

Chapter 11

France: the rush towards prioritising the enterprise level

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Compared with other European countries, collective bargaining was set up belatedly in France, in 1950.¹ In the following decades, by the general use of administrative extension of collective agreements, industry-level bargaining emerged as the main pillar of French industrial relations. The role of the state, however, remains one of the most peculiar features of the French collective bargaining system, the strength and spread of which have never relied on the existence of strong and encompassing bargaining parties, but on support from the state, particularly in the form of extension procedures and the statutory minimum wage. Political intervention both reflects and maintains the loose

Table 11.1 Principal characteristics of collective bargaining in France

Key features	2000	2016/2017
Actors entitled to collective bargaining	<ul style="list-style-type: none"> – at national level, representativeness granted by the government to five trade unions – at national level, representativeness granted by the government to three employers' organisations – in enterprises without a union, possibilities to bargain with elected representatives or mandated employees 	<ul style="list-style-type: none"> – for unions, representativeness based on workplace election criteria (10% at enterprise level; 8% at industry and national levels) – for employers' organisations, a criterion based on membership – in enterprises without a union, drastic extension of the possibilities to bargain with elected representatives or mandated employees
Importance of bargaining levels	– erosion of industry level but still the reference, particularly in SMEs	– increase of company agreements, less coordination between bargaining levels
Favourability principle/derogation possibilities	<ul style="list-style-type: none"> – strict favourability principle among levels – possibilities to derogate from labour code on working time only 	<ul style="list-style-type: none"> – compulsory division of certain topics among levels – for other topics, priority to workplace level
Collective bargaining coverage (%)	98	98
Extension mechanism (or functional equivalent)	Very frequent extension by the Ministry of Labour	
Trade union density (%)	8	8/11.2 (2013)
Employers' association rate (%)	74	75

Sources: Appendix A1 and Pignoni (2016); author's own comments.

1. The first law establishing a collective bargaining system dates back to 1936. Because of the outbreak of the Second World War, but also the hostility of employers toward unionism, the law was not implemented. The 1950 law consolidated the 1936 terms.

links between the social partners. As a result, the key role of state intervention and a long-standing mutual distrust between employers and trade unions explain the relative weakness of the French collective bargaining system.

From the mid-1980s, there was an early development, compared with most continental European countries, towards the decentralisation of collective bargaining to company level through a series of issues on which derogations were possible, but the system remained coordinated by law and the favourability principle (Tallard and Vincent 2014). In the past two decades, however, employers have chosen to privilege company bargaining and to weaken the constraints imposed by law or by sectoral bargaining, but industry has remained an important level for determining employment and working conditions. The 2016 and 2017 reforms introduced a reversal of the hierarchy of norms and conferred more autonomy on company bargaining. This overhaul of collective bargaining will certainly hasten the decline of the regulatory heft of industry agreements.

Industrial relations context and principal actors

The broader industrial relations context of collective bargaining in France is heavily shaped by the strong and interventionist role of the state, which at different points in time has served different purposes. Historically, four stages of state intervention can be distinguished. By the turn of the twentieth century, the state was using legal intervention to offset the organisational weaknesses of both unions and employers (Rosanvallon 1988; Pernot 2010). In addition, the historical legacy of a highly domestic-oriented economy with low industrial concentration may be seen as hindering the emergence of strong and centralised unions. In keeping with France's well-known republican tradition within which the government is responsible for protecting workers and their individual rights, a very detailed and broad Labour Code was set up in the first half of the twentieth century, mainly regarding working time and health and safety. Granting individual rights and benefits directly to employees, however, undermined the unions' role in collective bargaining development (Goetschy 1998).

In a second step, after the Second World War, the state attempted to incorporate trade unions and employers' organisations in the formulation of social and welfare issues by treating them as partners, albeit often only in an advisory capacity. This tripartite concertation formed the basis of an implicit 'Fordist compromise' (Boyer 1985) in which unions left the determination of work norms and organisation in the sphere of production to management in return for a share in the fruits of economic progress, as rising productivity brought higher wages. In these years of rapid economic growth, the extension procedure, along with the technical support provided by the Ministry of Labour enabled the entire workforce within industries to enjoy the benefits that had been negotiated by unions and employers' organisations. The Law on collective agreements (*Loi relative aux conventions collectives de travail*) of 1971 laid down a genuine right to collective bargaining for workers and legalised the threefold space in which collective agreements were signed: interprofessional national level, industry level and company level, in descending order of priority. In other words, the most favourable clause prevailed over any other, less favourable one from the employees' perspective:

in other words, derogation *in mejus* or the favourability principle. Although collective bargaining could legally take place at three levels, from the 1950s to the 1980s industry-level bargaining was the most common level at which collective agreements were negotiated; company-level bargaining took place only in large companies.

