which set the legal framework of the device while leaving the social partners to organize, by collective agreement, the implementation of the DIF in sectors and enterprises. The employee with a certain seniority acquires 20 hours of training per year, accumulated over 6 years. He has therefore a time credit of 120 hours, whether on a permanent or temporary contracts (rights are then calculated pro rata). The exercise of the individual right to training is the initiative of the employee, in agreement with his employer (art. L. 6323-9). In principle, training takes place during working time. The employee then receives a training allowance (50% of the net wage of the employee), which is not a “salary” and therefore is not subject to social security contributions (article L. 6321-12).

<sup>36</sup> The CPF is supplied by financial provisions provided namely by the state or the regional authorities to promote access to one of the qualifications mentioned in Article L. 6314-1, that is “it must be registered in the national directory of professional certifications, is recognized in the classification of a national sectoral collective agreement, and it opens up to the possibility of a vocational qualification”

<sup>37</sup> By a joint body as the Joint Fund for career security. In the end, the Caisse des dépôts et consignations, a public institution, will manage the CPF, from an accounting point of view only.

<sup>38</sup> J.M. Germain, Report No. 847, cit., p. 96.

### *2.1.1. The Individual Right Category: Beyond Employment Status*

In 1999, the governmental ministry posed a question for professional training regarding recognition of a right to continuous professional training for employees. In a working paper<sup>39</sup>, the ministry, then led by Nicole Péry, emphasized the need to elaborate an *individual* right to training (i.e. freedom to make use of one's acquired rights, while also building a training project that reconciles one's personal project and corporate interest, in agreement with the employer), transferable (rights to continuous professional training acquired within an enterprise would not be forfeited in case of employee mobility) and collectively guaranteed (given the management system for this right rests upon a mutual funding system<sup>40</sup>). While it was introduced in 2003 by an interprofessional agreement at the national level and restated in the act a year later, the Individual Right to training (DIF) partly reflects these guiding principles. 'Transferability' or 'portability'<sup>41</sup> of acquired rights has been at the core of relevant debates for almost ten years now. When it was created, the Individual Right to training (DIF) only provided for a relative transferability in the advent of the termination of an employment contract: the employee was required to use their training rights during their notice period. The January 11, 2008 ANI on the "modernization of the labour market" and the November 24, 2009 Act<sup>42</sup> introduced extended portability: acquired rights, or remaining ones, are transferable in another enterprise (or when brought under the responsibility of the unemployment benefit system), subject to the employer's agreement. However, this portability was limited in time: the employee lost their rights if they did not make the request to their employer within the two

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<sup>39</sup> N. Pery. *La formation professionnelle. Diagnostics, défis et enjeux*. The Secretary of State contribution to women's rights and vocational training, 17 March 1999, in *La documentation française*, p. 239. The same idea is expressed by J. M. Bêlorgey, *Minima sociaux, revenus d'activités, précarité*. In *La documentation française*, Commissariat Général du Plan, May 2000, p. 147.

<sup>40</sup> Principle laid down, with regard to the fund to ensure training for employees of one or more sectors, by Article L. 6332-7 of the Labour code ("They are managed jointly. They pool the money they receive from businesses").

<sup>41</sup> The concept of "portability" is a legal one, but its definition does not match the context of the DIF or CPF. Portability is a "debt that the debtor has to pay the creditor" (G. Cornu *Vocabulaire juridique*, PUF, Quadriège, 2004. The notion of transferability, a legal category to be built would have suited better to these measures.

<sup>42</sup> Law No. 2009-1437 Law No. 2009-1437 on guidance and long life vocational training Official Journal of 25 November 2009.

years following their recruitment. The Act proposes a personal learning account that is “completely transferable”. “Finally, [the Act] should provide for the transferability of rights under the Individual Right to Training (DIF) for the case of transition between the public and private sectors”<sup>43</sup>.

The first proposal to extend rights beyond the employment status is the most innovative feature of the personal learning account and likely what distinguishes it from flexicurity in the meaning of Community law. Based upon a typology of various forms of labour market organization, the European Commission proposed four “flexicurity programmes” in its 2007 communication. The first programme, entitled “[resolving] the contractual segmentation problem”<sup>44</sup>, aims to “redistribute flexibility and security in the most equal form possible among the active population”. Among other objectives, it also aims to redefine rules applicable to economic redundancies “[...] in order to reduce bureaucracy and the length of procedures [...]”. Flexicurity rests upon the objective of rendering the labour market as more flexible. In contrast, the enhancement of security for career paths needs to achieve two further objectives. On the one hand, it needs to create legal gateways among different employment statuses by establishing legal transitions. On the other hand, it needs to link a set of rights and immunities, which are eventually acquired under the previous status or are attached to the individual (*infra*) while it can be exercised under another status. It is precisely continuity of activity through the granting of new rights that is sought, rather than uniformity in legal statuses of employment, for instance through the creation of a single employment contract<sup>45</sup>. Establishing more security for career paths implies the articulation of the status and contract: if a worker’s rights were acquired under an employee status, they need to be flexible regardless of the employment status. Such is the intent of article L6322-25 of the Employment Act, which in principle, states the existence of a right to individual training leave (CIF) for “any person who, has held a fixed-term employment contract during

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<sup>43</sup> Jean-Marc Germain, Report No. 847 of 27 March 2013, cit., p. 93.

<sup>44</sup> European Commission. *Vers des principes communs de flexicurité : des emplois plus nombreux et de meilleure qualité en combinant flexibilité et sécurité*. Communication cited, 2007, p. 15.

<sup>45</sup> The idea dates back to 2004 thanks to two economists Pierre Cahuc and Francis Kramarz. *De la précarité à la mobilité: vers une Sécurité sociale professionnelle*. 2004 Report to the Minister of Economy and the Minister for Employment, 6 December, 202 p., p. 145 and ff., and was taken by the candidate at the presidential election Nicolas Sarkozy during the 2007 campaign.

his professional life.” The CIF-CDD<sup>46</sup> and the DIF are premised on the same logic. However, these rights can only be acquired under an employment contract and are open according to seniority. The originality of the personal learning account (CPF) is to establish continuity of rights acquired outside the employee status (“all persons, independently of their status, from their first entry onto the labour market”, Employment Act, art 5, I. paragraph 2) and independently of any condition related to individual seniority. In other words, the opening of rights assumes a progressive detachment from the employment status. While some rights remain linked to employee status, others aim to cover the aggregate of workers, and moreover the worker as a person. Given that these rights have distinct purposes, so should be the terms in which they are exercised.

## *2.2. The Personal Learning Account (CPF): Contradictions*

### *2.2.1. A Repository of Existing Training Systems*

The person being trained is granted either with the status of a professional training intern or that of an employee in a work-related training, without strict performance of actual work. In this case the acquisition of rights attached to an employment contract is called into question: will the training received be assimilated to a work period to define rights of those concerned in regard to annual paid leave and to rights that an employee holds from his seniority within the enterprise as is the case for the CIF (art L6322-13)? The Personal Learning Account (CPF) is, in the current state of the law, secured by corporate funding through which it is credited. Supplementary funding from the state, regional authorities or a joint body among others, only intervene in terms of additional financial contribution, precisely as a supplement. The concept of *abondement* (supplementary funding) per se limits the application scope of the Personal Learning Account and is conducive to a segmentation of funding arrangements. In reference to a terminology used in parliamentary debates, the personal

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<sup>46</sup> The right to individual training leave (CIF) acquired under employee status in fixed-term contract goes on at the end of the contractual relationship (Article L. 6322-29), i.e. it continues for the period in which the former employee on a temporary contract can be registered as a job seeker, or be in a self-employed status.



