

Chapter 5

The decentralisation of collective bargaining in France: an escalating process

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1. Introduction

In France, social dialogue has hardly existed without either government intervention or an acute social crisis. Political interference both reflects and maintains the loose links between social partners. As a result, the key role of state intervention and a long-standing mutual distrust between employers and trade unions mainly explain the relative weakness of the French collective bargaining system.

However, in the years of rapid economic growth, a powerful system of sectoral bargaining, by general use of extension procedures, spread the agreed benefits from one sector of activity to another and from company to company. Since the mid-1980s, annual bargaining on wages and working time has been compulsory in any company hosting one or more trade unions. In the meantime, employers have chosen to privilege company-level bargaining to weaken the constraints imposed by legislation or even by sectoral bargaining. This early process of decentralisation accelerated after the 2004 law implemented a limited reversal of the hierarchy of norms. This overhaul of collective bargaining, introducing more autonomy at company level, was also desired by some union confederations.

Within the economic crisis, reforms were passed to reduce labour regulation and increase labour market flexibility. In order to implement their employment policies and to ensure flexibility, governments have favoured both national multi-sector and company-level bargaining. If the sectoral level remains a place for determining employment and working conditions, the regulatory capacity of sectoral agreements has declined. The last reforms of 2016 and 2017 were intended to hasten this movement and to generalise derogation from sectoral agreements.

2. The overall development of decentralised bargaining

2.1 Main developments up to the crisis: early decentralisation but the traditional pillar – sectoral bargaining – is still alive

Compared with a number of other European countries, collective bargaining was established rather late in the day in France (in 1950). In the following decades, the

extension mechanism¹ imposed the sectoral level as the pillar of the French bargaining system and enabled all employees in a sector to enjoy the advantages, mainly on wages, that had been negotiated by unions and employers' organisations. Although collective bargaining in France can legally take place at three levels² – the multi-industry level, sectoral level and company level, in descending order of priority – from the 1950s to the 1980s, industry-wide bargaining was the most common level at which collective agreements were negotiated; company-level bargaining took place only in large companies.

In the 1950s and 1960s, the extension mechanism, along with the technical support provided by the Ministry of Labour through joint consultative committees, ensured the rapid diffusion of locally bargained benefits to the entire workforce within industries. The social advantages attained at multi-industry level took precedence over any inferior content of the latter two. In other words, the most favourable clause must prevail over any other one that is less favourable from the employees' perspective (*derogation in mejus* or 'favourability' principle).

However, the role of the state remains one of the most peculiar features of the French collective bargaining system both because of the collective bargaining rules of procedure it raises and its economic policy or administrative action. A first characteristic to be noted is the broader and much more detailed scope of the Labour Code in France than in any other European country, mainly regarding working time and health and safety. A second is the coordination between bargaining level and state intervention. Wage-setting mechanisms are an illustrative example.

The legal minimum wage or 'SMIC' (*'salaire minimum interprofessionnel de croissance'*) represented the gravitational pull for wage bargaining at sectoral level and set the pace for annual wage increases. In some ways, it has the same effect as centralised national wage agreements in other countries. At industry level, trade unions and employers' organisations have always negotiated the conventional minimum wages – which correspond to the wage floor for a given set of qualifications – not actual wages, as is the case in, for example, Germany. Therefore, sectoral level actors are not the only stakeholders regarding wage policies because room for manoeuvre is left for bargaining at company level. Agreed wages for blue- and white-collar workers – that is, those negotiated at industry level – are concentrated around the minimum wage. Increases granted to the lowest qualification levels often achieve compliance with the minimum wage only with difficulty.³ Companies juggle with bonuses and other parameters to adjust their wages to the legal constraint. This underlines the weight of

1. This procedure was implemented in 1936. The contents of sectoral agreements extended by the Ministry of Labour are binding on all the employers in a similar activity, with or without registered membership in a professional association. This extension procedure helps to offset the weakness of employee representation, as well as the employers' lack of incentives to bargain.
2. The Collective Labour Agreement Act of 1971 legalised the triple level where collective bargaining took place.
3. In 2012, the percentage increases granted at sectoral level remained similar to increases in the minimum wage. Despite the obligation provided by the 22 March 2012 law to open up sectoral-level wage negotiations within three months if the grid of 'conventional minimum wages' has at least one lower coefficient than the SMIC, in June 2012, 15 per cent of the 300 bargaining sectors covering more than 5,000 wage-earners still had a grid with at least one lower coefficient (Ministère du Travail 2013).

the state mechanism of wage settlements to define hierarchies and wage developments. Such a mechanism of wage settlement reflected at first a 'virtuous circle', which explains the similar patterns of real wages and productivity evolution over time (Husson *et al.* 2015). The sectoral collective agreement remains important for the determination of wage hierarchies, as it serves as a reference for extending increases throughout the wage scale. This regulatory capacity of sectoral agreements differs according to sector, however (Jobert 2003). In some industries, its regulatory function is still central, as it creates real wage convergence in all companies (for example, in the construction and petrochemical sectors, but also in industries composed of very small businesses, such as auto repair shops). In most other areas, particularly in the major one – the metal sector – trade union strength in large companies has enabled extension to the smaller ones. The driving force of sectoral collective bargaining has been eroded over the course of successive reforms in recent decades.

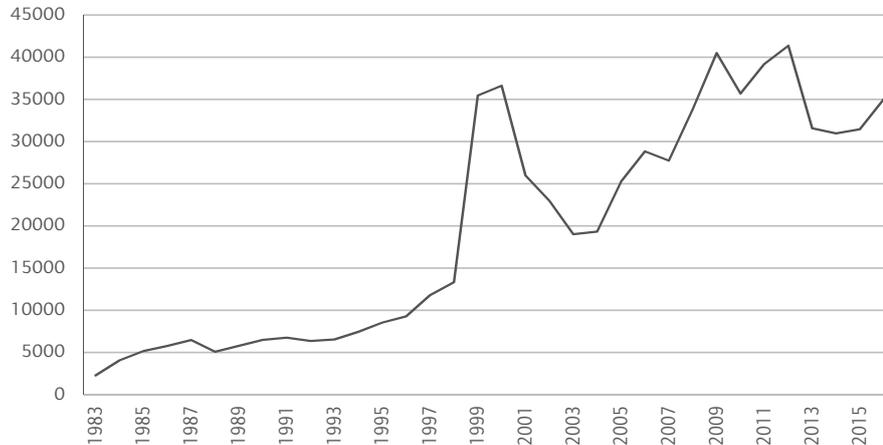
1980–2000: early decentralisation of collective bargaining, coordinated by law and the 'favourability' principle

The French bargaining coverage rate of 92 per cent in the private sector is today among the highest in the OECD countries; in the early 1980s, it never exceeded 80 per cent. Taking advantage of the 1981 Socialist political change, in line with a series of laws aimed at developing employees' rights, strong impetus was given to fostering collective bargaining. Since the Auroux Law of 1982, annual bargaining on wages and working time has been compulsory at sector level and in any company hosting one or more unions. Even so, no settlement is required. The law also strengthened the rights of unions and employee representatives at workplaces. Company-level bargaining was regarded positively by trade unions – above all, the CFDT – as a way to invigorate workers' participation and to enable union delegates to better defend and represent employees' concerns.

During the following two decades, the role of sectoral bargaining changed as it faced competition from the company level as a venue for establishing norms: what Morin calls 'a new space for norm production' (Morin 1996). Derogations from statutory working time were introduced and other compulsory topics added at company level from the 2000s (for example, forward-looking management of jobs and skills in 2005, gender equality in 2006, financial participation and profit sharing in 2008 and employment of young/old workers in 2013). Nevertheless, coordination among the different levels was still ensured by the 'favourability' principle.

The significant increase in company-level bargaining was triggered by a change in the outlook of employers' organisations in the late 1990s, when they discovered the charms of company bargaining, at which they can take advantage of the weakening of the trade unions (Figure 1). The sectoral-level bargaining remained determinant for labour regulation in SMEs, while large companies took the opportunity of greater company-level autonomy and relaxation of centralised labour market regulation on working time. Company-level bargaining became a way of life for employers all the more easily because the balance of power now favoured them at the company level. This priority given to the company slowly eroded solidarity among workers in the same industry.

Figure 1 Number of company-level agreements signed annually, 1983–2012, France



Source: Ministry of Labour.

At the end of the period, the Aubry laws on the 35-hour week (1998 and 2000) managed to foster company bargaining on working time reduction and enabled *quid pro quo* agreements whereby workers would accept greater flexibility in exchange for working time reduction and public financial support.

2000–2016: a less and less coordinated collective bargaining system

From 2000, in order to gain flexibility and to circumvent – and eventually get rid of – the domination of sectoral agreements, the main employers' organisation (MEDEF) advocated company agreements, with or without trade union mediation. In July 2001, four union confederations – CFDT, CFE-CGC, CFTC and FO – and the three employers' organisations agreed on a 'common position', setting out their wishes with regard to reforming the rules on collective bargaining. The central plank of this proposed reform was the introduction of a 'majority principle'. This text did not contain a clear reversal of the hierarchy of norms, which had been demanded by the employers' organisations. The overhaul of collective bargaining, also desired by some trade unions, finally occurred in May 2004, when a Right-led government transposed into law the 'common position' of 2001, but also introduced a reversal of the hierarchy of norms. This is the main reason why all trade unions opposed the new legislation. The May 2004 law and an August 2008 law brought the following changes:

- A majority criterion was introduced: an agreement shall take effect only if the signatory unions gained at least 30 per cent of the votes at the previous workplace elections and only if the agreement was not opposed by the majority unions at the level concerned.
- Plant-level agreements could derogate from higher-level bargaining agreements, even with regard to less favourable provisions for workers, except in four areas: agreed minimum wages, classifications, vocational training and supplementary

social protection. At the same time, three provisions made it possible to frame – or even limit – resort to such derogations. First, industry-level negotiators could ‘lock up’ other topics and exclude them from company-level derogations. Second, derogations could eventually be cancelled by an industry-level joint committee. Third, the law granted the majority unions the right to challenge the validity of opt-out company agreements.