This compromise collapsed in the early 1990s because of a shift away from industry to the service sector and the rise of unemployment and precarious forms of employment. From the 1980s and 1990s, the French economy underwent a number of transformations that led to talk of the ‘deindustrialisation’ of France (Demmou 2010). The share of French industry in GDP declined from 24 per cent in 1980 to 18 per cent in 2000 and as low as 12.6 per cent in 2011. Between 1980 and 2007, industrial sectors lost 36 per cent of their workforce. Furthermore, market services have also been boosted by a trend towards outsourcing by industrial firms, as well as the use of temporary workers, which now account for around 8 per cent of industrial employment.² Among many other factors, this evolution is due to the restructuring and financialisation of French multinational companies, which have shifted their centre of gravity towards international markets.

Meanwhile, as a third kind of state intervention, neoliberal policies have gradually been implemented, although a number of welfare safety nets have been retained. These changes have gone hand in hand with a decline of trade union structural power (Pernot 2017). Since the Auroux Law of 1982, annual bargaining on wages and working time has been compulsory 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. At the outset, company-level bargaining was regarded positively by trade unions as a way of invigorating workers’ participation and enabling union delegates to better defend and represent employees’ concerns. Contrary to prior expectations, during the following three decades, the role of industry level bargaining changed as it faced competition from the company level as a venue for establishing norms. Derogations from statutory working time were introduced and other compulsory topics added at company level from the 2000s. Nevertheless, coordination among the different levels was still guaranteed 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, within the framework of which they can take advantage of trade union weakness. The overhaul of collective bargaining finally occurred in May 2004, when a right wing–led government introduced a limited reversal of the hierarchy of norms. Decentralisation of the collective bargaining system has been reinforced since 2004 by successive legislative reforms, introduced by both right-wing and left-wing governments. Industry-level bargaining remains the determinant level for labour regulation in SMEs, while large companies have taken the opportunity of greater autonomy and relaxation of centralised labour market regulation on working time. The priority given to the company has slowly eroded solidarity among workers in the same industry and has resulted in a bargaining system that is less and less coordinated (Rehfeldt and Vincent 2018).

2. Temporary work is classified among services, whereas most temporary contracts are in industry.

The onset of the 2008 crisis had the effect of briefly reactivating a policy of tripartite concertation, first started by the right-wing governments under the Sarkozy presidency and continued by the Socialist president elected in 2012, François Hollande. These tripartite summits, however, 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.

Finally, to counter poor economic performance over the past few years, state intervention has shifted towards a clear supply-side policy to promote growth. Dissatisfied with the pace of structural reforms and in order to meet the demands of the country-specific recommendations within the framework of the 2015 European semester, the Socialist government ended up imposing an overhaul of collective bargaining without concertation. The Labour Law (Loi Travail) bill of 2016 led to numerous strikes and mass demonstrations organised by a coalition of General Confederation of Labour (Confédération Générale du Travail, CGT), the General Confederation of Labour-FO, commonly called FO (Confédération Générale du Travail-Force Ouvrière, CGT-FO) and some autonomous and student unions over a period of four months. To win the support of the French Democratic Confederation of Labour (Confédération Française Démocratique du Travail, CFDT) the announced reversal of the ‘favourability principle’ was limited to working time and overtime pay, paid holidays and weekly rest. The bill was finally adopted by the Parliament in August 2016.

During the presidential elections of 2017, candidate Emmanuel Macron announced that he would speed up labour law reform. Once elected, in order to avoid long debates in the parliament and possible demonstrations, a framework law (*loi d’habilitation*) was passed in Parliament by a majority of the new presidential party, authorising the government to execute its reform project through government decrees (*ordonnances*). These were issued in September 2017, after one-to-one formal consultations with unions and employers’ organisations. A twofold overhaul emerged from texts, clearly devised by and for companies: a transformation of industrial relations on a scale unprecedented since the Auroux law concerning the collective bargaining system and workplace representation; and a step forward in labour market deregulation, including a ceiling on damages in cases of complaint and the weakening of dismissal regulation. The employers’ organisations clearly supported the ordinances, whereas all the unions were firmly opposed.

As far as collective bargaining is concerned, in line with the 2016 Labour Law, the Ordinance on the strengthening of collective bargaining (Ordonnance relative au renforcement de la négociation collective) has generalised shared competencies between the law, industry level and company agreements. Moreover, the leading role that the government claimed to give to company agreements has resulted in the removal of the ‘favourability principle’ and the facilitation of collective bargaining in SMEs without unions. The government’s imposition in spring 2016 of a Labour law and the latest Macron ordinances reshaping both the labour market and collective bargaining suggest a shift to a more ‘top down’ hardening of social policy (Pernot 2017).