Learning Account (CPF) is thus a repository<sup>47</sup> from which the enterprise can draw through rights acquired by its employee, with the possibility to seek, if need be, additional financial provision from public authorities or joint bodies. Even if, in conformity with legislation, training hours contained in the Personal learning Account (CPF) cannot be merged<sup>48</sup>, they can still be pooled together<sup>49</sup>. However, this form of mutual compensation remains asymmetrical: only the sums paid under the Individual Right to Training (DIF) can benefit from the additional financial provision (*abondement*) described above. The legal framework did not provide for the compensation to operate in the opposite direction. In other words, a literal interpretation of article 5 of the 2013 Act conditions the use of the Personal Learning Account (CPF) to payments on grounds of acquired rights, as established under the Individual Right to Training (DIF). In the case where an employee mobilizes his personal learning account under this acquired rights based upon the DIF, he or she should be subjected to the legal regime for employees using their DIF: only training received during work time can be assimilated to work time per se. The supplementary funding regime (*abondement*) from public authorities will not be capable of causing the demise of the legal system given that initial access to training occurs through the Individual Right to Training (DIF). In the same vein, let us consider the case a serious fault which initially deprived the terminated employee from any use of the DIF, either within the enterprise, during his or her period of notice; or with a new employer, or else, when he is placed under the responsibility of the Unemployment benefit regime (Art L6323-17 and 18). Will such a fault prevent the employee from using his or her Personal Learning Account? For the rapporteur, Jean-marc Germain, “as far as the Personal LearningAccount is concerned, this condition should no longer exist, if the account is to be additionally funded by regional authorities and the state, bearing in mind that social partners will still be able to maintain their contribution through the DIF which in turn will fund the personal learning account”<sup>50</sup>. The 14 December 2013 ANI (art 14, paragraph 4)

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<sup>47</sup>For example, the rapporteur of the bill Claude Jeannerot, of the socialist group, Senate, 19 April 2013, Official Journal 20, p. 3625.

<sup>48</sup> An amendment providing for the absorption of DIF by the CPF has been filed by the UMP group in the National Assembly. It was rejected, the Minister of Labour Michel FIR referring to collective bargaining (Amendment No. 30 of the UMP, Second meeting of Thursday, 4 April 2013, Official Journal, 5 April, p. 3776)

<sup>49</sup> I.e. they can complement each other.

<sup>50</sup> National Assembly third meeting of 4 April 2013, official Journal of 5 April p. 3804.

provided that the employee would lose his or her acquired rights under the termination of an employment contract. This provision was not restated in the 2014 Act.

Based on the summary which accompanied the government bill submitted and also determined funding sources for the personal learning account (CPF), “the account becomes the repository of rights held by the employee under the Individual Right to Training (DIF) and can be mobilised in accordance with existing systems”<sup>51</sup>. Therefore, the personal learning account (CPF) was designed as a mechanism allowing the articulation of different funding sources with the exception of the training programme that remains under the aegis of the employer and is managed by the enterprise. It is interesting to note that the national interprofessional agreement (ANI) had provided that the enterprise would be able to add a financial supplement to the personal learning account (CPF) beyond the number of hours acquired under the Individual Right to Training (DIF) while this would allow the employee to access a training course likely to lead to a qualification or certificate (art 5, paragraph 3). The provision, which was not restated in the bill, was designed to be an addition to the individual training leave (CIF)<sup>52</sup>.

Employee status and the legal regime that is applicable to training-related actions will be conditioned by resources and systems to be mobilised accordingly. Yet, this will result in the re-introduction of logics of segmentation in opposition to which social partners and the government would like to operate. Paradoxically, this segmentation results from a syncretism, precisely from which the personal learning account originates. The law provides that “in addition to the account, the other training systems for which the account holder is eligible can be mobilised.” (Art 5, I, paragraph 2). Given that the respective objectives behind DIF, CIF and public financial funding are distinct, the combination of these systems seems quite unrealistic. Evidently, it could have been simpler and more coherent to create a personal learning account (CPF) outside existing systems. The objective behind this personal learning account (CPF) would have pertained to the development of employee professional capacity<sup>53</sup>, prior to serving as an instrument that ensures articulation among existing financial resources.

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<sup>51</sup> National Assembly Amendment No. 5562 submitted by the Government.

<sup>52</sup> Whose object is to enable the employee to attend training.

<sup>53</sup> On this concept, the philosophy and legal framework must be distinguished from the concept of employability, see Nicole Maggi-Germain, “La capacité du salarié à occuper un emploi”, in *Droit social*, December 2009, p. 1234 to 1245.

After the Act was passed in 2013, exercise terms of the acquired rights under the personal learning account system remained quite vague. They were more precisely stipulated in the Act in 2014. Hours of training undertaken under the Personal learning account system (CPF) and within working hours are considered as effective working hours for which employee remuneration provided by the employer remains unchanged (art 6323-18). If he or she is trained outside working hours, the employee is given the status of a professional training intern. During the training period, the employee benefits from social security benefits for work-related health and safety insurance. (L6323-19).

### *2.2.2. Increased Security in Workers' Career Paths through the Development of their Professional Capacities or Employee Empowerment through more Individual Accountability for his or her "Employability"?*

Already in 1986, German sociologist, Ulrich Beck noted, in his work, *Risk Society*, the evolution from a "unified employment system that occupies whole days and lives, with the total absence of professional activity as its only counter-alternative- a system typical of the industrial society-towards a system of flexible under-employment that is plural, decentralised and saturated with risks, *more likely one that is no longer familiar with unemployment issues (if here, we are referring to the absence of professional activity)*"<sup>54</sup>. Within such a system, unemployment is in some ways "integrated". As a substitute, there exists a generalisation of employment insecurity which is unknown to the 'old' system of full employment that characterised the industrial society"<sup>55</sup>. In contributing to the construction of professional transitions, could it be that professional training is being conceptualised in a form germane to the provisional job and skill management (*Gestion prévisionnelle des emplois et des compétences* – GPEC), one of the other themes evoked in the National interprofessional agreement (ANI) and the Employment Act, and in line with this evolution described by Beck?

In his report, parliamentary member Jean-Marc Germain relates the objectives behind the personal learning account system (CPF) to the construction of professional transitions: "In relation to employee access to lifelong professional training, the 5 October 2009 ANI notes that 'in an economy that is increasingly open to the world (...) the accelerated

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<sup>54</sup> In italics in the text.

<sup>55</sup> Ulrich Beck. *La société du risque*. Paris, Aubier, 2001, 521 p., p. 304.

renewal of technical production and distribution of goods and services continuously requires employee initiative and competencies. Employees' aspirations for an enhanced management of their professional development require the renewal of the objectives and means of continuous professional training. A personal account that can be mobilised during intentional or unintentional professional transitions, attends to this objective. As a result, distinctions between employee training and that of job seekers are reduced<sup>56</sup>. At the same time, several amendments<sup>57</sup> were submitted to the national assembly by the democratic and republican left wing of parliament, including the communist party. These amendments have resulted in the addition of one sentence in the first paragraph of article L.6111-1 of the Employment Act, which intended to define the objectives of professional training. In addition to being a national obligation, professional training is considered to be “a decisive element for the enhancement of employment security and for employee professional advancement”.