- Bargaining possibilities were extended to companies without union representatives.

Since 1966, five trade union confederations – CGT, CFDT, FO, CFTC and CFE-CGC – have been deemed representative at the national level labelled by the government. Any union affiliated to one of these nationally representative confederations had the right to participate in collective bargaining at the sectoral and company levels. An agreement was considered valid as long as it was signed by just one of these representative unions. The 2008 law redefined the criteria for the representativeness of the different unions. Workplace elections now became the decisive criterion. In order to take part in collective bargaining, a union had to obtain a minimum of 10 per cent of the vote at the workplace level and 8 per cent at the sectoral and inter-sectoral levels. This law took effect in 2010 for workplace bargaining and in 2013 for the other levels.⁴

The March 2014 law, amended in 2016, for the first time introduced criteria for the representativeness of employers’ organisations. It does not base representativeness on an electoral criterion, but on membership. In order to be considered representative at the sectoral and inter-sectoral levels, these organisations must prove that they represent 8 per cent of the contributing companies or 8 per cent of the corresponding number of employees.⁵ As on the union side, a representative employers’ organisation that represents more than 50 per cent of the employees can now challenge the validity of a collective agreement.

In practice, the legal options with regard to derogation offered by the 2004 law were not often used by the social partners because most sectoral agreements prohibited derogation and maintained the hierarchy between sectoral and company levels. Despite this restriction by sector-level actors, the new collective bargaining architecture provided room to manoeuvre for company-level bargaining. Returning to the example of agreed wages, the importance of the company in determining wages has increased since the mid-1990s and has weakened the leading role of sectoral agreements. The erosion of the driving force of sector-level negotiations with regard to real wages induced a tightening up of bargained wages, by compressing the wage hierarchy downwards (Delahaie *et al.* 2013). Henceforth, large companies sought to negotiate minimum wages at sectoral level to preserve some leeway on actual wages, either through company-level negotiations or individualised compensation (profit sharing, employee savings). By the early 2000s, performance-related pay had progressively replaced general wage increases and brought about a form of wage management whose purpose is to adjust labour costs

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4. The election results are aggregated every four years for the sectoral and inter-sectoral levels by the Ministry of Labour. The results were published for the first time in March 2013, and for the second time in March 2017. All five union confederations mentioned continue to be representative at the national inter-sectoral level.
 5. The Ministry of Labour published the results on employers’ representativeness in April 2017.

Table 1 Legislative reforms and reform proposals, 2000–2017, France

| | MEDEF demands 2000 | 'Common position' 2001 (without CGT) | Legislation 2004, 2008, 2013, 2015 | El Khomri law 2016 | Macron ordinances 2017 |
|---------------------------------------|---|---|--|--|---|
| Derogation | From sectoral agreement and from law | No derogation from sectoral agreement unless signatories decide otherwise | 2004: from sectoral agreement, unless forbidden by the agreement; forbidden also for agreed minimum wages, job classifications, supplementary social protection and multi-employer vocational training funds | Priority to company agreements except 'agreed collective order', supplementary or subsidiary role for law First step: only working time, paid holidays and weekly rest second step: other topics after expert commission 2017–2018 | Priority to company agreements unless forbidden by sectoral agreements on 4 topics, forbidden on the same 5 topics + fixed-terms contracts |
| Majority principle based on elections | – | At sectoral level: right to oppose for unions with 'numerical majority' At company level: sectoral agreement must choose between 50% majority or right to oppose | 2004-8: right to oppose for majority unions; supplementary condition: 30% majority 2013: 50% majority for derogation agreements in company with economic difficulties | Working time: 50% majority at company level Signatory unions with 30% can ask for ratification by referendum | 50% majority for all agreements Signatory unions with 30% can ask for ratification by referendum Employers can take the initiative for ratification by referendum (if signatories unions allow it) |
| Bargaining if no union delegates | Mandated employees or elected representatives | Sectoral agreement chooses between mandated employees and elected representatives | 2015: Elected representatives, otherwise mandated employees | – | <20 employees: ratification by referendum of the employer's proposal 20< employees> 50: Elected representatives, or mandated employees >50 employees: Elected representatives, otherwise mandated employees |

Source: Authors' elaboration.

and offer incentives for higher performance (Barreau and Brochard 2003; Castel *et al.* 2014). These individualising devices may themselves be subject to negotiation in the company, but a significant difference may arise between agreements signed in leading companies and the content of the corresponding sectoral agreements. This erosion of sectoral bargaining as a result of the decentralisation of bargaining towards company level and in the current context of wage moderation is not specific to France, however (Delahaie *et al.* 2012).

2.2 A quantitative look at collective bargaining since the onset of the crisis

Regarding the development of collective bargaining in 2010–2015, it is difficult to distinguish the general effects of the economic difficulties – which jeopardised the signing of agreements as they undermined the opportunity for reciprocal concessions – and the specific consequences of labour market and collective bargaining reform. Nevertheless, analysis of the available statistical sources and quantitative reports highlights a remarkable stability of the number of collective agreements in recent years. Similarly, the actors involved in negotiating and signing agreements have not changed much, despite the legal possibilities for negotiations with non-union representatives at the workplace level.

2.2.1 Sectoral and company bargaining in the crisis

Bargaining activity at sectoral level has been broadly stable over the past decade. Since 2000, between 1,100 and 1,400 agreements have been signed each year at national, regional or territorial level. Between 2009 and 2012, the number of agreements annually signed reached a very high level, with more than 1,300 agreements concluded each year. In 2013, the number of agreements fell significantly to around 1,000, a figure repeated in 2014 and 2015. This slight decrease is explained mainly by the decline in agreements on wages and working time. In 2015, the number of wage agreements decreased by 9 per cent due to low inflation (0.1 per cent in 2014, 0 per cent in 2015) and a very moderate SMIC rise.

Table 2 Evolution of wage agreements at sectoral level, 2005–2015, France

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|----------------------|------|------|------|------|------|------|------|------|------|------|------|
| % of wage agreements | 44.8 | 46.5 | 47.6 | 47.1 | 34.5 | 36.5 | 40.5 | 45.6 | 41.6 | 38.2 | 34.6 |

Source: La négociation collective en 2015, Ministry of Labour.

In 2015, 671 sectors had valid collective agreements but only 300 of them covered more than 5,000 employees. At the national level, at least one agreement was signed in 70 per cent of these sectors.

Regarding the workplace level, as stated above, the number of agreements increased substantially between the 1980s and the 2010s, from 3.900 in 1984 to 34.000 in 2011. In France, unlike other countries, the crisis did not have a negative impact on

Table 3 Number of sectoral agreements binding more than 5000 employees in 2015, France

| Total | | Metal industry | | Construction | |
|----------------------|-------------------|----------------------|-------------------|----------------------|-------------------|
| Number of agreements | Employees covered | Number of agreements | Employees covered | Number of agreements | Employees covered |
| 299 | 14 073 000 | 68 | 1 629 700 | 57 | 1 196 500 |

Source: Ministry of Labour DGT (BDCC).

the dynamism of company negotiations. On the contrary, the number of agreements concluded each year continued to increase, despite a slight decline in 2014. This growth was due partly to the reactivation of crisis agreements, with or without conflict. Although France has not experienced massive use of temporary short-time working, as in Germany, 23,000 companies nonetheless used such devices in 2009. The major car producers, such as PSA and Renault, in particular negotiated so-called competitiveness-employment or short-time working agreements (see Part 3 on the metal sector).

In 2015, 36,600 workplace agreements were signed between employer and employee representatives,⁶ in line with 2014. While the agreements on employment and complementary health dried up, the signing of agreements on workplace gender equality started to increase due to the renewal of numerous triennial agreements on this subject. In 2014, negotiations took place in only 15 per cent of workplaces with more than 10 employees; however, they were employing 61.5 per cent of the workforce. Negotiations started in 84 per cent of workplaces with trade union delegates. Agreements were signed in 11.7 per cent of all workplaces and in 68.6 per cent of those with union representation.

Table 4 Evolution of the number and the topics of workplaces agreements, 2012–2015, France

| | 2012 | 2013 | 2014 | 2015 |
|---|--------|--------|--------|--------|
| Number of agreements | 38 799 | 39 363 | 36 528 | 36 624 |
| Number of agreements signed by union delegates (DS) or mandated employees | 31 310 | 31 514 | 30 965 | 31 449 |
| % of DS/mandated agreements on: | | | | |
| Wages | 36 | 33 | 33 | 38 |
| Working time | 23 | 21 | 21 | 24 |
| Employment | 9 | 17 | 13 | 11 |
| Profit-sharing, participation | 18 | 19 | 16 | 19 |

Source: La négociation collective en 2015, Ministry of Labour.

6. That includes agreements signed by union delegates, elected representatives and employees mandated by trade unions.

2.2.2 Who are the negotiators? Union unity at workplace level

Since early 2000s, successive legislation has extended the possibilities for non-union representatives to negotiate at workplace level if there is no union delegate. However, the vast majority of agreements were still signed by union delegates. In 2015, almost 85 per cent of all workplace agreements were signed by union delegates, 14 per cent by elected employee representatives and a few by mandated employees. The slight but constant decrease in the number of agreements signed by elected employee representatives (–7 per cent in 2015) is numerically compensated by the increase in those signed by union delegates (+1 per cent in 2015).

Agreements are generally signed by all the trade unions present at the workplace. To neutralise the effect of each union's presence on the number of agreements they sign, the Ministry of Labour calculates their 'propensity to sign'. This is the signature rate of an organisation calculated in the companies where it has a union delegate and where, therefore, it has or has not signed the existing agreements. The CFDT appears to be the organisation whose union delegates sign agreements most frequently, but the other organisations are very close behind (see Table 5). The CGT is characterised by a slightly lower propensity but it is not comparable to that at the sectoral level. Indeed, the propensity to sign at multi-sectors at sectoral levels of the three main confederations is very different. In 2015, the CFDT signed 86 per cent of them, FO 68 per cent and the CGT only 35 per cent.