Within this broader industrial relations context, the principal actors on the employee side are the five pillar organisations, which were granted ‘nationally representative’ status by the government until 2008, and since then through representativeness elections (see below). The three main organisations are the CGT, CFDT and FO. The first two account for 65–70 per cent of trade union members; FO brings the figure to 80 per cent (Pernot 2017). In addition, there is the small French Christian Workers’ Confederation (Confédération Française des Travailleurs Chrétiens, CFTC) and the sectoral organisation representing managerial employees, the French Confederation of Management-General Confederation of Professional and Managerial Staff (Confédération Française de l’Encadrement-Confédération Générale des Cadres, CFE-CGC). In all French confederations the national industry level organisation is called a federation (*fédération*). Two more recently established organisations, the National Unions of Autonomous Trade Unions (Union Nationale des Syndicats Autonomes, UNSA) and the Trade Union ‘Solidaires’ (Union Syndicale Solidaires, USS) are not recognised as representative at an interprofessional level, but they are representative in a number of industries, thus enabling them to participate in industrial bargaining.

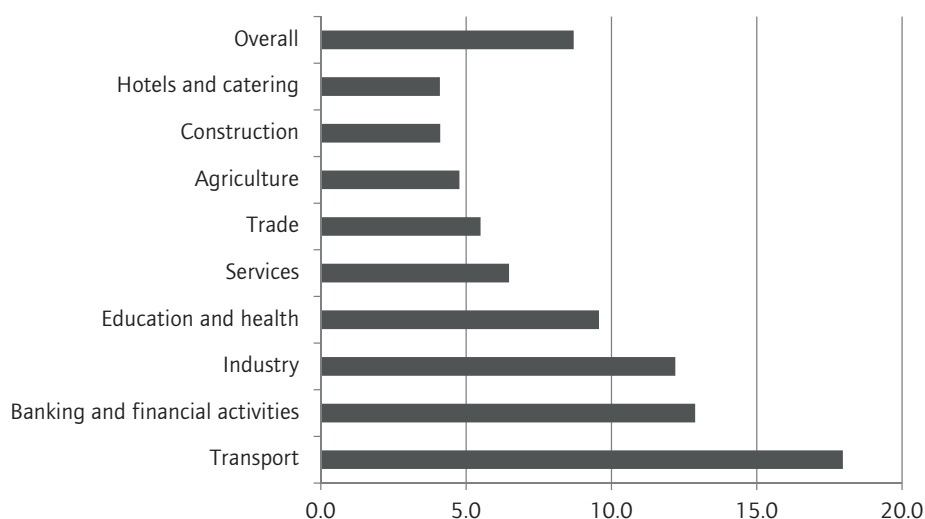
Trade union membership statistics have always exhibited lower rates in France than in other European countries, barely reaching 20 per cent even in the late 1960s. The oil shocks and recession of the 1970s further narrowed the base and trade union membership has been constantly low since then, at a mere 5 per cent in the private sector and roughly 15 per cent in the public sector. The rate was recalculated for 2013 using new surveys.³ Union density is now considered to be 11.2 per cent: 19.8 per cent in the public service and 8.7 per cent in the private and voluntary sector (Pignoni 2016). In the latter, the industrial breakdown highlights that union membership remains robust in traditional industries (Figure 11.1).

By contrast with trade unions, the participation rate of management representatives in employer-led organisations is fairly high, standing at 75 per cent in 2012 (Table A1.G). Between 1998 and 2004, however, a survey by the Ministry of Labour reveals a weakening participation rate, largely explained by morphological distortions in the industrial base: the loss of factories, operational facilities and manufacturing potential, and the rapid expansion of services.

There are three representative employers’ organisations. The Movement of French Enterprises (Mouvement des entreprises de France, MEDEF) is the peak organisation, intending and aspiring to represent all businesses of all sizes and all sectors. Two other organisations contest this aspiration and consider MEDEF as expressing the interests only of large companies. Despite this contestation MEDEF is the central employers’ organisation and participates in social negotiations. The two smaller organisations

3. Providing the headcount of trade union members is a tedious task. Until 1994, union membership was assessed on known or estimated union dues, mainly based on a union’s own statement, which tend to be exaggerated. From 1997 to 2013, the calculations were based on two direct surveys of individuals published by INSEE (National statistical institute), which was used as a reference in international comparisons. The Ministry of Labour and INSEE have provided a new calculation based on the Working Conditions Survey, which found that previous figures have been underestimated. Both surveys provide a member count, but none specifies which union the employee belongs to.