For the first time, the Law for the development of participation and employee ownership emphasized the concept of enhanced employment security. This Law also includes provisions of economic and social order and creates<sup>58</sup>, namely, mobility leave, an emblematic feature in the construction of professional transitions<sup>59</sup>. In the 7 January 2009 ANI on the “development of training, professionalization and the enhancement of security for professional paths”<sup>60</sup>, the concept is included as a transversal theme that was inadequately defined. Professional transitions, which in the case of professional mobility aim at linking legal statuses by ensuring continuity in the application of rights and immunities, differ from the professional path. In the concept of the professional path, the worker is

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<sup>56</sup> Supra, report, p. 88.

<sup>57</sup> Amendments No. 456, 457, 463, 465 of the 2nd meeting of 4 April 2013 of the NA, Official Journal 5, p. 3764 and 3765.

<sup>58</sup> Law No. 2006-1770 of 30 December Official Journal, 31 December 2006.

<sup>59</sup> Mobility leave is offered to employees in companies with at least a thousand employees with an agreement GPEC. It is intended to promote professional transitions accompanying measures, training and periods of work within or outside the company who proposed the leave (Article L. 1233-78). Acceptance by the employee of the proposed mobility leave wins out of the employment contract by mutual agreement of the parties after the leave (Article L. 1233-80).

<sup>60</sup> Taken by Act No. 2009-1437 of 24 November 2009 on guidance and lifelong vocational training, supra.

involved in continuity on his professional career<sup>61</sup>, which is first built within the enterprise, precisely within the framework of one or several employment contracts<sup>62</sup>. The professional path framework underpins the implementation of systems designed to facilitate professional transitions (internal or external to the enterprise, in the current job or towards new employment or from one employment status to the other) towards a process of professional development. The process consists of a skills development path in which information about, orientation, training and recognition (*infra*) are included. In other words, if the person acquires a set of rights, these are exercised within a collective legal framework. Employers, joint bodies, the State and regional authorities work in unison towards the enhancement of employment security for the employee.

Such an approach contradicts the logic of employability. Although the term does not bear any legal value, it forms part of the managerial norms, which confine the enterprise within its economic role<sup>63</sup>. In focusing on the individual, the logic allows for a selection between employees who are and who are not “employable”. Employees are assessed as active members who align themselves with the enterprise’s strategy. From the vantage point of a legal analysis, the logic of employability leads to the employee’s responsibility, or more precisely to multiple situations within which their responsibility is likely to be required. The employee’s initiative (or lack thereof) thus becomes an essential criterion. From this point of view, the personal learning account (CPF) remains ambiguous, as demonstrated by

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<sup>61</sup> This notion, at the foundation of the French idea of the role of the state was already present in some collective company-level agreements: the SNPE Matériaux énergétiques has established in its agreement of 21 November 2007 (signed by all the trade unions, with the exception of SUD) a “career” savings account that can be used in particular for training at least 70 hours (LS, short social report No. 15007 of Tuesday, 4 December 2007). See the agreement of 4 October 2004 on the principles for the development and career progression within Veolia Environment (Signed by the CFDT, CFE-CGC, CFTC, CGT, FO, UNSA). The agreement of 24 September 2004 on the Training and GPEC in the pharmaceutical industry Industries (CGT was not a signatory).

<sup>62</sup> See, for example, Article L. 6321-13 of the Labour Code (introduced through Law No. 2005-157 of 23 February 2005 Article 67 IV Official Journal of 24 February 2005.) The employer, pursuant to an extended collective agreement or extended or to the employment contract, agrees to renew the contract of an employee employed on a seasonal basis for the next season, may enter into an employment contract for a fixed term to allow the employee to participate in a training programme provided by the company.

<sup>63</sup> A retrospective and theoretical approach to the concept of human resources is available at B. Quélin. *L'analyse fondée sur les ressources et les compétences*. In *Le management. Fondements et renouvellements*, 360 p., p. 29-41, p. 30 and 31.

parliamentary activities. “With the personal learning account system, we will shift from the collective obligation to finance employees’ training to an individual obligation to finance every individual’s training”<sup>64</sup>. “The individual account implies a distinct organization of the circuits, increasingly centred on the employee, whose training initiatives need to be trusted. It is a right that is more distinctive than the Individual Right to training (DIF). It differs completely from the way in which Gérard Filoche caricatured it, with his well-known lyricism, portrayed the system as the new employee-training booklet. While the Individual Right to Training (DIF) could afford such criticism given that it’s negotiated with the employer, the individual account requires the employee’s autonomy and responsibility. To be sure, this is where we depart from each other. You think that the employee does not know what is good for them. In other words, you only believe in collective rights, while here, we are creating an individual right that is guaranteed collectively”<sup>65</sup>. The collective dimension of the personal learning account system (CPF) appears to be very limited: “this account will be included in the framework of training catalogues which will be fixed with social partners at national level. It is hoped that their content will prove useful to the country and, *a fortiori*, to the persons concerned by allowing them to find employment and to progress professionally”<sup>66</sup>. The very notion of “account” assumes an ambivalent character. On the one hand it places training within a consumerist approach, just as the notion of “accrued rights” to unemployment insurance in the January 11, 2013 ANI<sup>67</sup>. On the other hand, it assumes that the account, from which the individual would draw, would be funded through “deposits”. In addition, the notion assumes that the account would also be funded by contributions from the employee who would give part of his or her time in exchange of credited training hours, as is the case with the time savings account (*Compte épargne-temps-CET*)<sup>68</sup>. Within this logic, the Morange report that was published in 2010

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<sup>64</sup> Jean-Marc Germain, Report No. 847 of 27 March 2013, cit., p. 112.

<sup>65</sup> Speech to the National Assembly by Jean-Patrick Gille, Socialist, republican and citizen group, second sitting of 4 April 2013, Official Journal, 5 April p. 3764.

<sup>66</sup> Speech to the National Assembly Jean-Marc Germain, Rapporteur of the Committee on Social Affairs, Socialist Group, Republican and Citizen, 2nd meeting of 4 April 2013, OJ 5, p. 3761.

<sup>67</sup> Art. 3, creating *droits rechargeable* to unemployment insurance. The term is not present in the law.

<sup>68</sup> Established by the law of 25 July 1994 on the profit-sharing (Article L. 3151-1 et seq.), The time savings account was created to allow employees to convert additional holidays and use time to create jobs, it has gradually become a device for time management and

suggested the creation of a “social account” for each employee on the basis of the current time savings account<sup>69</sup>. Besides, the concept of an “account” also presupposes that each worker is capable of thinking and designing his or her training plan, while a major part of access inequality to training is correlated with the number of study years covered in initial training. Overseas experiences such as the one proposed through the ILA\* in the 1990s in the UK, the *individual account for learning*, has extended the logic of the account by far. In paying an amount of £25, which was topped by a statutory contribution of £150, where individuals were able to open an account in a bank that gave access to discounts on training-related actions. The account expired after one year<sup>70</sup>.

From this vantage point, the Personal learning account system (CPF) is consistent with the concept of individualization, which characterizes industrial relations today and is at the core of the most global developments in employment rights in general, and particularly in continuous professional training. The role of the initiative<sup>71</sup>, as a manifestation of autonomy, thus becomes the basis from which might emerge the most mythicized representations of the employee as the actor in his skills development<sup>72</sup>; a pure mind, free from any contingency.