2.3 Collective bargaining reforms under pressure from the crisis

Many developments in industrial relations since 2008 have been indirectly linked to the economic crisis. Reforms of bargaining systems have continued under pressure from the employers' organisations against a trade union movement which has been more and more weakened by economic stagnation and the employment situation. The Socialist government that came to power under the Hollande presidency in 2012 proclaimed its willingness to strengthen participation rights, but these were implemented in a very ambiguous way. The government ended by imposing a reform of collective bargaining procedures against the majority of the trade unions and of public opinion.

Table 5 Unions' 'propensity to sign' company agreements (%)

| | 2012 | 2013 | 2014 | 2015 |
|--------------|------|------|------|------|
| CFDT | 94 | 94 | 94 | 94 |
| CFE-CGC | 92 | 92 | 91 | 92 |
| CFTC | 90 | 89 | 89 | 89 |
| CGT | 85 | 85 | 84 | 84 |
| FO | 90 | 90 | 89 | 90 |
| Other unions | 16 | 15 | 16 | 18 |

Source: La négociation collective en 2015, Ministry of Labour.

2.3.1 A brief revival of tripartite concertation

The onset of the 2008 crisis had the effect of reactivating a policy of tripartite concertation abandoned since the failure of the tripartite summit in 1998 under the socialist Prime Minister Jospin. This policy first started with the right-wing governments under the Sarkozy presidency and was continued by the Socialist president elected in 2012, François Hollande, when he announced that he would lead a policy of systematic concertation with the social partners and organised annual tripartite summits called 'Social Conferences'. But even with all this, the negotiations between the employers' and trade union confederations were placed under threat of legislative action and framed by government 'roadmaps' whose features were often very close to the employers' demands. Last but not least, these negotiations frequently revealed deep disagreements among the trade unions.

The first Social Conference was convened on 9–10 July 2012. The government presented a roadmap for a negotiation that was supposed to end before the close of 2012. Its main goal was to secure employment. This negotiation resulted in a 'national inter-sectoral agreement' (ANI) on competitiveness and job security, signed on 11 January 2013 by the employers' organisations and three trade union confederations (CFDT, CFTC and CFE-CGC). The CGT and FO refused to sign the ANI but could not challenge its validity, as they represented only 49.6 per cent of employees in workplace elections. The content of the agreement was very complex and comprised a large number of subjects on which the negotiators had agreed reciprocal concessions. The main element was the possibility of bargaining workplace agreements in order to secure employment which may temporarily (for a maximum of two years) derogate from sectoral agreements on wages and working time. To be valid, these workplace agreements must be signed by trade unions representing more than 50 per cent of the employees in the workplace elections. As promised, the government transposed the ANI into a 'Law on securing employment', adopted by the Parliament in June 2013. Again, very few companies took advantage of this opportunity for derogation; only ten new-type agreements were signed by the end of 2016.

In 2014, Hollande wanted to renew the experience and asked the social partners to negotiate a 'pact of responsibility and trust' in support of his policy of labour cost reduction in order to enhance competitiveness and facilitate job creation. In March 2014, three trade unions – CFDT, CFTC and CFE-CGC – signed such an agreement with employers' organisations. However, the CFE-CGC afterwards withdrew its signature because, like the CGT and FO, it considered that the agreement did not contain quantitative commitments by the employers on job creation. The agreement remained only a 'joint opinion' for which there is no majority criterion of validity and was obviously a political failure.

The failure of concertation recurred in 2015, when negotiations on the 'modernisation of social dialogue' were declared unsuccessful. These negotiations took place on the basis of a catalogue of employers' demands to 'simplify' workplace employee representation, partly supported by the government. This time, even the CFDT, the CFTC and the CFE-CGC refused to sign the proposed agreement, because the employers' organisation CPME refused to grant, in return, the possibility of appointing regional union representatives

authorised to negotiate collective agreements for small companies without union delegates. The government was thus obliged to draw up its own bill, which was adopted in July 2015 as the Law on social dialogue and employment. This legislation largely takes up the employers' demands. Among other things, it authorises companies to derogate, by a majority agreement, from the legal obligations of consultation and negotiation, modifying terms and periodicities. It also introduces regional joint inter-sector committees for very small companies, but with no ability to negotiate agreements.

2.3.2 An overhaul of collective bargaining without concertation

We have seen that decentralisation of the collective bargaining system has been reinforced since 2004 by successive legislative reforms, with both right-wing and left-wing majorities. These reforms were preceded by concertation with the social partners that generally satisfied the demands of the employers' organisations, with the consent of part of the trade unions. The CGT was opposed to most of these reforms, except the one concerning representativeness. Since 2013, FO has joined the CGT in this opposition. We have also seen that, up to now, very few of the provisions authorising derogatory agreements has been put into practice; a very small number of companies have made use of them despite a difficult economic context and an employment crisis.

Unsatisfied with this state of affairs, Prime Minister Manuel Valls commissioned a commission of experts in April 2015, to make 'bold' proposals to 'go further' than the previous reforms. The commission was supposed to draw on the experience of other countries and also take into account recent reports by think tanks on the same subject, most of them in favour of the prioritisation of company agreements by introducing a general derogation principle. The experts commission's report (Combrexelle 2015), presented in September 2015, advocates reversal of the hierarchy of norms, giving priority to company agreements in order to ensure 'proximity regulation'. During a four-year experimental period, four areas should be opened up to derogation: wages, working time, employment and working conditions, including derogation from legislation on the 35-hour week and overtime payments. Sectoral agreements should define an 'agreed collective order' for matters not open to derogation by company agreements. All other standards of a sectoral agreement would apply only in the absence of a workplace or company agreement. As a safety net, all company agreements should need to be signed by the majority unions.

Prime Minister Valls welcomed the report as a whole. He departed from the recommendations only on a single point, stating that 35 hours and overtime should not be open to derogations, thus giving a pledge to the left-wing of the Socialist Party and the trade unions. Without fair concertation,⁷ the minister of labour, Myriam El Khomri, prepared a bill reforming collective bargaining. The first draft bill, presented in February 2016, incorporated almost all of the experts Commission's proposals. It also introduced some measures that were not part of the recommendations, such as the reduction of severance payments for employees who make a complaint about unfair dismissal and the possibility for minority unions (representing at least 30 per cent of the workforce)

7. In early November, the minister of labour invited the social partners to negotiate a 'method agreement' before the end of 2015 to 'inspire' the future law, but they declined this invitation and the topic was not included in their annual autonomous bargaining programme.

to impose an employee referendum in order to validate a workplace agreement signed by minority unions, thus preventing the majority unions from challenging its validity.

This draft provoked rejection by all the trade union organisations, this time including the CFDT, as well as by the main leaders of the Socialist Party. The government agreed to withdraw the draft and negotiate some changes with the CFDT. In particular, the reduction of severance payments was finally dropped, to the dissatisfaction of the MEDEF. The new version of the bill led to numerous strikes and mass demonstrations organised by a coalition of CGT, FO, and some autonomous and student unions over a period of four months. According to opinion polls, the bill was also rejected by a majority of the population but was finally adopted by the Parliament in August.

The El Khomri Law, which runs to hundreds of pages, has not reduced the complexity of the French Labour Code. The announced reversal of the hierarchy of norms is, in a first step, limited to working time and overtime pay, paid holidays and weekly rest. Regarding these topics, the Labour code is rewriting as follows:

- (i) the 'fundamental principles of labour law', which would be imperative and guaranteed by the Constitution,
- (ii) areas open to derogation by sectoral or company agreements, with a 'minimum legal framework', and
- (iii) legal standards that would apply only in the absence of a collective agreement.

The 'redesign' of the rest of the Labour Code according to the same principle was to be entrusted to a labour law expert commission is supposed to present its conclusions by 2018. Labour minister El Khomri did not have the time to set up this commission, however, because of the presidential elections of May 2017.

2.3.3 President Macron's ordinances: a turning point for decentralisation?

The rejection of the El Khomri law by public opinion certainly contributed to the elimination of the Socialist candidate in the presidential elections of 2017 and to the election of Emmanuel Macron. What is astonishing, however, is that Macron managed to surf victoriously on the wave of rejection of reforms that he had himself largely inspired both as advisor of President Hollande and as Minister of the Economy. During the election campaign, Macron announced that, once elected, he would prioritise continuing labour law reform, and even accelerate it.

In order to avoid long debates in the parliament and possible demonstrations, the new labour minister Muriel Pénicaud has prepared a framework law (*loi d'habilitation*) which in July was passed in parliament by a majority of the new presidential party and what is left of the traditional parties of the right. This law authorises the government to execute its reform project through ordinances (government decrees). These were adopted in September 2017. The vote was preceded by formal consultations with the unions and the employers, one by one. These consultations did not make it possible to get a clear picture of what will be in the government decrees, however. A twofold overhaul emerged from texts clearly developed by and for companies: an unprecedented transformation of industrial relations since the Auroux law on the collective bargaining system and

workplace representation; a step forward in labour market deregulation (a ceiling on damages in case of complaint, dismissal regulation). The employers' organisations clearly support the project and its acceleration, but this time most of the unions are firmly opposed. However, only the CGT has completely rejected the project and even called for industrial action against it in September and October. It later received some support from FO for mobilisation.

As far as collective bargaining is concerned, in line with the El Khomri law, the ordinance on 'the strengthening of collective bargaining' has generalised shared competencies between the law and sectoral and company agreements. Moreover, the leading role that the government claimed to give to company agreements has resulted in, on one hand, reinforcement of its legitimacy, and on the other, facilitation of its implementation in SMEs without unions.

Regarding competencies in standard-setting, the division is as follows:

- Formally, the role of sectoral agreements has been reinforced because there are now thirteen topics with regard to which derogations are forbidden. However, this reinforcement has taken place at the expense of the law and not at the expense of company agreements (Canut 2017). In addition, a company agreement may implement different provisions from those of the sectoral one if it provides 'at least equivalent guarantees'. This formula has replaced the classic formula in the Labour Code which required 'provisions more favourable for employees' ('favourability principle'). The effectiveness of this guarantee will be conditional on jurisprudential interpretation of the new formulation.
- The sectoral 'lock up' facility was unlimited under the 2004 law. From now on, this facility is reduced to four areas, mainly concerning occupational safety and disabled workers. A weakening of sectoral bargaining is evident here.
- The primacy of company agreements concerns everything that does not fall into the two previous blocks, which is considerable. For example, all remuneration rules are governed solely by the company agreement, with the exception of agreed minimum wages, classifications and overtime premia.

