Recent collective bargaining developments in France

The Macron reforms: a final step for decentralisation through derogation?

Udo Rehfeldt
The rise of company level bargaining since 1983...

Annually concluded workplace agreements 1983-2012
... but not at the expense of sector level bargaining

Annually concluded collective agreements 1919-2014

<table>
<thead>
<tr>
<th>Year</th>
<th>Sector level</th>
<th>Company/workplace</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950-59</td>
<td>420</td>
<td>143</td>
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<tr>
<td>1960-67</td>
<td>990</td>
<td>356</td>
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<tr>
<td>1968-70</td>
<td>1395</td>
<td>608</td>
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<td>1980-81</td>
<td>1952</td>
<td>1544</td>
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<td>1982-85</td>
<td>1118</td>
<td>3397</td>
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<tr>
<td>2012</td>
<td>1236</td>
<td>38799</td>
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</table>
Explanatory factors for the rise of company bargaining

- 1982 Auroux Laws: legal **obligation to negotiate annually** both at sector and workplace level (if union present) on wages and working time
  - other themes latter added by law,
- The employers, initially opposed to company bargaining, changed their strategies in order to take advantage of the weakening of the trade unions.

**Unionisation rate:**

However: union presence at the workplace still important (in 2011: 56 % of the workforce >10 covered by union delegates)
A need for further promotion of decentralisation by law?

2000: employers’ initiative for the “overhaul” (*refondation*) of the bargaining system

- The employers’ organisations seek to
  - abolish the *favour principle*,
  - reverse hierarchy of norms through *derogation*
  - allow negotiation in small workplaces *without unions*

- The big *trade union* organisations CGT and CFDT seek to
  - impose a *majority principle* (based on workplace elections) for the validity of collective agreements
  - institutionalize the role of unions as bargaining partners for *small workplaces*
## Overview of reforms laws 2004-2017: A success for the employers’ demands

|--------------------|--------------------------|-------------------------------------|-------------------|-------------------|

### Derogation

- **2004:** from sector agreement, unless forbidden by the agreement. Derogation forbidden for: minimum wages, job classification, supplementary social protection, multi-company vocational training funds
- **2008:** from sector agreement, except social public order and “social collective order”. First step: only working time
- **2013:** from sector agreement, except social public order and “social collective order”. Derogation forbidden for: minimum wages, job classification, supplementary social protection, multi-company vocational training funds
- **2017:** Priority for company agreement, except social public order., derogation from sector agreement forbidden for enlarged list of matters

### Majority principle

- **2004:** right to opposition of majority unions, 2008: need for 30 % “majority” added 2013: need for >50 % majority for derogatory job protection agreements
- **2016:** >50 % majority principle at company level; signatory unions with 30-50% can ask for ratification by a referendum
- **2017:** 50% majority for all subjects. But: employer can ask for a referendum, if signatory unions with 30-50 % and no signatory union opposes.

### Bargaining competence if no union delegates

- **2015:** elected representatives, otherwise mandated employees
- **2016:** unchanged
- **2017:** >50; elected reps, otherwise mandated reps 20-50: elected or mandated <20: referendum on employer project
Transition from co-ordinated to State-imposed decentralisation – why?

- official arguments for the 2016-2017 reforms:
  - **urgent** need for further stimulation of collective bargaining
  - employee protection better ensured by company agreements (‘proximity’)  
  - stimulation of competitiveness, growth and employment

- ILO and OECD reports show however:
  - No link between decentralisation and economic performance,
  - Negative effects on bargaining coverage, equality and wage dynamics

- New element: **EU country-specific recommendations** for France 2015:
  - reduce labour costs
  - facilitate derogations,

- Need for accommodation:
  - France under UE scrutiny for excessive deficit
What future for the use of the legal possibilities of derogation by the actors?

• Up to now not used by the actors:
  – after 2004 Fillon law: sector agreements prohibit derogation,
  – After 2013 law: only 10 “job protection agreements” signed

• Will employers use the new legal tools in order to cut cost under the threat of plant closures or redundancy plans?
• safeguard in the 2016-2017 laws: need for a majority agreement
• possible use of referendum for blackmailing of the workforce
• resilience of a “high road” model of competitiveness in big companies?
  – good relations with trade unions as a precondition for cooperative work relations needed for productivity and quality production
References for further reading