The functions of a Right to Training that has yet to be designed are not to foster employability of employees but to develop or maintain their professional capacity. This includes the development of their

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for the employee an opportunity to save money. See Nicole Maggi-Germain, “À propos de l’individualisation de la formation professionnelle continue”, In *Droit social*, July-August, 1999, p. 692-699.

<sup>69</sup> Information of the Social Affairs commission at the conclusion of the work on French flexicurity presented in 2010 by MP Pierre Morange, Report No. 2462, 28 April 2010, p. 238, p. 57.

<sup>70</sup> The program was suspended due to widespread fraud. See Circé-Amnyos (consulting firm) and J.Barthélémy and associates. *Opportunité et faisabilité d’un compted’épargne formation*. Working Paper, 2008, 131 p., p. 31. Coralie Perez, “Regard sur quelque sex périencesé trangères de ‘comptes individuels de formation’”, In *Droit social*, n° 12, Dec.2014, pp. 981-985.

<sup>71</sup> Determining criterion to define the legal regime applicable to the time spent in training (considered or not as working time); see. Court of Cassation, Social Chamber, 16 January 2008, No. 07-10095 published in the Bulletin: “whereas, having noted that the training activities related to the project *Alliance* had not been requested by employees, it follows that whatever their nature, these training time could not be charged to the learning account, the court of appeal that has pointed out that the debits made were manifestly unlawful ruled that that the plea is unfounded”.

<sup>72</sup> One of the objectives stated in the preamble to the ANI of 5 December 2003 concerning the access of employees to training throughout working life.

qualifications and competencies, while taking into account the acquisition of theoretical and empirical knowledge as well as opportunities to apply them. While these opportunities depend upon the individual *per se*, they primarily depend upon the context and means made available within the enterprise to maintain and develop this professional capacity. The enhancement of employment security is one of these means.

### 3. A Right to Training that Remains to be Defined

Neither the Individual Right to Training (DIF) nor the Personal Learning account (CPF) pertains to “rights to training” *per se*. The ambiguity lies with the fact that there exists confusion between the Rights to training and legal mechanisms, precisely between principle and rule. Yet, the distinction is fundamental. As is reminded in *The Digest*<sup>73</sup>, “one should not seek to draw law from the rules. Instead, rules should be drawn from law.” A Right to Training should be modelled onto (existing) legal systems: it cannot be identified with them. An individual right to training lies within distributive justice<sup>74</sup>: it proposes to give persons their rightful due, while taking into account, their level of initial education, for instance. This also implies that individuals are to be guided on a training path. On various points, the Act provides a number of responses.

#### 3.1. A Right to Training: The Concept

##### 3.1.1. The “Right to” and the Legal Framework

No text exists which declares a Right to professional training. The preamble of the 1946 Constitution whose constitutional value was granted recognition from the Constitutional Council (*Conseil constitutionnel*) in 1971

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<sup>73</sup> Issued on 30 December 533 under the Emperor Justinian, it is composed of extracts from books of Roman jurists. Together with the Justinian code (collection of imperial compilations), the *Institutes* (collection of quotations from jurists of the Roma Republic or the Roman Empire) and *Novelles* (collection of new constitutions of Justinian), it makes up the *Corpus Juris Civilis*, that is to say the largest compilation of ancient Roman law (529-534).

<sup>74</sup> Aristote. *Éthique à Nicomaque*. GF-Flammarion, 1992, p. 346, p. 144.



does not provide for equal access to professional training<sup>75</sup>. While the rate of access to training amounted to 41% in 2007, the figures represent short-term training. Precisely, the length of internships is approximately 30 hours per intern<sup>76</sup>. In regard to the Individual Right to Training (DIF)<sup>77</sup>, only 6% of the employees attended a training course within the framework in the same year and 6.5% in 2010<sup>78</sup>. The average length of training is of 22 hours. The DIF is primarily used in large enterprises for short and non-diploma courses.

The History of the right to continuous professional training shows the extent to which the effectiveness of a right to training is conditioned by its implementation methods. As a result, opening the possibility to transpose training onto the employee's free time generates significant inequalities not only among employees in varying sectors, but mostly between male and female employees. The intrusion of a "grey" period (neither working hours, nor rest periods) in the employee's free time implies that the public is deprived access to training within this mechanism. Therefore, an effective right to training can only be understood as a right that is exercised in principle during working hours. Also, the training program needs to provide for further arrangements whereby remuneration can be paid directly by the employer, or indirectly by joint institutions such as the OPCA<sup>79</sup>, the State or regional authorities. The provision would allow these various funding sources to supplement each other. Finally, a right to training needs to extend to the aggregate of workers in the sense of community law. Those concerned range from employees to the self-employed, including civil servants, job seekers, or the professional training intern<sup>80</sup>. In fact, the Employment Act provides for an individual right to

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<sup>75</sup> "The Nation guarantees equal access for children and adults to education, vocational training and culture. The organization of free and secular public education at all levels is a duty of the State. Preamble to the Constitution of 27 October 1946, paragraph 13.

<sup>76</sup> Bill of the Budget Law 2009, under *formation professionnelle*, 139 p., P. 38 (regarding training activities of 2007).

<sup>77</sup> The ceiling of 120 hours of training to which employees could have access was reached in 2009.

<sup>78</sup> R. Descamps, "Le DIF : la maturité modeste", In *Bref Céreq*, no. 299-2, mai, 4, 2012, p., p. 2.

<sup>79</sup> Accredited joint collecting fund for training.

<sup>80</sup> ECJ 19 March 1964, M.K.H. Unger, R. Hoekstra against Bestuur der Bedrijfsvereniging voor Detailhandel Ambachten in Utrecht, Case 75-63, ECR, p. 347; ECJ July 3, 1986, Lawrie Blum, aff. 66/85, D. 1986 IR 452 (about a teacher trainee); ECJ 31 May 1989 Rec. p. 1621: "The essential feature of an employment relationship is the fact that a person performs services for a while, in favour of another person and under the direction thereof, benefits in return for which he receives remuneration. Provided that it

continuous professional training of the self-employed, members of liberal as well as non-remunerated professions, and their collaborating and joint partners<sup>81</sup>. With universally declared as a guiding principle in the January 11, 2013 ANI, it is assumed that the allocation of training hours does not depend upon the individual's employment status. However, rights formerly acquired under the Individual Right to training (DIF) and acquired today under the Personal learning account (CPF) are calculated on a prorata temporis basis for part-time employees (subject to more favourable provisions made in enterprise-, group- or sectoral-level agreements- Art L. 6323-11, paragraph 2). While there is no intention to pretend that the right to training needs to fall within the logic of perfect equality, the validity of these criteria of differentiation still needs to be questioned. The need to receive training does not vary according to employment status. The benefit of a personal right that transcends employment statuses here seems to be of significant pertinence.

Instead of introducing a new training system codified under the general principles of lifelong professional training, the French legislation would have been well advised to add the fundamental principles that structure the different systems, which could then have been listed in detail in the rules on access to training. The right to lifelong professional training could have been defined as follows: "the right for each employee to be released from work in order to attend training aimed at maintaining his or her professional capacity and to allow them to progress by at least one qualification level, during their professional life.