Regarding the validity of company agreements, the requirement for being signed by a majority of unions will be widespread as of 1 May 2018.⁸ The other change introduced is openly regressive: in the event of an agreement approved by unions that obtained at least 30 per cent of the votes in workplace elections, the initiative to organise a referendum among employees, which in the 2016 law belonged only to the signatory unions of the agreement, has now been extended to the employer, on condition that the signatory unions do not oppose it.

Last but not least, regarding negotiation in workplaces without unions, different regimes have been introduced depending on size of workplace. Negotiation is then possible on all topics:

8. The El Khomri law provided for this generalisation by 1 September 2019.

- Up to 20 employees in enterprises without employee representatives: the employer can propose an ‘agreement’ drafted unilaterally that must be approved by at least two-thirds of the staff.
- From 20 to 49 employees: two possibilities are open without priority. The agreement can be signed by elected representatives if they represent the majority of votes or it be signed by employees mandated by a union.
- Over 50 employees without employee representatives: the agreement can be signed by elected representatives, otherwise mandated employees.

These new rules clearly indicate that the purpose of the ordinances is to further undermine the role of trade unions in collective bargaining.

3. Decentralisation of collective bargaining in the metal sector

3.1 The sector and its economic context

In this section we will consider the metal sector exclusively from the point of view of collective bargaining, which does not exactly correspond to the sector defined in the national economic statistics. The conventional metal sector (*métallurgie*) has the following subsectors:

- metallurgy and manufacturing of metal products,
- manufacturing of data processing and electronic products,
- manufacturing of electrical equipment,
- manufacturing of machinery and equipment,
- automobile industry,
- manufacturing of other transport equipment,
- shipbuilding,
- railway equipment,
- aeronautical and space construction,
- repair and installation of machinery and equipment.

Collective agreements (including the steel industry) covered 1,663,100 employees by the end of 2013; 26 per cent of them belonged to the category of professional and managerial staff (*cadres*), 27 per cent were ‘intermediate professions’ (technicians and so on), 8 per cent white-collar workers and 39 per cent manual workers. Furthermore, 22 per cent of the employees were women, 15 per cent under 30 years old, 3 per cent had fixed-term contracts and 21 per cent were part-time employees (Ministère du Travail, 2017: 632).

The metal industry has suffered from a long-term process of de-industrialisation and has come under heavy competitive pressure. In the past twenty years, the sector has lost one-third of its employment. This process is a result of a lack of innovation and investment in France, on one hand, and delocalisation of production, on the other. The business downturn since the economic and financial crisis of 2008 has added to these difficulties. Two types of strategy were developed by French companies to gain

competitiveness: a 'high road' strategy aimed at gaining new markets by developing new products and upgrading skills, and a 'low road' strategy aimed at reducing production costs, especially labour costs. Very often both strategies are developed at the same time. This puts collective bargaining under constraints, because the employers seek to erode past union achievements by introducing more flexibility, especially on working time, more mobility and more productivity, and also dampening wage dynamics. The unions, on their part, have set new priorities, in order to obtain guarantees on employment and skills. This explains the growing number of collective agreements focused on employment and training.

Since 2016, France has been in economic recovery. After a period of wage moderation, wage bargaining has benefited from this situation (Ministère du Travail 2017). In 2015 and 2016 basic wages in the metal sector increased 1.5 per cent per year, more than the average basic wage growth in the private sector (1.2 per cent). Given consumer goods inflation of 0.2 per cent in 2015 and 0.6 per cent in 2016, purchasing power grew only modestly. Managerial and professional staff did better (+1.9 per cent in 2016) than manual workers (1.4 per cent) and white-collar workers (1.3 per cent).

3.2 The actors

In 2013, trade union representativeness was decreed for the first time by the Ministry of Labour on the basis of the previous workplace elections. Only four unions – CGT, CFDT, FO and CFE-CGC – passed the 8 per cent threshold in the metal sector, but not the CFTC. This union continued to participate in the sector bargaining, however, because it had passed the threshold at the national inter-sector level and was allowed by the 2008 law to do so for a transitional period – 2013–2017 – because it was affiliated to a representative confederation at the national inter-sector level. In 2017, the CFTC, like the autonomous unions UNSA and Solidaires, again did not reach the threshold of 8 per cent and now risks being excluded from collective bargaining. Therefore, the CFTC metal federation has appealed to the government to lower the 8 per cent threshold by decree. Alternatively it will try to merge the metal sector with another bargaining sector in order to preserve its representativeness. It has obtained support from the UIMM, who successfully asked the government, in order to gain time, to delay publication of the decree with the official results of representativeness in the metal sector.

Whereas at the national inter-sector level, the CFDT is now the most representative union and has surpassed the CGT, it is still only second in the metal sector, but very close to the CGT, which has lost 3 percentage points. The CFDT has also lost some votes, however, whereas the CFE-CGC – the union of managerial and professional staff – has gained nearly 3 percentage points and now occupies third place, with a percentage nearly double what it obtained at the inter-sector level.

The picture is somewhat different at the local level, where most collective bargaining takes place. Here, CGT and CFDT are representative in all 76 bargaining regions. The CFTC has kept its representativeness in 20 regions, whereas FO has lost it in four.

Table 6 Union representativeness in 2017 according to the 2013–2016 elections, France

| | Voting population | Participation | CFDT | CGT | FO | CFE-CGC | CFTC | UNSA | Solidaires |
|----------------------|-------------------|---------------|--------|--------|--------|---------|-------|-------|------------|
| Total private sector | 13,244,736 | 42.76% | 26.37% | 24.85% | 15.59% | 10.67% | 9.49% | 5.35% | 3.46% |
| Metal sector | 1,178,053 | 67.85% | 25.35% | 26.39% | 16.17% | 19.09% | 7.42% | 2.71% | 1.59% |

Note: As explained above, these are not official figures yet, because the sectoral breakdown of the figures on union representativeness still awaits publication by the Ministry of Labour. Officially, representativeness is only known with regard to the employers.

Source: FGMM-CFDT.

UNSA is representative in two regions and Solidaires in one. The CFTC has kept its representativeness at the national sectoral level for managerial and professional staff, where the CFE-CGC has representativeness of 45.9 per cent.⁹

On the employers' side, the situation in the metal sector is a peculiar one, compared with other sectors. There is one employers' organisation that participates in the collective bargaining: the UIMM (*Union des industries et métiers de la métallurgie*), which is affiliated to the national confederation MEDEF.¹⁰ It represents 42,000 companies in the metal sector, but exclusively for collective bargaining and social dialogue. These companies are members of 10 industrial federations, according to sub-sector (automotive, electrical and so on). These federations represent their economic interests and are, in turn, affiliated to the UIMM. The UIMM was founded in 1901 and is the most powerful and influential French employers' organisation, although it has lost some of its influence within MEDEF to the expanding companies of the service sector.

In the steel sector, there is another employers' organization, GESIM (*Groupement des Entreprises Sidérurgiques et Métallurgiques*), which was created in 1981 by two employers' associations representing 22 steel companies in Lorraine and northern France. Like the UIMM, it acts only in the area of social affairs and negotiates a proper national convention collective (CC) and its amendments for its members. It cooperates with the employers' association A3M, which represents the economic interests of all steel and mineral companies. Both are members of the UIMM.

Under a law introduced in 2014, employer organisations' representativeness is measured by membership. In order to participate in collective bargaining, an employers' organisation must represent at least 8 per cent of all affiliated companies or 8 per cent of the employees. In April 2017 the Ministry of Labour presented the results of its investigations for the first time. The UIMM has a representativeness rate of 100 per cent in the whole metal sector, both at national and local levels. The same goes for GESIM.

9. This situation is again very different from the rest of the private sector, where the CFDT is the first union in this category (in 2017: CFDT 27.0 per cent, CFE-CGC 19.4 per cent, CGT 19.3 per cent, FO 13.4 per cent and CFTC 9.2 per cent).

10. Until 2012, the UIMM had a double affiliation: to MEDEF and the confederation of small and medium companies CGPME (now CPME).

3.3 Procedures and outcomes at sectoral level

According to French labour law, two types of collective agreement are negotiated at the sectoral level: the so-called *conventions collectives* (CC) and the *accords collectifs*. The CCs lay down the regulatory system governing work (wages, terms and conditions of employment, working conditions, social welfare). They are considered to be the 'law of the industry'. The *accords collectifs* treat only specific, mostly single topics.

In the metal sector, 76 *conventions collectives territoriales* (CCT) are negotiated at local (mostly *département*) level, sometimes for several departments, sometimes only for part of a *département*. For professional and managerial staff, there is a nationwide CC.

Conventions collectives generally have unlimited duration. However, the minimum wages for the different qualification levels are renegotiated annually and take the form of amendments to the CCT. There are still major differences in the wage structure and wage levels of the different CCTs. However, today none of the minimum wages in the metal industry are below the legal national inter-sector wage (SMIC). All CCs and CCTs, including their annual amendments, and most national agreements are extended by the Ministry of Labour in order to become applicable erga omnes.

The signatory parties of CCTs and annual amendments differ according to region and time of signature. For instance the CCT for Moselle goes back to 1955 and was initially signed only by FO and CFTC. However, they were later joined by the other representative unions.

The national CC for professional and managerial staff was signed in 1992 by CFDT, CFE-CGC, FO and CFTC. Its latest amendment was signed in 2010 by all five representative unions.

As already mentioned, there is also a special national CC for the steel industry, signed in 2001 by the employers' organisation GESIM and by all five representative unions. It covers 17,715 employees, which represent only part of the sector, the rest being covered by the extended CCTs of the metal sector. GESIM has never asked for an extension of its CC, which contains higher social standards than the CCTs of the metal sector. Until 2013, the annual amendments were signed jointly by all five unions; those of 2015 and 2017 only by FO, CFE-CGC, CFTC and CFDT. For its professional and managerial staff, the GESIM member companies apply the CC of the metal sector negotiated by the UIMM.