Figure 11.1 Union density by industry in 2013, France (%)



Source: Dares-DGAFP-Drees-Insee, enquête Conditions de travail 2013, Pignoni 2016.

are the Confederation of Small and Medium-Sized Enterprises (Confédération des Petites et Moyennes Entreprises, CPME) and the Union of Local Businesses (Union des Entreprises de Proximité, U2P). CPME aims to organise small companies beside and sometimes against the MEDEF. At the same time it is fairly dependent and does not stand out during the negotiations with trade unions. The U2P is sometimes very opposed to the two abovementioned organisations and at times has an inclination to side with the trade unions in some areas, probably because small employers feel close to and hardly different from their employees. Retail and building industry craftsmen are most widely represented in this union.

Extent of bargaining

Despite one of the lowest rates of union density, the French bargaining coverage rate is among the highest among the OECD countries: 96 per cent in the private sector and 98 per cent in public enterprise. First and foremost, it is worth noting that there is no real collective bargaining in the public service in France even though it accounts for almost 20 per cent of the total employed workforce.⁴ In France's long-standing administrative and legal culture, employment in the public service is characterised

4. The public service includes three branches: (i) the state civil service includes central government departments and their decentralised administrations across the territory, as well as public administrative institutions, for example the agency in charge of monitoring the unemployed (Pôle emploi); with just over 1 million workers, the Ministry of Education is the largest public employer; (ii) local authorities share areas of intervention at three geographical levels: the regions, the counties and the municipalities; (iii) public service hospitals include public health and medico-social institutions.

by a separate status, unilaterally granted by the state and detailing its civil servants' rights and duties. Industrial relations in the public service are specific. Since 1946, the full right of association, except for the armed forces, and the right to strike, except for military personnel, the police, magistrates and prison guards, have been constitutionally protected with special regulations. By contrast, until 2010, there was no scope for collective bargaining. The 2010 Law on social dialogue renewal (*Loi sur la rénovation du dialogue social*) acknowledged and generalised collective bargaining but renewal remains incomplete. The law did not confer legally binding status on agreements, as only their legislative or regulatory implementation grants them normative scope. Bargaining rights are still fairly weak and, regarding wages, under the unilateral control of government (Vincent 2016).

The high coverage level results from two factors. First, collective agreements apply to all employees of a company covered by them, regardless whether or not they are trade union members. Second, and above all, bargaining coverage has been broadened by extending the contents of sectoral agreements to all the employers in a similar activity, with or without registered membership in an employers' association. According to this administrative procedure, legally implemented since 1936, the extension of an industrial agreement must be made by one or both contracting parties through an explicit application. The only requirement is related to the bargaining parties' representativeness (see below) and does not rely on the coverage of the agreement, as in the Netherlands (see Chapter 21). The Ministry of Labour can also launch the procedure on its own initiative. When examining the application for extension, the Ministry of Labour ensures the validity of the signing of the text, its conformity with the applicable legislation and the presence of mandatory clauses. This review of legality may lead to the exclusion of certain provisions. The Ministry of Labour takes the final decision on extension after consulting with the National Collective Bargaining Commission (*Commission Nationale de la Négociation Collective, CNNC*), which is composed equally of representative peak-level trade union confederations and employers' organisations. In practice, nearly all industrial agreements are extended. In 2016, almost 10 per cent of extension decrees excluded some provisions of the extended agreements, but no extension was refused.

Notwithstanding the general use of extension mechanisms, collective bargaining has spread only slowly: in the early 1980s, 80 per cent of employees were covered by an agreement. The expansion of bargaining was achieved under state pressure, through the Labour administration's deliberate policy. Taking advantage of the 1981 reformist political change, a strong impetus was given to extending bargaining coverage, mainly at industry level. As a result, industry bargaining flourished during the 1980s and 1990s, even though some agreements covered only a few thousand or even fewer workers. Most of the new industrial agreements signed in the 1980s, particularly in services and trade, were at a minimum, with standard provisions that were not very advantageous compared with the Labour Code. The duration of collective agreements depended on the terms agreed by the signatories, except on compulsory bargaining topics. In 2015, 97 per cent of industries covering more than 10,000 employees had signed at least one agreement.

Table 11.2 Number of industrial agreements in France covering more than 5,000 employees (2015)

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

Sources: Ministry of Labour DGT (BDCC).

Currently, there are more than 680 industries with valid collective agreements at national, regional or territorial level, but only 370 cover more than 5,000 employees (Table 11.2). In retail, for instance, the collective bargaining landscape is very fragmented, with 84 collective agreements, only 29 of which cover more than 5,000 employees. The 75 largest industrial agreements alone cover almost 80 per cent of employees.

The stated aim of governments in recent years has been to reduce the number of industries to 200 or so by merging existing industries, in the hope thereby of improving the qualitative content of agreements. This target was part of the 2016 and 2017 legislation. In the metal industry alone there are 76 territorial collective agreements, negotiated at the local, primarily county (*département*) level. For professional and managerial staff, there is a nationwide agreement. In June 2016, the Metal Employers' Federation (l'Union des Industries et Métiers de la Métallurgie, UIMM) and all five representative confederations signed a procedural agreement programming the merger and renegotiation of the whole collective bargaining system in the next two years.