Remuneration or the payment of a replacement income, training-related initiatives taken during working hours and guidance afforded to employees during their training path all contributes to the effectiveness of this right".

The confusion that exists between the Right to training and systems underpinning access to training creates legal instability. The individual Right to Training (DIF), the Individual training leave (CIF) and the personal learning account (CPF) are eventually muddled insofar as the

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refers to effective and genuine activities, neither the origin of the resources to pay, or the nature of the legal relationship between the employee and the employer cannot have consequences for the recognition of a person as a worker"; ECJ, 3rd c., 21 Feb 2013 aff. C-46/12, SNB c / Styrelsen for Videregående Uddannelser og Uddannelsesstøtte.

<sup>81</sup> Art. L. 6312-2 states that "Self-employed workers, members of the liberal professions and non-employed workers, including those who do not have any employees, as well as their collaborating or associated partners to in Article L. 121-4 of the Commercial Code, benefit personally of the right to continuing training".

question about their combination is repeatedly mentioned<sup>82</sup>. It is unrealistic to attempt to subsume these systems under each other given that their purposes diverge. On the contrary, they need to be envisioned as distinct categories while being subjected to unique legal effects. Objectives set for the Individual Training Leave (CIF), the individual employee's prerogative, are extended. The CIF is designed to allow an employee to pursue his or her initiative and as an individual, to undertake training-related initiatives that will allow him or her to access a superior level of qualification, to change his or her occupation or professional field or to be more open to culture, social life and responsibilities within voluntary organisations (art L. 6322-1). As far as the Individual Right to training is concerned, no specific purpose has been fixed. The Employment Act only indicates that social partners can define "priorities", through a collective agreement at sectoral or enterprise level. In the absence of an agreement, the act refers to a typology of training-related actions conducive to the exercise of the individual right to training (actions related to promotion, actions towards acquiring, updating or improving in terms of knowledge, actions towards qualifications- art L. 6323-8). However, due to the fact that the use of acquired hours requires the employer's approval, training-related initiatives that originate from this framework are generally linked to corporate needs. This concept has been coined "special training program" (*formations difables*). In addition, the March 5, 2014 Act removed the Individual Right to Training (DIF), which has been absorbed by the personal learning account system (CPF). Nevertheless, the Individual Training Leave (CIF) and the Individual Right to Training (DIF) are complementary. As a result, they cannot be rolled into one. Having a personal learning account system (CPF) would be beneficial if it filled the gaps left by the Individual Training Leave (CIF) and the Individual Right to Training (DIF): a larger public, training program that lead to qualifications (through the additional funding system (*abondement*) which supports the DIF under the CPF, for example). Therefore, the relevant logic should not be that of provision in term of hours (*dotation*) which, *a priori*, couldn't be easily defined. Instead, logic of the social drawing right (*droit de tirage social*) seems more appropriate. Its terminological rationale is explained as follows:

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<sup>82</sup> By way of example: Gérard Larcher – member of the Senate. *La formation professionnelle : clé pour l'emploi et la compétitivité*. Document submitted to the President of the Republic Nicolas Sarkozy, 65 p., p. 21, 2012; François Davy – former president of Adecc, *Sécuriser les parcours professionnels par la création d'un compte social universel*, report submitted to the Ministry of Labour, 2012, 40 p., p. 22-23.

*Drawing rights because their enactment depends upon a double-edged condition: the design of an adequate provision and the account holder's decision to make use of this provision. Social Drawing Rights because they are social both in terms of their way of establishing (different funding added to the provision) and their objectives (social utility)*<sup>83</sup>.

1) *An asset-based system or a social drawing right?*

The hour-based provision system and social drawing rights are premised upon distinct logics.

The first mechanism is restricted to provide individuals with a pre-defined number of hours. It lies within an individualistic perception of professional training: human beings possess a degree of rationality that allows them to make pertinent use of training systems. It also confines continuous professional training within a consumerist approach by limiting it to affording the character of a claim which the worker (or any individual) would be able to make to the employer, a joint institution or to the whole community. Neither the Individual Right to Training (DIF) nor the personal learning account (CPF) is liable for such claims<sup>84</sup>. A right to continuous professional training has more to do with the construction of the professional state of persons than with a right to claim. The social drawing right substantialises the right to training, which it coalesces to the person *per se*. Professional training belongs to the category of social rights, which is of non-commercial character and has to do with national solidarity<sup>85</sup>. This is because it is essentially attached to the person, contributes in shaping them through the construction of their professional identity while increasing the level of instruction and improvement of members of a society. The right to training has no material equivalent. It is one of the rights that cannot be turned into a financial claim. It attends to objectives with a scope that goes beyond recipients' interests and concerns those of society as whole. It is not a form of authority that is imposed on an individual but rather the marker

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<sup>83</sup> A. Supiot "Du bon usage des lois en matière d'emploi", In *Droit social*, 1997, p. 229-242, p. 242 ; and A. Supiot (ed.) *Au-delà de l'emploi. Transformations du travail et de venir du droit du travail en Europe*. Report for the European Commission Paris, Flammarion, 1999, 321 p.; see also the special issue of *Droit social*, May 1999, p. 431-473.

<sup>84</sup> Ibid.

<sup>85</sup> See R. Demogue. *Les notions fondamentales du droit privé*. In LGDJ, *La mémoire du Droit*, 2001, 681 p., p. 443 à 480 (Converting rights into money), 1911.

of the interdependent connection between members of a coordinated society. Beyond the “right to”, one should consider aspirations, the human being’s life-related purposes<sup>86</sup>. As a result, the act of exercising social drawing rights cannot become an obligation for its account holder, nor should it be conditioned by the emergence of potential risks<sup>87</sup>. A right attached to the person needs to own a certain set of legal attributes, primarily, in terms of its universal, fundamental and non-patrimonial character<sup>88</sup>. There remains a need to construct an articulation between rights attached to the person- regardless of employment status- and more restrictive rights per employment contracts.

What may be the merits of the idea of a professional social security? Since 2002, the theme has been developed by the CGT who envisions it, namely as an alternative to redundancies<sup>89</sup> and to flexicurity<sup>90</sup>. According to the CGT<sup>91</sup> Confederation secretary, Maryse Dumas, “In case of job cuts, whether collective or individual, the employment contract needs to be maintained (the salary as well) until the individual employee is redeployed or until a solution is identified. Despite this endeavour, the objective should not be to exert pressure upon enterprises, which are already in difficulty, but to call for inter-firm solidarity. Such solidarity could be operationalized through the occupational or sectorial pool, and through the conversion of funds designed to finance re-deployment programs in the form of redeployment leave and remuneration”<sup>92</sup>. In this case, access to training needs to be facilitated and “implies a public sector with a new managerial approach in which workers’ unions and professional associations would be involved. Such a system would allow for extensive mutual cost coverage in line with objectives pertaining to training, mobility and employment integration”<sup>93</sup>. In regard to the social

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<sup>86</sup> See M. Villey. *Le droit subjectif en question*, in *Archives de philosophie du droit*. Vol. IX, 1964, p. 97 à 127, p. 102.

<sup>87</sup> On this last point see A. Supiot, ed. *Au-delà de l’emploi*, cit. p. 90

<sup>88</sup> The ANI of 11 January 2013 provides that portability does not imply a conversion of hours into money (Art. 5, par. 3) Act 2013 provides that the personal learning account is calculated in hours (Art. L. 6111-1 as amended by the Labour Code as).