Since 1970, a series of national sectoral agreements on specific topics have been signed with the UIMM and are generally extended by the Ministry of Labour. The most important recent agreements are as follows:¹¹

11. The full list and the texts of all national agreements in force can be found in chronological order on the UIMM website: <https://uimm.fr/textes-conventionnels/accords-nationaux-metallurgie>. The texts of all agreements signed can be found on the CFTC website: <http://www.cftcmetallurgie.com/fr/accords-nationaux-de-la-metallurgie.23.html>. They are documented by topic on the FGMM-CFDT website: <http://www.cfdt-fgmm.fr/conventionmetal.php>

- National agreement of 26 April 2010 on social dialogue (signed by FO, CFE-CGC, CFTC, CFDT and CGT). This agreement settles such matters as procedures for the validation of company agreements signed by elected employee representatives, the creation of specialised joint committees, including an Observatory on Collective Bargaining, as well as guarantees concerning the careers and remuneration of employee representatives and union delegates.
- National agreement of 17 May 2010 on forward-looking management of employment and skills (signed by FO, CFE-CGC, CFTC and CFDT).
- National agreement of 12 December 2013 on disabled employees (signed by FO, CFE-CGC, CFTC and CFDT).
- National agreement of 8 April 2014 on gender equality (signed by FO, CFE-CGC, CFTC and CFDT).
- National agreement of 21 October 2014 on apprenticeships (signed by FO, CFE-CGC, CFDT and CFTC).
- National agreement of 13 November 2014 on lifelong learning (signed by CFE-CGC, FO, CFDT and CFTC), amended 10 January 2017.
- National agreement of 27 June 2016 on the negotiation procedures for a renewal of the system of collective bargaining (signed by FO, CFE-CGC, CFTC, CFDT and CGT).
- National agreement of 23 September 2016 on employment (signed by CFE-CGC, FO, CFDT and CFTC). This agreement replaces the one on forward-looking management of employment and skills of May 2010.

Before 2004, it was sufficient for a collective agreement to be signed by just one representative union in order to be valid. This explains why in 1996 the UIMM was able to sign a national agreement on the reduction of working time, allowing more overtime, with only two unions, despite the strong opposition of the two main unions CGT and CFDT. In 2004 a supplementary condition for validity was introduced by law: such an agreement must not be opposed by an arithmetical majority of the number of representative unions, that is, three out of five. As a consequence, the UIMM began to sign national agreements with a coalition of FO, CFE-CGC and CFTC. In 2003, the conditions of validity were changed again. Now agreements had to be signed by a union or unions that represent at least 30 per cent of the representative unions (as determined by the workplace elections) and must not be opposed by representative unions that represent more than 50 per cent. As a consequence, UIMM began to sign national agreements with a coalition of CFDT, FO, CFE-CGC and CFTC. Exceptionally, the procedural agreements on social dialogue of 2010 and on collective bargaining of 2016 were signed by all five representative unions. It remains to be seen how the CFTC's loss of representativeness will affect coalition building on the union side in negotiations over the next four years.

3.4 Collective bargaining at the company level

Since the Auroux laws of 1982, annual negotiations are mandatory at company level. They generally lead to company agreements, in particular in the bigger companies. As the amendments to the *conventions collectives* fix only the level of agreed minimum

wages, these company agreements have a decisive impact on the evolution of real wages, together with the growing practice of wage individualisation.

In 2015, 4,310 company agreements were signed by union delegates in the metal sector which correspond to 10 per cent of the companies in the sector. As these agreements are negotiated mainly by the biggest companies, they cover 1.17 million employees, around 70 per cent of all employees.

Neither the unions nor the employers' organisation UIMM have a detailed knowledge of the contents of the company agreements. There is an obligation to send these agreements to the Ministry of Labour, which publishes an analysis in their annual reports on collective bargaining (last edition: Ministère du Travail 2017). But these reports give only a global breakdown on the themes of the agreements and do not get down to the sectoral level. The union federations of course perform their own analysis and some have set up databases on company agreements. They can, however, obtain information only on companies in which their representatives are present and have to take the initiative to inform local federation structures about the negotiations and their outcomes. The national federations have direct knowledge of company agreements only in relation to large multi-workplace companies that sign national agreements. Information is more complete on annual wage negotiations at the company level, on which the federations send out regular reminders by e-mail to complete their databases. As the number of topics for mandatory bargaining has increased in recent years, it is more and more difficult for the union federations to ensure exhaustive monitoring of these negotiations. Many unionists complain that these mandatory negotiations exhaust local representatives who lose time needed for bargaining on more urgent topics.

Most company agreements concern wages and working time. In the big companies, especially in the automotive and electronics sector, more comprehensive agreements are negotiated on qualitative topics, in particular on employment. Only two companies in the sector have signed an 'agreement on the conservation of employment' within the meaning of the law on employment protection of 2013, which allows modification of individual employment contracts in exchange for a temporary employment guarantee. Other companies, in particular in the automotive sector, have signed so-called 'competitiveness-employment agreements', which are a French version of concession bargaining. Such agreements have no particular legal foundation, but are just ordinary company agreements in which the unions exchange guarantees on employment against the lowering of social standards contained in past company agreements.

Renault

The most interesting of these 'competitiveness agreements' is the one signed by Renault in February 2013, in which the management made the commitment that it would not close down any site in France. The plan for 7,500 job cuts (15 per cent of the French workforce) by 2016 would be implemented through 'natural wastage' (resignations, retirements and early retirements) without forced redundancies or a voluntary leave programme. Car production would be increased from 500,000 to 700,000 in 2016. In

exchange, three of the four representative unions¹² in Renault – CFDT, CFE-CGC and FO,¹³ but not the CGT – agreed to increase working time (to 1,603 hours per year) and to a temporary freeze on wages in 2013, followed by wage moderation in 2014 and 2015, depending on the group’s financial situation and economic performance. They also agreed to the elimination of time saving and training accounts. Mobility between sites was to be reinforced, on a voluntary basis, through mobility incentives. In exchange, the management made a commitment to improve profit-sharing and employee share ownership. The agreement also contains provisions for monitoring, in particular through the introduction of an Observatory.

The general economic recovery has helped Renault to fulfil its commitments, so that the objective of 700,000 cars produced in 2016 was even surpassed and profitability enhanced. According to an outside evaluation (Pellet and Urbejtél 2017), this performance, together with an improvement in working conditions, contributed to restoring confidence between the signatory unions and the management. They signed a new agreement on employment in January 2017, which will cover the three years 2017–2019. Again the management committed itself not to close any of its French production sites and moreover will create 3,600 additional permanent jobs and renew 6,000 youth employment contracts. It will invest massively in the French plants, with the aim of increasing productivity from the current 60 cars produced per employee per year to 90. In parallel, working conditions will be improved via a ‘zero accident safety policy’.¹⁴ In exchange, the unions accepted the possibility of raising working time by one hour per day during peak business periods, up to a ceiling of eight days per month and 50 days per year. These new flexibility measures are to be negotiated at local establishment level.

PSA Peugeot Citroën

After the collapse of the automotive market after the 2008 crisis, the financial situation of the other big French car producer, PSA Peugeot Citroën, was even worse than the one at Renault. In June 2011, PSA announced a vast restructuring plan and its intention to eliminate 8,000 jobs and close down two production sites in France, one in Aulnay (Paris region) and that of its subsidiary for commercial vehicles Sevelnord in Hordain (northern France), after Fiat had ended its partnership with this subsidiary. Finally PSA negotiated a new partnership with Toyota and decided to keep the Sevelnord plant open. This allowed the management to sign a competitiveness agreement for Sevelnord in July 2012 with CFE-CGC, FO and the autonomous company union SIA-GSEA, but without the fourth representative union at the plant, CGT. By this agreement, the management made a commitment to exclude lay-offs for the plant’s 2,800 employees for a period of three years, eventually renewable for two years. In exchange, the unions accepted a pay freeze for two years, compensated by a reduction of weekly working time,

12. Union representativeness on the basis of the 2011 workplace elections in Renault was as follows: CFE-CGC 29.7 per cent, CGT 25.2 per cent, CFDT 19.2 per cent and FO 15.6 per cent. The other unions did not reach the 10 per cent threshold. In the 2015 elections, CFC-CGC gained 2.3 per cent and CFDT 1.3 per cent, whereas FO lost 2.6 per cent and CGT 0.9 per cent.

13. It is interesting to note that FO, which at the national level was, like CGT, opposed to derogatory agreements on principle, agreed to sign the agreement with Renault, and also later with PSA.

14. The agreement contains provisions on forward-looking management of employment and skills, for which negotiations are mandatory every three years.

an increase in profit-sharing and an additional bonus. They also agreed more working time flexibility, in particular possible working on Saturday and the introduction of a 'daily production guarantee' (if the daily production goals are not met, the management can impose up to 20 minutes' additional overtime). The agreement also introduced new rules for mobility, including temporary staff loans to other companies, which cannot be refused unless for family reasons. A transfer to a less qualified job, which can only be temporary (with a maximum of one year) and cannot entail a reduction in pay, requires the employee's written consent.

The situation of the 1,400 workers of the Aulnay plant could not be solved in the same manner. Here the management maintained its intention to close the plant and deigned only to negotiate a social plan for voluntary departures, early retirement and financial support for internal and external mobility, which was accepted by the unions CFE-CGC, CFTC, FO and GSEA. CGT and CFDT called for a strike, which was to last four months, without being able to change the plant closure, although it ended in May 2013 with an agreement that prolonged production for eight months and enhanced financial compensation.