Security of bargaining

Security of bargaining refers to the various factors that determine the trade unions' bargaining role. The French labour movement has traditionally been marked by trade union pluralism and fragmentation, inter-union rivalry, low union density and a paucity of financial and organisational resources (Pernot 2010). This reality underlines how the extent and stability of bargaining have never been based on unions' organising strength. The state has compensated for union weaknesses using four tools. First, it has granted special legal rights enabling unions to represent the interests of all employees and not only those in membership.⁵ In that respect, until the late 1990s, representative unions had a quasi-monopoly in collective bargaining at all levels. The provision of services and collective agreements benefit all workers, industrial agreements apply even in companies where there is no union presence and there is no system by which employers can opt out.

Second, the right to strike is strongly constitutionally protected, with weak special regulations. In the private sector, the provision of minimum service is laid down for

5. For instance, 1946: prior authorisation by the labour inspector for the dismissal of employee representatives and union delegates; 1968: legal right to establish workplace branches and union workplace delegates.

those providing essential public services only, such as health or transport services. Beyond that, there is no obligation to inform the employer or to attempt to conclude an agreement before going on strike. There is also no regulation of the minimum or maximum duration of a strike. The right to strike applies to all employees, whether or not there is a union call for action and even when the majority of the employees are not involved. An individual can go on strike, however, only for reasons linked to employment and work conditions. Although the right to strike is an individual right in France, the unions' ability to mobilise more than just members and to force social and political demands and issues into the public arena used to be one of the main factors in the unions' structural power. This was based on their strategic locations in public infrastructure, particularly the CGT in energy and the railways. Their ability to bring the country to a standstill was demonstrated at various points, most recently in 1995 and 2003, when huge strikes paralysed part of the country's economic activity. In the past decade, strikes have become rarer and conflicts have tended to remain confined within companies, apart from the occasional major industrial action. The strike rate is still one of the highest in Europe, however, and was significantly higher in 2005–2014 than in the previous decade (Vandaele 2016).

Third, in order to increase their social and political influence, unions were granted a role in the administration of the welfare state, giving them legitimacy beyond the sphere of collective bargaining. In France, jointly managed institutions are a central approach to governance in the fields of social protection, unemployment benefit and training. All the social partners are devoted to it, including employers' organisations (Daniel *et al.* 2000).

Last, but not least, in order to level social inequalities and to compensate for a deficient bargaining process, a statutory national minimum wage was implemented by a 1950 Law revised in 1970. The government annually set the rate of the Growth-linked Interprofessional Minimum Wage (Salaire Minimum Interprofessionnel de Croissance, SMIC) according to strict rules, based on annual inflation plus half any increase in the gross hourly wage of blue-collar workers, albeit on a discretionary basis. Linkages between the SMIC and wage bargaining are fairly complex but the minimum wage increase more or less sets the pace for sectoral wage agreements (see below).

More recently, new rules for union representativeness and the validity of agreements have also sought to boost bargaining security. The extended possibilities to negotiate without unions have had more controversial effects. Paradoxically, these supporting measures have often proved detrimental by removing individuals' incentive to join unions, promoting a unionism based on the strength of a community of activists rather than on a mass membership, and ultimately encouraging further dependence on state support.

Regarding collective bargaining, representative contracting parties appear surprisingly stable. Until 2008, the government deemed five trade union confederations (CGT, CFDT, FO, CFTC and CFE-CGC) representative at the national level. Any federation affiliated to one of these nationally representative confederations had the right to participate in collective bargaining at industry and company levels. An agreement was

Table 11.3 Union representativeness* in France (%)

	Labour tribunals 2008	Works councils 2004/2005	Representativeness 2013	Representativeness 2017
CFDT	21.8	20.3	26.0	26.3
CGT	33.9	23.6	26.8	24.8
FO	15.8	12.6	15.9	15.6
CFTC	8.7	6.4	9.4	9.5
CFE-CGC	8.2	6.3	9.3	10.7

Note: * The election results are aggregated every four years by the Ministry of Labour for sectoral and interprofessional levels. The results were published for the first time in March 2013, and for the second time in March 2017.

considered valid as long as it was signed by just one of these representative unions. At the turn of the 2000s therefore the two major confederations, CGT and CFDT, promoted an overhaul of principles governing representativeness and the validity of agreements. The law on the renewal of social democracy and working time reform (Loi portant rénovation de la démocratie sociale et réforme du temps de travail of 2008) 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 federation has to obtain a minimum of 10 per cent of the vote in elections for works councils and 8 per cent at industry and interprofessional levels.