<sup>89</sup> See for instance J.-C. Le Digou. *Demain le changement : Manifeste pour un nouveau syndicalisme*. Armand Colin, Paris, 2005, 267 p., p. 93. See in particular p. 90-96 and 108-112.

<sup>90</sup> J.-C. Le Digou. *Vers une sécurité sociale professionnelle*. Alternatives Économiques Poche No. 052, 2011.

<sup>91</sup> Confédération générale du travail – a french trade union.

<sup>92</sup> M. Dumas. « Sécurité sociale professionnelle et nouveau statut du salarié : le projet de la CGT », In *Les cahiers Bernard Brunhes*, 11, 2004, p. 33-35.

<sup>93</sup> J.-C. Le Digou, 2011, *cit.*

contribution of enterprises, the project proposed by the CGT also makes provision for adjustment needs that take into account the management of recruitment practices.

Other authors argue for a very different conceptualisation of professional social security in which some of the enterprise's obligations such as re-deployment can be brought to fall under the responsibility of the community. "In the realms of employment, professional social security ought to guarantee decent income and quality guidance to all job seekers by allowing redeployment towards future employment. (...) A public service in charge of redeployment would replace the enterprise's obligation in this respect"<sup>94</sup>. In the presidential wishes stated on 4 January 2007, Nicolas Sarkozy called for a professional social security that would have to fulfil four missions, namely, "the payment of unemployment benefits, personalized guidance for job seekers, professional mobility support and lifelong training. (...) In regard to the contract of professional transition, a real contractual relationship with rights and obligations will be established between individuals (recently) out of employment and the professional social security system. In line with the social dialogue reform, social partners will be responsible for managing this new collective arrangement in collaboration with the state." In discussions on the bill on employment security enhancement, the rapporteur, Jean-Marc Germain, refers to the management of the personal learning account (CPF) and argues for "the creation of a real training insurance regime along the lines of the unemployment insurance mechanism created in 1958. In fact, this regime could be managed by social partners"<sup>95</sup>. The labour minister, Michel Sapin presents the bill as a "base (...) towards a universal personal account that will be a central pillar of 'professional social security'"<sup>96</sup>.

The professional social security concept aligns itself with the History of continuous professional training. Already in 1966, continuous professional training was envisaged as a "national obligation" in the legislation<sup>97</sup>.

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<sup>94</sup> Pierre Cahuc and Francis Kramarz. *De la précarité à la mobilité : vers une Sécurité sociale professionnelle*. Report to the Ministry of Employment, Labour and Social Cohesion, La documentation française, 202 p., 2004, p. 11 et 12.

<sup>95</sup> J.-M. Germain, rapporteur, NA, third sitting of 4 April 2013, Official Journal of 5 April, p. 3810. The information report of the Committee on Social Affairs at the conclusion of the work on French flexicurity presented in 2010 by MP Pierre Morange referred to the idea of a professional insurance replacing the unemployment insurance to manage the social account of each employee (Report No. 2462, April 28, 2010, 238 p.).

<sup>96</sup> AN, parliamentary debates, 1st sitting of Tuesday, 2 April 2013.

<sup>97</sup> Law of 3 December 1966 on guidance and vocational training.

Today, this provision is included in the general principles of lifelong professional training (Labour code, Art L. 6111-1). The state is not specifically targeted in the text: “national obligation” encompasses social partners. Joint partnership is fundamental to the professional training system. Based on the 1969 report compiled by the Court of Auditors (*Cour des comptes*), “This (arrangement) implies that there is consultation for policy development, and also cooperation in its execution”<sup>98</sup>. Consultation takes place, “namely with the employer and employee representative associations as well as *the self-employed*”<sup>99</sup>. However, if consultation is not underpinned by a principle of solidarity, the concept of professional social security may lead to enterprise responsibility being transferred to the community and individuals. The insured individual contributes as much as they receive: “The essence of solidarity in the meaning acquired in Social Right is to establish a common pot within a community of human beings. Each and every one ought to contribute to the pot according to their means and may seek from the pot according to their needs. This mutual arrangement replaces the individual utility calculus (which it forbids) by a collective utility calculus”<sup>100</sup>. However, prior to being a form of insurance, social security is an institution that unites its members around a common project, a social cohesion factor. The concept was also present in Mauss’ essay on gift: “The worker gave his life and labour to the community on the one hand, to his employers on the other. If they are required to contribute to the insurance mechanism, those who benefited from this service still owe him his remuneration. In collaboration with the worker’s employers and based upon the rights, the state, representative of the community, owes him some form of security in life, against unemployment, illness, old age and death”<sup>101</sup>.

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<sup>98</sup> Court of Auditors. *La mise en œuvre de la politique de formation professionnelle et de promotion sociale*. In Report to the President of the Republic of 1969, second part, Les Administrations de l’État. Observations communes à plusieurs ministres, Official Journal 1971, administrative documents, p. 177 à 270, p. 181.

<sup>99</sup> Italics added. *Ibid.*

<sup>100</sup> A. Supiot. *L’esprit de Philadelphie*. Paris, éd. du Seuil, 2010, 192 p., p. 160.

<sup>101</sup> M. Mauss (1923-1924). *L’essai sur le don*. In *Sociologie et anthropologie*, PUF, 1966, 475 p., p. 260-261.

### 3.1.2. Access to Training: In Search of Equity

#### 1) Differed qualification-based training: an objective, not a right

In 1990, the right to professional qualification was included in the Employment Act<sup>102</sup>. In 2009, the objective of facilitating employees' advancement by at least one qualification level during their professional life was included as a principle in the same article by social partners<sup>103</sup> and policy makers<sup>104</sup> as follows:

“Any worker or person engaged in active life has a right to information, orientation and professional qualification. On individual initiative and regardless of their status, they should be able to attend a training course which would allow them to progress by at least one level in the course of his or her professional life by acquiring a qualification that is in line with economic needs that are predictable in the short and medium term. The qualification should be:

1. Either registered in the national repertoire of professional certificates under article L. 335-6 of the Code of Education.
2. Recognised in classifications established by a national sector-based collective agreement;
3. One that gives right to a professional diploma provided by the branch level (CQP<sup>105</sup>).

The qualification issue is not merely related to the person and their approach to training. It is at the core of the concept of justice and is fundamental to the continuous professional training system introduced in 1971. Should the allocation of hours under the person learning account system be egalitarian or redistributive?

The very notion of the Individual Right to Training (DIF) suggests the introduction of corrective mechanisms that would achieve concrete equality given a concern for equity. In Aristotelian terms<sup>106</sup>, the rule will thus be able to “bend according to the shapes of the stone” and make it

<sup>102</sup> Law No. 90-579 of 4 July 1990 on training credit, quality control of the CVT and amending Book IX of the Labour Code. It appears today in Article L. 6314-1, in the general provisions of Book III on CVT.

<sup>103</sup> ANI of 7 January 2009 on the development of training, professionalization and career security.

<sup>104</sup> Law No. 2009-1437 of 24 November 2009 on guidance and lifelong vocational training, *supra*.

<sup>105</sup> Professional qualification certificate.

<sup>106</sup> Aristote. *Ethique à Nicomaque*. GF-Flammarion, 1992, 346 p., book V (Justice), chapter XI, p. 163.



possible to personalise employee's rights<sup>107</sup>. If applied to continuous professional training, this personalization implies that employees' initial education is taken into account based on the Right to vocational training that remains to be built<sup>108</sup>.