The Sevelnord agreement paved the way for a triennial agreement for the whole PSA group, which was signed in October 2013 by FO, CFE-CGC, CFTC and SIA-GSEA.¹⁵ This time, however, the management gave no formal guarantees on the level of employment, which explains the refusal of CGT and CFDT to sign. The agreement, a document of 212 pages called a 'new social contract', replaces 11 previous company agreements, including those on forward-looking management of employment and skills, quality of life at work and social dialogue. In the agreement, the PSA management committed to producing 1 million vehicles per year in 2016 and to make a global productive investment of 1.5 billion Euros in its French factories in the period 2014–2016. At least 75 per cent of its R&D activities will be carried out in France, and the level of subcontracting will remain below 20 per cent until 2016. In exchange, the unions accepted that there would be no general wage increase in 2014 and that possible later increases would depend on the group's performance. Furthermore a bonus, granted after 20 years in the company, will be cut. Overtime pay for work on Sundays will be lowered to the legal standard. In return for these wage cuts, PSA made commitments on future profit sharing and the purchase of vehicles. The unions also accepted more working time flexibility. An important part of the compensatory time regime passed from individual choice to unilateral management regulation. The range of weekly working time was to be increased, leading to less overtime pay. The possibility of part-time work two or three years before the end of a career will be introduced on a voluntary basis. Training priorities were to be aimed at supporting internal mobility between trades within a site or between sites. However, collective internal mobility was used only as a last resort when no local solution has been found. Temporary external mobility to another employer may be organised through suspension of the employment contract for two years. Finally, the agreement announced some improvement in strategic information and consultation, in

15. Union representativeness in the PSA group on the basis of the 2012 workplace elections was as follows: CGT 22.6 per cent, FO 18 per cent, CFE-CGC 17.2 per cent, SIA-GSEA 14.7 per cent, CFDT 13.8 per cent and CFTC 11.7 per cent. In the 2016 elections, FO gained 2.5 per cent and now achieved first place, CFC-CGC gained 2.2 per cent and CFTC 1.7 per cent, whereas SIA-GSEA lost 4 per cent, CGT 3 per cent and CFDT 0.2 per cent.

particular through the International Strategic Joint Committee and through employee representation on the company board (a legal obligation since 2013).

In February 2014 the French state and a Chinese company became the major shareholders of PSA, alongside the Peugeot family, which definitely saved the company from bankruptcy. PSA recovered financially¹⁶ and in July 2016, it signed a new triennial competitiveness agreement with the four signatory unions of the previous agreement, which were joined by CFDT. In it, PSA committed to hiring 1,000 permanent employees by 2019 and promises to make investments for the production of 1 million cars per year in France and for the launch of eight new models. In exchange, the unions made concessions for more flexibility of work organisation, including night-time working on a voluntary basis. Employees may work eight days more than is stipulated in the employment contract without earning overtime pay.¹⁷ This time, however, no wage freeze was demanded, and the management promised to open annual wage negotiations on the basis of 1 per cent over the inflation rate. The agreement also included a commitment that studies on working conditions would be carried out in cooperation with the unions.

3.5 Trade union strategies for the future of collective bargaining at the sectoral and company levels

Since the end of the 1990s, UIMM and the unions have tried to harmonise the different classification schemes of the different CCTs, for which there is no longer any economic justification. They were, however, unable to conclude these negotiations. CGT and CFDT have also asked for a common national CC, including common classification schemes for both the professional staff and the rest of the employees. CFE-CGC recently modified its position on this topic, because it has a growing membership outside the category of professional and managerial staff, in particular among technicians. UIMM agreed to reopen negotiations on this topic, as it has realised that the classification schemes in most CCTs are obsolete. In June 2016, UIMM and all five representative unions signed a procedural agreement for renegotiation of the whole collective bargaining system in the metal sector. It contains a list of topics on which to negotiate, a negotiation agenda and a method of validation. There are 11 negotiation topics:

- (i) the architecture of the future collective bargaining system;
- (ii) the classification schemes;
- (iii) working time;
- (iv) health and safety, working conditions;
- (v) individual working contracts;
- (vi) employment and vocational training;
- (vii) social protection;
- (viii) remuneration and employee savings;

16. In February 2017 PSA was even able to buy Opel-Vauxhall from General Motors. In March 2017 PSA got the support of the unions FO, CFE-CGC, CFDT, CFTC and SIA-GSEA for this purchase.

17. As in the case of Renault, PSA's working time standards remain above those of the collective agreement for the metal sector.

- (ix) social dialogue at the company level;
- (x) the scope of the future CCs;
- (xi) the entry into force of the agreement and transitional provisions.

The negotiators meet every two weeks to negotiate topic by topic. However, there will be no agreements by topic but only one final agreement to be validated at the end of the negotiation cycle, which UIMM has fixed for the end of 2017, but will more likely be the end of 2018.

The negotiations started on topics (i) and (ii), which are, however, very complicated because legally the social partners at the local level are completely autonomous. There are three possible methods to pass from local CCTs to a common national CC, and the negotiators of each local CCT can choose between one of the three methods. The union federations will ultimately give instructions on how to handle this problem.

From the Law on Employment Security of 2013 to the El Khomri Labour Law of 2016, French legislation has put forward the aim of giving further impetus to company bargaining by allowing derogations from sectoral agreements. To satisfy some of the trade union criticisms, the El Khomri law has also assigned new tasks to bargaining at the sectoral level. It requires that every bargaining sector must set up a 'permanent joint committee on bargaining and interpretation' (*Commission paritaire permanente de négociation et d'interprétation* – CPPNI). This committee is to have several missions:

- the monitoring of working and employment conditions;
- the publication of an annual report on company agreements dealing with working hours, annual leave and so on;
- the interpretation of branch agreements for the courts that request it.

UIMM proposed to delegate the task of reporting to the 'observatory on collective bargaining', which was set up jointly by the national agreement on employment of April 2010, and to set up similar observatories at the local level. The unions welcomed such a decentralised structure because it would have the effect of 'professionalising' local union representatives. The unions also welcomed UIMM's proposal as an opportunity to transform this observatory into a tool for qualitative analysis of what is really negotiated at company level, an objective previously rejected by UIMM, arguing that it has no extensive knowledge of company agreements in the metal sector.

Concerning company agreements, there is considerable negotiating autonomy among local union representatives. This explains why there is such a variety of agreements and of signatory parties. Sometimes local representatives ask the federation for a model agreement. The federations are, however, reluctant to provide one because companies' economic situations differ so much. This can justify different approaches to what should be negotiated and what concessions should be made. Therefore they establish only check lists of possible topics. Some of the controversial topics between unions, and even inside one union, are the introduction of mobility leave in an agreement on forward-looking management on employment and skills. It is difficult to establish a common union rule on that, because local activists must judge whether such a concession is compensated

in a complex agreement by advances for employees in other areas. Some unions take a more rigorous stance, refusing to accept concessions of any kind. Often, taking such a radical position is a relatively painless display of union principles, as the employers generally find other unions to sign such agreements. On the other hand, only in very rare cases do union federations replace union delegates who sign a company agreement that are considered a breach of internal union rules.

4. Decentralisation of collective bargaining in the retail sector

4.1 Introduction

With almost 2.2 million employees in around 500,000 enterprises, the retail trade sector (see Box 1) represents 12 per cent of the total labour force and 10 per cent of gross added value. It is therefore one of the largest economic sectors. Nevertheless, it has never played a leading role in French industrial relations, in contrast to, for example, the metal sector. There are various reasons for this: the preponderant weight of very small establishments, a low-skilled and low-wage labour force and, above all, the historic weakness of unionisation in the sector. However, because of the dynamism of job creation in this sector, but mainly because it constitutes a field of experimentation for new forms of atypical job. Since the Auroux laws of 1992, annual negotiations are mandatory at the company level. They generally lead to company agreements, in particular in the bigger companies. As the amendments to the *conventions collectives* fix only the level of conventional minimum wages, these company agreements have a decisive impact on the evolution of real wages, together with the growing practice of wage individualisation, retail trade is a key target for French trade union organisation. It is also a sector that is experiencing strong organisational changes. Although the first department stores (*grands magasins*) date back to the second half of the nineteenth century, with the establishment of the Bon Marché and the opening of the Felix Potin grocery stores, the concept of mass retailing, in the contemporary sense (retail sales of all types by store networks to an end customer), is a much more recent economic activity. Major global distribution groups, including several French multinational companies, are only about fifty years old. During the recent decades of rapidly rising purchasing power, with massive access to consumption, distribution has grown remarkably, knowing how to exploit every opportunity to constantly improve profitability. The retail

Box 1 Definition of the retail sector

The retail trade sector corresponds to Section 47 of the French activity classification (NAF). It represents 29 per cent of the turnover of all trade (including wholesale trade and e-commerce).

Within the retail trade, there are three main sub-sectors: food-based stores (meat, fruit, vegetables, and frozen food), household goods stores (furniture, household appliances and computers) and stores selling personal goods (clothing, perfume, books, glasses, pharmacies).

sector has experienced a tough transformation of management and logistics techniques, the computerisation of cashier tasks, the creation of discount stores and attempts to diversify into services. However, retail activity has been slowing down for several years. In a context of economic crisis, a number of factors have contributed to this deceleration: the growth of e-commerce, especially for non-food goods and changes in consumer purchasing behaviour, which tend to favour purchases of electronic equipment (mobile phones, multimedia, and computers). To adapt, alongside strong price competition, the retail trade has launched new strategies: ongoing extension of shop opening hours, new digital technologies and the establishment of smaller-scale convenience stores in city centres that better meet consumer needs.

4.2 Employment in the French retail trade sector: demanding working conditions and low wages¹⁸

Employment creation remained positive in the retail trade sector, although less dynamic than before the crisis (+ 2.1 per cent from the end of 2009 to the end of 2013), while it was declining in the wholesale trade and in many other sectors.

The sector is significantly polarised, with a few large enterprises, mainly multinational companies in supermarkets, DIY stores, fashion chains or department stores, and a large mass of small shops. In 2012, 90.6 per cent of all retail enterprises had fewer than 10 employees (see Table 7).