The picture is somewhat different at local level, where most collective bargaining takes place. CGT and CFDT maintain representativeness in almost all bargaining units. CFTC remains representative in only 203 industries. UNSA, however, gained representativeness in 88 industries and Solidaires in 35. In the metal industry, for instance, CGT and CFDT are representative in all 76 bargaining regions. The CFTC maintains representativeness in 20 regions only, and lost representativeness at national industrial level, except for managerial and professional staff, where the CFE-CGC has representativeness of 45.9 per cent. The diversity of the combinations existing at workplace level is even greater. Regarding the validity of agreements, a majority criterion was gradually introduced. Nowadays, any industry level and interprofessional agreement has to be supported by a majority of representative unions. Workplace agreements take effect once unions have gathered at least 50 per cent or more of votes.

To offset the fact that non-unionised firms, mainly SMEs, could not bargain because of a lack of union delegates, the social partners advocated non-union negotiators. For trade unions, this could have been an opportunity for new settlements. In 1995, however, a National Interprofessional Agreement (Accord National Interprofessionnel, ANI) signed by the employers' organisations and CFDT, CGC and CFTC (but not CGT and FO) allowed company agreements to be signed in the absence of union delegates by employees specifically mandated by unions, or by elected employee representatives, such as works council members or employee delegates. Since the early 2000s, successive legislation has extended the possibilities for non-union representatives to negotiate in non-unionised workplaces. The Macron ordinances have drastically extended the scope

of the device. Three different regimes have been introduced, depending on the size of the non-unionised workplace.

- (i) Where there are 20 or fewer employees and no employee representatives: the employer can propose an ‘agreement’ drafted unilaterally that must be approved by at least two-thirds of the workforce.
- (ii) Between 20 and 49 employees: two possibilities are open without priority. Elected representatives can sign the agreement if they represent the majority of votes or it can be signed by employees mandated by a union.
- (iii) Workplaces with 50 or more employees: the agreement can be signed by elected representatives, otherwise by 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.

Level of bargaining

As noted above, the industry level was dominant from the 1950s to the 1990s. Derogations from the Labour Code – on statutory working time – through industry or company agreements were introduced from the 1980s and 1990s. In 1993, however, François Sellier put forward the controversial thesis that the company level was the centrepiece of the French industrial relations system. Even if the changing pattern of collective bargaining has gradually delinked the central and the company levels, until 2004 coordination among the different levels was still ensured by the ‘favourability’ principle. In 2017, the Macron Ordinances replaced it with a compulsory division of topics among levels.

Wage-setting mechanisms are an illustrative example of the trend in the coordination between bargaining levels and state intervention. The statutory minimum wage (SMIC) provided gravitational pull for wage bargaining at industry level and set the pace for annual wage increases. Although the SMIC increase is state-imposed and not bargained, it has the same effect as centralised national wage agreements in other countries. This underlines the influence of state wage settlements in defining wage development and explains the similar pattern of real wage and productivity evolution over time (Husson *et al.* 2015). At industry level, union federations and employers’ organisations have always negotiated minimum wages, which correspond to the wage floor for a given set of qualifications. Agreed wages granted to the lowest qualification levels often achieve compliance with the minimum wage only with difficulty. The industry-level collective agreement is the place for the determination of wage hierarchies, as it serves as a reference for extending increases throughout the wage scale. This regulatory capacity differs according to industry (Jobert 2003). In some industries, this is still central, as it creates real wage convergence in all companies: for example, in the construction and petrochemical industries, but also in industries composed of very small businesses, such as auto repair shops. In most other areas, particularly in the metal industry, employers’ federations sought to negotiate industrial minimum wages that preserve some leeway on actual wages in large companies, either through company-level negotiations or

individualised compensation by means of profit sharing or employee savings. Industry-level actors are thus not the only stakeholders with a concern for wage policies, because room for manoeuvre is left for bargaining at company level. 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 and offer incentives for higher performance (Castel *et al.* 2014). These individualising devices may be subject to negotiation in the company. The erosion of industry-level bargaining as a result of the decentralisation of bargaining towards company level and in the current context of wage moderation, however, is not specific to France (Delahaie *et al.* 2012).

The 2004 Law on lifelong vocational training and social dialogue (Loi relative à la formation professionnelle tout au long de la vie et au dialogue social) launched the first major reversal in the coordination between bargaining levels. 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, job classifications, multi-employer vocational training funds and supplementary social protection. At the same time, three provisions made it possible to limit resort to such derogations. First, industry-level negotiators could ‘lock up’ other topics and exclude them from company-level derogations. Second, an industry-level joint committee could, in some instances, cancel derogations. Third, the law granted majority union federations the right to challenge the validity of derogating agreements signed in their enterprise.