The National Interprofessional agreement (ANI) and the bill initially proposed, make no mention of this aspect. It is only in the amendment introduced by the government on funding sources for the personal learning account (CPF) that the topic on conditions of hour allocations is raised. In this respect, the 2013 Act goes beyond the ANI as it connects the concept of mutual and supplementary funding to qualifications. This is stated below:

“The account is credited (...) 2. By supplementary funding, provided namely by the State or regional authorities, in order to facilitate access to one of the qualifications mentioned in article L.6314-1, particularly for individuals who left schooling in earlier stages or who, further to their initial post-compulsory education, did not obtain any accredited professional qualifications.” According to the rapporteur Jean-Marc Germain, “the personal learning account aims to materialize this objective linked to professional training under the first paragraph of the same article (The CPF also aims to) allow each person to progress by at least one qualification level during his or her professional life, regardless of his status”<sup>109</sup>. Given that the acquired rights to 120 hours under the

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<sup>107</sup> See N. Maggi-Germain, « La formation professionnelle continue entre individualisation et personnalisation des droits des salariés », In *Droit social*, May 2004, p. 482 to 493. As a comparison, see Court of Cassation, Social Chamber, 18 January 2005, No. 02-46737: he fails to comply with his obligation with regard to employees' reclassification, the employer who does [...] communicate to each employee who is about to be dismissed without any specific, and personalized proposals of reclassification.

<sup>108</sup> The idea has been developed by the European Parliament in its Report on the Commission memorandum on lifelong education and training. It draws attention to the proposal that all persons should be entitled to a certain number of years of public education, which implies that those who left school early are entitled later in life to complementary education aimed at acquiring the necessary vocational qualifications that will enable them to play an active role in society and give them access to the labour market; European Parliament Committee on Culture, Youth, Education, the Media and Sport (2001), Report on the Commission memorandum on Lifelong Learning A5-0322/2001, 25 p. (paragraph 42, p. 12). In the same vein, see also draft law on the possibility to have a passport to guarantee equal access to education and training throughout life, presented to the AN on 20 March 2002 by MP Gerard Lindeperg and in the ANI of 5 December 2003 which put forward the idea of a right to “deferred skills training”.

<sup>109</sup> Cited Report, p. 86.

Individual Right to Training (DIF) are not sufficient for obtaining a qualification<sup>110</sup>, supplementary funding and/or the possibility to mobilize other training systems such as the Individual Training leave (CIF) or the operational preparation to job (*Préparation opérationnelle à l'emploi-POE*)<sup>111</sup> will be required. Several amendments proposed by the Democratic and Republican<sup>112</sup> left wing at the national assembly, and by the Republican and citizen communist group<sup>113</sup> in the Senate took their concern for equity further. In conformity with provisions included in the 2009 ANI<sup>114</sup>, the amendments argued for priority access to diploma and qualification-based courses for employees without or with low qualifications<sup>115</sup>. Based on an amendment introduced by left-wing parliamentary members, this right needed to be extended and set within an unlimited timeframe and be calculated in terms of accrued training as being worth at least 10% of time at work<sup>116</sup>.

However, while amendments codify a right to differed training according to the principles under the right to continuous professional training, the Social Affairs Commission includes the objective for differed and qualification-based training in the Employment Act provisions that deal with “means” (supplementary funding to the CPF)<sup>117</sup>. In doing so, the commission limits the symbolic value as well as the constraining power (the objective for differed and qualification-based training is limited to the supplementary funding mechanism) of the legislative provision<sup>118</sup>. The

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<sup>110</sup> For example, initial training at the level V (BEP or exit before the final year of secondary education) as a family carer requires 840 hours.

<sup>111</sup> Established by the ANI of 7 January 2009 which sets up a system to increase employment readiness of jobseekers, compensated providing in some cases for an allowance, to increase access to (permanent or temporary of at least 12 months) employment for “training activity that cannot exceed 400 hours in order to acquire the foundation of professional skills necessary for the proposed position” (Article 21 et seq.).

<sup>112</sup> Amendment No. 4886, AN second sitting of 4 April 2013, Official Journal of 5 April, p. 3766.

<sup>113</sup> Amendment No. 53, Senat, sitting 19 April 2013, Official Journal of 20 April, p. 3624.

<sup>114</sup> Paragraph 1.4.3 of the ANI of 7 January 2009 under the title *La formation initiale différée*.

<sup>115</sup> Amendment No. 4886, AN second sitting of 4 April 2013, Official Journal of 5 April, p. 3766.

<sup>116</sup> Amendment No. 4887, AN second sitting of 4 April 2013, Official Journal of 5 April, p. 3766.

<sup>117</sup> Speech by Jean-Marc Germain, second sitting of 4 April 2013, Official Journal of 5 April, p. 3767.

<sup>118</sup> Even though Article 8 of the law on guidance and planning to reconstruct education in the French republic establishes a right to deferred initial qualifying training (Bill No. 441, 20 March 2013).

November 24, 2009 Act brought adjustments to the ANI signed during the same year. During the parliamentary debates that preceded the passing of the November 24, 2009<sup>119</sup> Act, two similar amendments were proposed under Nicolas Sarkozy's presidency by the left-wing, including the socialist group<sup>120</sup>. The Special Commission of the senate did not have a favourable opinion in respect of these propositions: "First, it is not appropriate to target a specific public within general objectives for lifelong professional training. In addition, this unloads a particular form of responsibility onto professional training without specifying the obligations of the national education system. It would be illusory or even, dangerous to demand that national education affords the role of the family"<sup>121</sup>.

Even if "the intent (*l'esprit*) of the personal learning account"<sup>122</sup> is to provide employees with an access to training that is inversely proportional to acquired qualifications, the law does not attend to a right to differed and qualification-based professional training. This is so although studies, which have been conducted, do demonstrate that access to training is not adequately open to those who need it the most, namely, less trained or less qualified individuals<sup>123</sup>.

We can notice that if the December 14, 2013 ANI included, in the category of training courses eligible for the CPF, "qualification-based courses which attend to the economic needs that are predictable in the short and medium term *and*"<sup>124</sup> which facilitate the enhancement of

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<sup>119</sup> Law No. 2009-1437 of 24 November 2009 on guidance and lifelong vocational training.

<sup>120</sup> Amendment No. 131 (rejected) to Art. No. 1 presented by members of the Socialist Group, Senate, 21 September 2009, Official Journal of 22 September, p. 7784. Amendment No. 25 (rejected) to Article 1 presented by members of the Communist, Republican, Citizen group and by the Senators of the Left Party, Senate sitting of 21 September 2009, Official Journal of 22 September, p. 7785.

<sup>121</sup> Speech at the Senate by rapporteur Jean-Claude Carle, Senator of the UMP group (majority of the President N. Sarkozy), sitting of 21 September 2009, official Journal of 22 September p. 7785.

<sup>122</sup> J.-M. Germain, AN second sitting of 4 April 2013, Official Journal of 5 April, p. 3774, Speech in response to an amendment No. 5421 filed by the UDI group, Union of Democrats and Independents.