Table 7 Proportion of establishments by number of employees (%)

| | 0 | 1–5 | 6–10 | >11 |
|-----------------|------|------|------|-----|
| Food | 45.9 | 40.1 | 5.5 | 7.6 |
| Household goods | 48.8 | 40.9 | 5.4 | 4.9 |
| Personal goods | 37.8 | 53.1 | 6.7 | 2.4 |
| Other | 69.3 | 26.6 | 2.8 | 1.4 |
| Total | 47.2 | 43.4 | 5.5 | 3.9 |

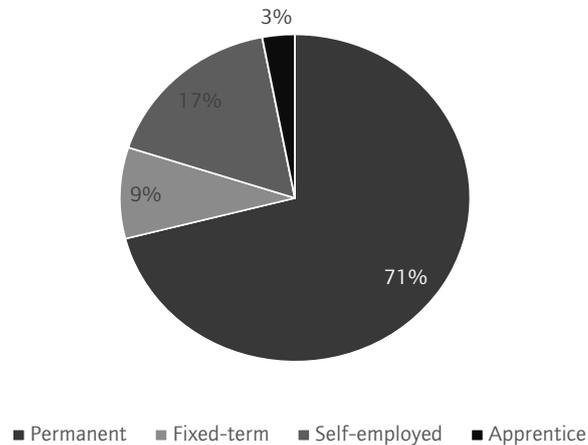
Source: Insee, Clap (Connaissance localisée de l'appareil productif), 2012.

The largest sub-sector is food retailing with 45 per cent of the workforce, followed by personal goods stores with 32 per cent. Despite this predominance of very small establishments, in 2013, 61 per cent of employees of the retail trade (full-time equivalent) worked in retail group outlets. The stores are often part of chains, in particular in clothing, footwear or perfumery.

Regarding job structure, the proliferation of atypical contracts is characteristic of the retail trade sector (see Figure 2), more because of the number of self-employed than the number of fixed-term contracts (9 per cent in the retail sector compared with 7 per cent for the private sector).

18. Unless otherwise specified, data in this section are taken from the INSEE Employment survey.

Figure 2 Structure of employment in the French retail sector (2012)



Source: Insee, Enquête emploi 2012.

The number of self-employed rose by 6 per cent during the crisis (2009–2013), three times faster than all employment in the sector. However, this growth has been less vigorous than in other trade sectors or in the economy as a whole. Again, between 2009 and 2013, payroll employment grew by 1.4 per cent, mainly in the food trade.

Most employees in the sector are unskilled. In the retail sector as a whole, 67.8 per cent are unskilled white-collar employees and only 8.9 per cent are blue-collar workers; 73.5 per cent and 10.5 per cent, respectively, in food retailing. The largest occupational categories consist of nearly 900,000 people composed of store cashiers (180,000), clothing and sporting goods sellers (140,000), food sellers (110,000), non-specialised sellers (100,000) and self-service and storekeepers (just under 100,000).

Nearly one-third of those working in the retail trade are under 30 years of age and 60 per cent are women, compared with 22 per cent and 39 per cent in the private sector as a whole. Some typical retail jobs are overwhelmingly performed by women: 85 per cent of cashiers and self-service employees and 76 per cent of salespeople are women. Women are, on the other hand, slightly in the minority among managers.

Due to the activity's dependence on customer flow, the common denominator of retailers is their subjection to substantial time organisation constraints, implicitly experienced at all levels of the company. Thus, companies must constantly adapt their workforces to fluctuations in the number of customers, whether on an annual, monthly, weekly or daily basis. The use of part-time work is the most frequent way of devoting maximum working time to customer service and thus reducing wage costs. Some 28 per cent of retail employees work part-time. This is much higher than in the private sector as a whole (15 per cent). As in other sectors, part-time work is more important for women than for men (39 per cent versus 10 per cent). Part-time employment is closely related to

job: half of cashiers and self-service employees and 32 per cent of salespeople are part-timers. Involuntary part-time work is also typical of supermarket and large retailers (44 per cent of all part-timers) and related jobs (41 per cent for cashiers and self-service employees). The phenomenon is more pronounced among young people: almost half of young part-time retail workers want to work more. However, the rate of part-time work varies from one store to another, ranging from 15 per cent to almost the whole workforce. This diversity in human resource practices can be explained by a combination of several factors. Some brands have developed pro-active policies to reduce the use of part-time work with quantified thresholds, often embodied in company agreements.

Working time is also characterised by its great flexibility; 29 per cent of people working in retail have schedules that vary from week to week, compared with 22 per cent in private sector as a whole. Irregularity of schedules concerns supermarkets and cashiers and self-service employees in particular. Because these occupations are predominantly filled by women, they are most affected by irregular schedules.

Almost nine out of ten people employed in this sector (88 per cent) work on Saturdays or Sundays, usually or occasionally (52 per cent in the private sector as a whole). As for Sunday work, 37 per cent of employees work at least occasionally on Sundays and 19 per cent usually (24 per cent and 10 per cent, respectively, in the private sector as a whole).

Finally, low wages are particularly prevalent in the retail sector. Fruit and vegetables, grocery and dairy products, hairdressing and retail, clothing and textiles are the sectors in which the average wages of workers and employees are lowest and the proportion of employees paid around the legal minimum wage (SMIC) is the highest (between 20 and 32 per cent).

All these unfavourable aspects of working conditions represent strong claims and bargaining stakes for the trade unions in the sector.

4.3 Trade unions and employers' organisations in the retail trade sector

In such a heterogeneous sector it is not surprising that employers' representation is fragmented. Differences among employers can be found at all levels, including their histories (department stores in the nineteenth century and the electronics trade), traditions (small grocery stores and supermarkets) and forms of business (butchers, bakers, branches of multinational companies). Consequently, different and even opposing economic and social interests are defended in the various employers' organisations.

The major food retailers and specialised retailers are found in FCD (Federation of Trade and Distribution) which belongs to MEDEF. As a member of MEDEF, department stores and popular stores, because of their specific history, have their own federation, UCV (City Centre Department Stores Union). Small shops, whether independent or chain-owned, prefer federations that specialise in their activity: FEH (federation of clothing retailers) and FEC (federation of footwear retailers), for example. These federations

are generally members of CPME (confederation of SMEs). It is interesting to note that in order to better defend their economic interests some employers' federations have created groupings. The Trade Alliance, for example, groups UCV, FEH and FEC. In the social field, on the other hand, employers' organisations are striving to keep negotiations divided among the various sub-sectors.

Craftsmen have also set up employers' organisations specific to their specialty, but which, in order to increase their influence over the public authorities, have joined forces in two major confederations: CGAD (General Confederation of Food Retail), to which all food handicraft traders belong, and CNAMS (National Confederation of Crafts and Services), to which non-food traders (hairdressers, furnishings, florists) belong. These two confederations are founding members of the employers' confederation of the craft sector, which is now called U2P. In the retail sector, most of the larger retail companies, as well as the small craft ones are members of an employer organisation.

Regarding trade unions, we find the same organisations as in the other sectors. CFDT, CGT and CFTC have a unique federation for the trade sector. Only FO has two: FEC (Federation of Employees and Managers) and FGTA (Federation of Food Workers) who share the field in the retail trade. The results of the representativeness elections give a good picture of the unions' presence in the different trade bargaining sectors. The weight of each of these organisations varies greatly by sub-sector and depends on their

Table 8 Trade union representativeness in the main collective bargaining sectors of the retail trade, France, 2017 (%)

| | Voting rate | CFDT | CGT | FO | CFTC | UNSA |
|----------------------------------|-------------|------|-----|----|------|------|
| Supermarkets | 64 | 22 | 21 | 25 | 16 | 3 |
| Department stores | 72 | 29 | 33 | 12 | 7 | 3 |
| Clothing (two separate branches) | 36 | 29 | 21 | 12 | 17 | 10 |
| Non-food retail shops | 15 | 32 | 22 | 9 | 19 | 3 |
| Pharmacies | 12 | 16 | 18 | 22 | 8 | 18 |
| Furnishing | 40 | 30 | 23 | 15 | 17 | 5 |
| Hairdressing salons | 5 | 12 | 23 | 22 | 7 | 27 |
| DIY stores | 52 | 30 | 21 | 16 | 22 | — |
| Groceries, delicatessens | 7 | 19 | 34 | 13 | 7 | 7 |
| Clothing stores | 6 | 21 | 28 | 16 | 16 | 9 |
| Household appliances | 51 | 21 | 19 | 12 | 26 | 2 |
| Stationery, bookshops | 26 | 27 | 19 | 7 | 24 | 10 |
| Sports goods shops | 23 | 17 | 19 | 6 | 30 | 25 |
| Butchers | 7 | 7 | 52 | 13 | 8 | 11 |

Source: Ministère du Travail, Représentativité par branches professionnelles, 2017.

individual histories. None of the five representative trade unions is significantly ahead of the others.

It is worth noting the very low voting rate recorded in the craft sectors and in the small shops. On the other hand, participation in elections is high in sectors composed of large enterprises and close to that of other sectors.

Due to the extension procedure, collective bargaining coverage is high in the trade sector, but the degree of workplace employee representation is generally low compared with cross-sectoral national averages (see Table 9). Trade union membership is also lower in the trade sector: 6 per cent in 2013 compared with 8 per cent in the private sector as a whole. As in other sectors, union density is slightly above average in large retail enterprises, while trade unions are almost absent from small and medium-sized shops.

4.4 Sectoral collective bargaining: structure and outputs

With the exception of department stores and supermarkets, which have a long tradition of sectoral bargaining and where the trade union presence is of long standing, sectoral bargaining in the retail trade is more recent than in industry. In order to benefit from public support for employment and training, it has developed on a corporatist basis at the initiative of employers' organisations. The collective bargaining landscape is fragmented, with 84 collective agreements, of which only 29 cover more than 5,000 employees (see Table 10).

Bargaining at sectoral level is not very dynamic. First, it is often supported by the Ministry of Labour through mixed joint committees (CMP, see box 2). Of the 88

Table 9 Presence of at least one employee representative or union in workplaces with 11 or more employees in 2011 (%)

| | Trade sector | Private sector |
|----------------------------------|--------------|----------------|
| Workplace representation: | | |
| 11–49 employees | 47 | 50 |
| > 50 employees | 96 | 94 |
| Total | 56 | 60 |
| Union delegate: | | |
| 11–49 employees | 20 | 21 |
| > 50 employees | 64 | 67 |
| Total | 28 | 31 |

Source: Ministère du Travail, Dares, *Enquête REPONSE* 2010–2011 ; volet 'représentants de la direction'.

instances of sectoral bargaining followed by a CMP, 35 belong to the trade sector (in red in Table 10), thus most retail sub-sectors, including some chains of stores and large companies. In the view of the trade union federations, the large food retailers sector is the only one with negotiations that lead to agreements with innovative contents.