In practice, the use of derogations remained limited. Three reasons explain the lack of success of derogations at company level. First, since 2004, because otherwise union federations would have refused to sign them, almost all industry-level agreements have blocked derogations. Second, the standards imposed at industry level are already the result of minimal compromises and leave little room for less favourable agreements. Last but not least, derogation agreements are not relevant tools for management. In large companies, as long as economic survival is not at stake, opening negotiations on derogation clauses sends a very negative message both for unions and employees. SMEs are less likely to sign their own agreements, whether or not they include derogations, because maintaining the reference to industry-level agreements seems less time-consuming and risky.

In the new collective bargaining architecture provided in the 2017 Ordinances, coordination between levels is no longer based on the ‘favourability principle’, but rather on the complementarities of bargained topics. Regarding competencies in standard setting, the division is as follows:

- (i) Formally, the role of industry level agreements is reinforced since there are now 13 topics on which derogation is forbidden. This reinforcement has taken place at the expense of the law, however, and not at the expense of company agreements.
- (ii) The industry level ‘lock up’ faculty, unlimited under the 2004 Law, has now been reduced to four areas, which mainly concern issues of occupational safety and disabled workers. The weakening of industry-level bargaining is evident here.

- (iii) The primacy of company agreements concerns everything that does not fall into the two previous blocks, a considerable quantity. Returning to the example of wages, all remuneration rules are now governed solely by the company agreement, with the exception of agreed minimum wages, classifications and overtime premiums.

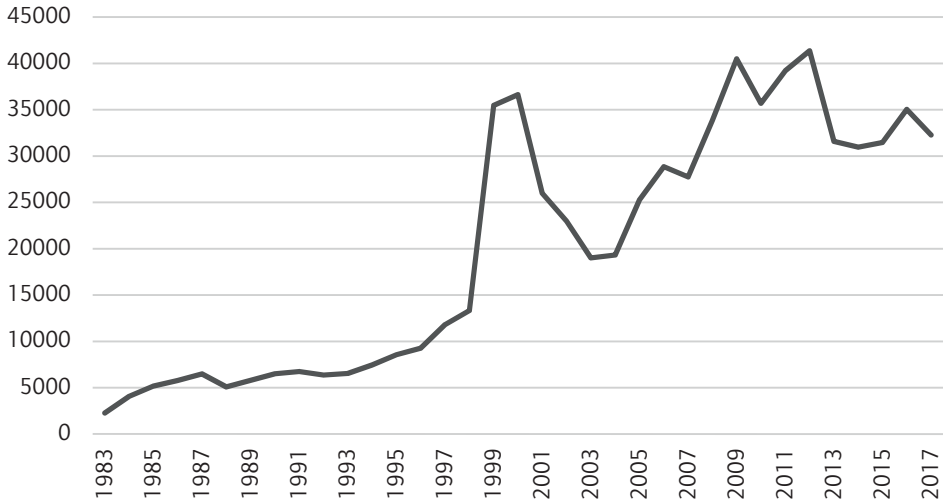
Looking further at each of the three bargaining levels, in France there has been a long-standing tradition of national interprofessional agreements (ANI) signed by the social partners in various fields: covering, for example, social protection, monthly pay for production workers, employment and training. To come into effect, most ANIs need to be transposed into legislation. The practice was enshrined in legislation only in 2007, in the so-called Larcher Law. Mirroring the European Treaty (Articles 154 and 155), the new procedure is designed to prevent the government from simply forcing decisions through in areas in which prior negotiations between social partners might be seen as bringing a more effective and democratic approach. Now, the law requires the government to hold dialogue on certain reforms before introducing the bill before Parliament, except in urgent circumstances. Since then, successive governments have turned this requirement to their advantage whether by exploiting the involvement of trade unions in order to push through their policies – including the ANIs on job security in 2008 and 2013 – or consultation prior to Macron Ordinances. They may also invoke force majeure, as in the cases of pension reform in 2010 and Labour Law in 2016. As they are tied to the vicissitudes of tripartite concertation, the number of ANIs signed annually varies considerably.

Regarding industry- and company-level bargaining, decentralised bargaining has not developed to the detriment of the former. Despite recent economic difficulties, which jeopardised the signing of agreements, as they undermined the opportunity for reciprocal concessions, analysis of the available statistics and quantitative reports highlights a remarkable stability in the number of collective agreements in recent years. Similarly, the actors involved in negotiating and signing agreements have not changed much, despite the extension of legal possibilities for negotiations with non-union representatives at the workplace.

Bargaining activity at industry level has been broadly stable over the past decade, with between 1,100 and 1,400 agreements signed each year, of which wage agreements comprise between 35 and 48 per cent, depending on the year. In 2013, the number of agreements fell significantly to around 1,000, a figure repeated in 2014 and 2015. This decrease can be explained mainly by the decline in agreements on wages due to low inflation and a very moderate minimum wage (SMIC) rise.