<sup>123</sup> Finally, see also the report of the Court of Auditors that finds out that the proportion of young people without vocational qualification has been shrinking since the introduction of "training contracts" in 2003, "this trend is exacerbated in occasion of the crisis. Like other employment policy tools, training contracts are hardly targeted to those who need them the most", Court of Auditors. *Le marché du travail : face à un chômage élevé, mieux cibler les politiques*. Thematic public report, 2013, 170 p., p. 106-107.

<sup>124</sup> Italics added.

employment security for employees” (Art. 13, paragraph 3), the 5 March 2014 Act first states the only training “which facilitates the acquisition of foundations of knowledge and competencies as defined by decree”. (Art. L 6323-6, I).

### *2) A New Professional Development Advisory Service*

The employment security enhancement project places the person in a professional development process materialized in a training path, which encompasses information, orientation, training and accreditation. The right to information and the right to orientation were noted in the November 24, 2009 Act (Art L. 6314-1). In this respect, the act has made provision for a “public service for lifelong orientation” designed to “guarantee access to information that is free, comprehensive and objective for all persons. Information here pertains to training, qualifications, job opportunities and levels of remuneration in addition to access to advisory and guidance services in quality orientation that are organized in networks” (art L6111-3). In reference to the provisions made in the ANI, the law creates a new article (L. 6314-3) in the Labour Code. This article recognizes the right to benefit from advisory services in professional development that are provided by the public service of orientation and whose primary objective is to help the employee improve their level of qualification. The existing articulation between the interventions of joint institutions and the public service of orientation noted in the ANI has disappeared from the law that is related to subsequent negotiations on continuous professional training<sup>125</sup>. One of the fears expressed in parliamentary debates pertains to the possibility to witness the emergence of a career guidance market. Consequently, the guidance monopoly has been placed under the aegis of the public sector and the provision made in the bill for the possibility of having CPF to finance this guidance (possibility introduced by the ANI) has been removed. However, ambiguity lies within the stance taken by the labour minister, Michel Sapin in this case: “According to those concerned by this topic, it is evident that employees should not have to spend from their frequently low incomes to access this service. Nevertheless, this service will need to be funded, and as far as I am concerned, I would not be surprised if each individual was to mobilize their personal account”<sup>126</sup>.

<sup>125</sup> Second sitting of 4 April 2013, Official Journal 5 April, 3781.

<sup>126</sup> Ibid., p. 3778.

It seems clearly pertinent to implement this public service at local level. Similarly, regional authorities hold a fundamental place and the forthcoming bill on decentralization (Act III) should redefine the public service of professional orientation and employment. The choice of the territorial level aligns itself fully with the perspective of right territorialisation that attends to a European Union demand<sup>127</sup>.

The level of information, which the employee is likely to receive, is extended. It concerns the professional environment, the development of occupations on respective territories as well as various training systems. It pertains to guidance, which is designed to allow the employee to enhance their competencies and where possible, facilitate their professional development project. The aim is to “foster the training-related initiative of an active individual. Throughout his professional path, this individual is alternately a private sector employee, a public actor or a job seeker. As they entered active life, they also benefited from training programs designed for apprentices and youth entering the labour market”<sup>128</sup>. Based upon parliamentary debates, it is clear that the creation of an advisory service for professional development was envisioned in relation to the personal learning account (CPF). “Precisely, these provisions become systems. They introduce, on the one hand, a territorialised mechanism designed to incite and guide the individual towards qualifications- the professional development advisory service and on the other, a tool that fosters access to qualification: the personal account”<sup>129</sup>. The implementation of this professional development advisory service needs to be aligned with recent reforms such as the creation of an ‘orientation-training passport’ or the transformation of the professional interview<sup>130</sup>.

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<sup>127</sup> See N. Maggi-Germain, « La territorialisation du droit. L'exemple des politiques de l'emploi et de la formation professionnelle continue », In *Droit et société*, No. 69-70/2008, p. 441-477, article drawn on an online report: N. Maggi-Germain and P. Caillaud. *Les évolutions du cadre juridique de la formation professionnelle continue : un changement de paradigmes?*. Report by the Ministry of employment, housing and social cohesion/DARES, 2006, p. 448. <http://halshs.archives-ouvertes.fr/halshs-00403783/fr/>.

<sup>128</sup> Report by J.-M. Germain, *supra*, p. 88 (under “Aims”).

<sup>129</sup> Although these measures were not in force yet (the law makes reference to a decree of the Council of State, which has not been enforced yet), some sectoral agreements have in the meantime implemented it.

<sup>130</sup> See Nicole Maggi-Germain, « L'entretien professionnel : de l'outil managérial au dispositif juridique instrument des politiques publiques de l'emploi », *Les Cahiers sociaux* n° 267, oct. 2014, p. 597-602.

#### 4. Conclusion

The law, which was recently passed, lies within a certain degree of continuity. It was introduced by a socialist government, which took office after UMP candidate Nicolas Sarkozy ensured a ten-year presidential mandate. From the vantage point of a legal analysis, there is no discontinuity<sup>131</sup>. Proposed reforms are well in line with contemporary conditions and equally indicate the consensus that can emanate from social dialogue.

For the personal learning account system, inspiration is drawn from other projects. Its resemblance with the training savings account<sup>132</sup> is significant. Evidently its greatest quality lies with its symbolic strength. Like the Individual Right to Training (DIF) at the time, the personal learning account is likely to help trivialize the concept of lifelong professional training. If it achieves notoriety, the category of the rights related to the person can be exerted. All training systems do not automatically become rights attached to the person. The personal learning account system (CPF) cannot be a mere repository of systems and funding mechanisms. On the contrary, training systems need to be distinguished according to their respective ends. When they are differentiated, they can then be hierarchically organized and some of them will be identified as rights related to the person because they will have the relevant attributes. It is through this condition that the right related to the person will be able to acquire real consistency as a legal category.

The 2013 Law was only the first stage that preceded consultation between the State, regional authorities and employer and worker associations at national and interprofessional level on the implementation of the personal learning account system (art 5, Act IV) and on the opening of national

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<sup>131</sup> “The senators of the UMP group would therefore wish to go further, with a radical overhaul of the Labour Code, introducing more flexibility, providing annualized hours, removing the 35-hour pattern, with a view to creating a shock of competitiveness, what the Government proclaim it wants to do, it keeps talking about it! – Unfortunately without ever getting at the end of. [...]”

[1] All these reforms will therefore in the right direction, and that is why, despite the lack of audacity I mentioned, the UMP group rather sees favorably the bill transcribing ANI January 2013”, Speech by Jean-Noël Cardoux, Senate of 17 April 2013, Official Journal of 18 of April p. 3386.

<sup>132</sup> M. Bernard Seillier, Group of the European and Social and Democratic Roundup. *Le fonctionnement des dispositifs de formation*. Report on behalf of the joint mission of information on Vocational Training of the Senate – No. 365 vol. I (2006-2007) – 4 July 2007, vol. I, 344 p., p. 201 and ff.

and interprofessional negotiations on professional training as at January 1, 2014 (art 5, Act V).

*“We create the framework, we create a strategy, and we provide direction. Other legal documents will follow. The first year of this legislature has not ended. In respect of professional training and professional social security, however, we have immense ambitions for the country and for French employees”<sup>133</sup>.*

Will this lead to the codification of a right to lifelong learning, for instance?

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<sup>133</sup> Speech by M. Christian Paul, Groupe socialiste, républicain et citoyen, AN second sitting of 4 April 2013, Official Journal of 5 April, p. 3765.

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