Secondly, a major common characteristic of other bargaining sectors is the weakness of their agreements' content: they provide very few benefits to employees in addition to those provided for by the Labour Code. The sectoral agreements are signed on legally binding topics: vocational training, senior employment and so on. In an area as important as wages, for example, union organisations achieve only modest annual increases for employees. The agreements signed merely upgrade the classification levels below the SMIC. The following levels are generally very low. The result is a narrowing of the wage range. One union federation official interviewed described sectoral bargaining as a 'minimum service' for employers. This strategy allows the employers' federations to keep their members and leave room for manoeuvre to large companies to negotiate their own agreements.

Sectoral collective agreements systematically prohibit derogations by company agreements as provided for in the Fillon Act of 2004. All trade union organisations in the sector refuse to sign agreements that do not provide for this prohibition clause. For

Table 10 Sectoral collective agreements covering more than 5,000 employees in the retail trade (2015)

| Bargaining sector | Employees | Bargaining sector | Employees |
|--|-----------|----------------------------------|-----------|
| Supermarkets | 669 300 | <i>Opticians, glasses stores</i> | 34 700 |
| <i>Pharmacies</i> | 119 100 | Laundries | 31 900 |
| <i>Clothing branches</i> | 111 600 | Perfumeries | 23 700 |
| Non-food retail shops | 107 200 | <i>Shoe branches</i> | 21 700 |
| Hairdressing salons | 98 700 | <i>Florists</i> | 21 400 |
| DIY stores | 74 100 | <i>Hardware stores</i> | 19 600 |
| Groceries, delicatessens | 70 800 | <i>Jewellery, watch shops</i> | 18 000 |
| Clothing stores | 66 800 | Garden centres, pet shops | 17 500 |
| <i>Household appliances, computers</i> | 63 900 | Pastry shops | 16 100 |
| Furnishing trade | 63 000 | Meat shops | 15 900 |
| <i>Stationery, bookshops</i> | 57 000 | Shoe stores | 10 400 |
| Sports goods shops | 56 700 | Confectionery, chocolate shops | 10 400 |
| Bakeries | 43 600 | <i>Fishmongers</i> | 10 000 |
| Butchers shops | 39 300 | Consumer cooperatives | 9 500 |
| <i>Department stores</i> | 37 200 | | |

Note: In italics: sectoral bargaining with CMP.

Source: La négociation collective en 2015. Bilan, Ministère du Travail.

Box 2 What are CMPs?

In the event of difficulties or blockages in the bargaining process, Labour Code article L.2261-20 allows requests to a mixed-joint committee (CMP) chaired by a state representative. The purpose of the CMP is to assist in the negotiation of legally binding texts in a sector, by resolving difficult situations with the help of a third party's technical and legal competence. The CMP is composed of representative union and employers' organisations in the sector concerned and chaired by a representative of the Ministry of Labour. The Ministry may initiate a joint committee in two cases: at any time, on its own initiative or when an employer or trade union organisation so requests.

the moment, this lock has been effective and derogations remain limited. However, the latest legislative developments that make negotiation at company level prevail over that of the sector with regard to working time weaken trade unions' strategy, especially on Sunday work.

4.5 Decentralisation of collective bargaining: new issues in a renewed legal context

In France, there is a strong correlation between size of enterprise and the existence of collective agreements. Smaller enterprises are less likely to sign their own agreements but are covered by sectoral agreements. By contrast, most large enterprises are covered by workplace agreements. The retail sector follows this pattern.

Industry and services are the two sectors with the highest number of company agreements signed by union delegates, accounting for 34.4 per cent and 37.7 per cent, respectively. Although the volumes of agreements signed in these two sectors are very similar, service companies employ more than twice as many employees as industrial firms (44.9 per cent versus 17.7 per cent). Trade, accommodation, food and transport companies, which employ just under one-third of the labour force in the private sector sign only 23.6 per cent of agreements. In the trade sector (wholesale, retail, sales and car repair) 3,338 company agreements were signed by union representatives in 2015 out of a total of 31,200 (10.7 per cent of the agreements signed for 16.8 per cent of the labour force). As a result, in bargaining sectors with many SMEs, such as small retail, national sectoral agreements mitigate the lack of negotiations at company level.

Compared with major industrial groups, for example, the agreements signed with major retailers offer little benefit to their employees. In many cases, they only take over the sectoral agreement by adding provisions such as complementary health care or training schemes, but only very rarely are there wage benefits. For company HR departments, bargaining issues concern mainly the organisation of work schedules. The latest labour laws give them new opportunities in this field.

Hitherto, Sunday work and the extension of opening hours have been the main issues in company negotiations, for both employers and employees. Opening options on Sundays widened with the Macron law of 2015, as did opening ranges with the El Khomri law of 2016. In both cases, derogations are conditional on the conclusion of a collective agreement which provides compensation for employees or, as regards work on Sunday, with a unilateral decision of the employer after a ballot among the employees. In this legal context, most department stores and specialised chains or retailers have attempted to reach agreements on this subject. The union federations have divergent positions on Sunday work. CGT and FO are against it in principle and give strict instructions on the issue to their union delegates.¹⁹ Conversely, CFTC and, above all, CFDT make the signing of agreements conditional on the quality of the counterparties offered to employees.

As a result, the situation varies by company. Some have successfully concluded agreements, such as BHV. Others, faced with the unions' refusal to sign, have attempted a ballot but failed to achieve the result they wanted (FNAC). Others preferred to abandon negotiations (Galeries Lafayette, for example).

More generally, the link between the sectoral and company levels in the retail trade has changed only in very large firms. However, regarding recent and upcoming legal changes, and in particular the introduction of the ballot, the balance of power is increasingly unfavourable to trade unions in enterprises. In the rest of the sector, the sectoral agreements remain the reference for small employers, all the more so because their contents are not particularly advantageous for employees.

5. Conclusion

Although it has earned a degree of centrality in French industrial relations, sector-level collective bargaining has never achieved integrative capacity and the normative significance it can boast in some other European countries. Extensive state regulation – mainly through the extension procedure, the favourability principle and statutory minimum wages – has ensured vertical and horizontal coordination of collective bargaining. Starting with the Auroux law (1982), the French collective bargaining system has evolved since then through a state-led decentralisation. The aim of the government's policy was twofold. Company competitiveness was supposed to be enhanced by fostering workplace agreements better adapted to the firm's needs. In the meantime, the 'proximity' of these agreements would guarantee better protection for employees. In the first phase this was done without affecting the favourability principle. The reforms accelerated in the late 1990s and 2000s and led to deeper institutional change. Some reforms, such as increasing the number of compulsory negotiated topics at company level – initially limited to wages and working time – favoured the trade unions. Others gave more strength to the employers, in particular expanded scope for derogation mechanism or the extending of bargaining competence to non-union

19. Checking these instructions is not always easy and may sometimes end with the withdrawal of the delegate's mandate.

representatives, both existing institutions (works councils and employees' delegates) and entirely new institutions (employees mandated by branch unions). As a result, company-level bargaining has developed dynamically over recent decades, without hampering the development of collective bargaining at the sectoral and multi-sectoral levels.

Our general study and our case studies on the metal and retail sectors show that, encouraged at all levels by legislation, the content and scope of bargaining has been diversified. However, legal stimulation of company level derogation or bargaining without unions has not produced significant effects in practice. Unions are still the main (and mostly exclusive) bargaining partner and have succeeded in negotiating company agreements significantly above the standards of the sector-level agreements. Nevertheless, decentralisation has had the effect of increasing inequalities among and within sectors. Some differentiation can be observed. In the metal sector, only minimum wage standards are agreed at sectoral level, leaving room for big companies to bargain their own real wage development and additional compensation, whereas in the retail sector company agreements play only a limited role. Here negotiations at the company level presently concentrate on working time, especially Sunday work. In the metal sector, which is strongly exposed to international competition and to the business cycle, the crisis stimulated the negotiation of new types of agreement at company level in order to secure employment. It is important to stress that none of these negotiations needed any legal encouragement on derogation, as the agreed provisions of these employment-securing agreements were not less advantageous than the sectoral agreements, but only compared with previous company agreements.

In a context in which employment has become a major public problem, both right- and left-wing governments have tried to obtain the social partners' support for labour market reforms, pushing them to negotiate flexibility at national inter-sectoral level. After 2012, the PS-led governments reaffirmed the objective of labour market flexibility as a means of regaining competitiveness and reducing unemployment, sticking to a supply-side vision of the economy. Pressure for structural reforms also came from the European Commission. In order to get additional deadlines to meet the stringent public budget criteria, the government partly implemented the 'country specific recommendations' for France, which in 2015 suggested the facilitation of derogations in order to reduce labour costs and link wages to productivity. This was initiated by the El Khomri law, voted in the last phase of the socialist government, and was immediately followed by the Macron ordinances. Both have utterly changed the French collective bargaining system. They represent a legal turning point towards decentralisation by derogation in order to stimulate competitiveness, growth and employment. Regarding employment creation, this rationale seems to be contradicted by a series of international comparative studies. Studies by the ILO (2012) and the OECD (2012) show that it is impossible to establish any clear link between the decentralisation of collective bargaining and a country's economic and employment performance. They do show, however, that decentralisation has negative effects on bargaining coverage, income equality and wage dynamics among sectors, which can produce negative indirect effects on growth and employment.

It remains to be seen how industrial relations will evolve at company level. Will a substantial number of employers use the new legal tools in order to cut costs and extend work schedules under the threat of plant closures or redundancy plans? Or, will it, like some of the big companies so far, continue to follow a 'high road' model of competitiveness by maintaining good relations with trade unions as a precondition for cooperative work relations and the enhancement of productivity and quality production?

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