The number of workplace-level agreements increased substantially between the 1980s and the 2010s, from 3,900 in 1984 to 36,600 in 2015 (Figure 11.2). Industry and services are the two sectors with the highest number of workplace agreements signed by union delegates, accounting for 34.4 per cent and 37.7 per cent of the total, respectively, in 2015. Although the volume of agreements signed in these two sectors is very similar, service companies employ more than twice as many employees as industrial firms, 44.9 per cent compared with 17.7 per cent. Trade, accommodation, food and transport

Figure 11.2 France: number of workplace agreements signed annually* (1983–2017)



Note: * Including agreements signed by union delegates and employees mandated by trade unions.
Source: Ministère du travail (2017); author's calculation.

companies, which employ just under one-third of the labour force in the private sector, sign only 23.6 per cent of agreements.

In France, unlike many other countries, the crisis did not have a negative impact on the dynamism of company negotiations. On the contrary, the number of agreements concluded continued to increase each year, apart from 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 (see Chapter 12), 23,000 companies 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 below). In 2015, negotiations took place in only 15 per cent of workplaces with more than 10 employees; however, these workplaces employed 61.9 per cent of the workforce (DARES 2017). 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, proving that, in SMEs, there is often no collective bargaining because there are no unions.

Figures published every year by the Ministry of Labour paint a picture of a country heavily engaged in collective bargaining at enterprise, industry and national level. The question remains whether this helps to produce social compromises.

Depth of bargaining

The way bargaining is organised and the content of the agreements reached depend on the level at which negotiations take place. Differences are far more important between workplaces than industries.⁶

Representatives of union federations lead industry-level bargaining, usually under the tight control of their confederation officers. More often than not, union members have the opportunity to influence the content of claims before a bargaining round starts. In the CFDT and CGT metal federations, for example, the representative in charge of wage bargaining organises an annual meeting with union delegates of the main metal companies in order to develop a proposal on wage rises. The federation executive committees are the final authority on the bargained text, but they generally consult lower levels and members beforehand, by means of a more or less formal vote.

The findings are much less simple at workplace level. As noted above, three types of actors can negotiate at the workplace: union delegates, works council members or employees mandated by a union. The vast majority of agreements, however, are still signed by union delegates, particularly on wages. 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. Although France is one of the worst performing European countries in union membership, it ranks better (10th position) than Germany or the United Kingdom with regard to union presence at workplaces with 20 or more employees, which increased from 37.5 per cent in 1996 to 47 per cent in 2008 (Wolf 2008). This measure of union delegates' presence does not provide any information on their day-to-day practices. In many enterprises, unionists have little contact with union structures outside the company. Sometimes, union presence is confined to a single delegate, isolated from the organisation that is supposed to have chosen them (Dufour and Hege 2010). In fact, bargaining takes place in large companies only: in 2015, 36 per cent of workplaces with 50 to 100 employees had agreements, compared with 93 per cent for workplaces with more than 500 employees. Negotiations in smaller companies are often only pseudo-negotiations, in which union delegates simply accept the employer's offer. Genuine negotiations take place only in companies in which unions are strong enough, meaning the large ones.

Neither the unions nor the employers' federations have detailed knowledge of the contents of company agreements. 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 therefore 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, on which the federations send out regular reminders to their activists to complete their

6. There is no systematic research on the issue of bargaining processes. The features presented in this section are based on the author's long-term research on bargaining practices and her numerous interviews with trade unionists.

databases. As the number of topics for mandatory bargaining has increased in recent years, it is becoming more and more difficult for the union federations to ensure exhaustive monitoring of negotiations. Many unionists complain that these mandatory negotiations exhaust local representatives, who lose time needed for putting the employees' daily demands on the agenda.

During the two past decades, MEDEF has encouraged managements to adopt an active HR policy at plant level. This shift in employer attitudes was stimulated by the institutionalisation of workplace bargaining during the 1990s, which led to a more participatory style based on quid pro quo bargaining. HR managers have put a wide range of measures on the bargaining agenda to increase flexibility, moves facilitated by the continuous relaxation of labour market regulations. Developments have included the use of more individualised and merit-based pay systems, and increased flexibility in work organisation. These new bargaining topics are often controversial between unions, and even inside individual unions. For representatives of federations, it is quite impossible to establish common rules for concession bargaining, because local activists must judge whether such a concession is compensated in a complex agreement by advances for employees in other areas. Some union federations take a more rigorous stance, refusing to accept concessions of any kind. In retail, for example, opening options on Sundays have been widened recently: derogations for Sunday opening are conditional on the conclusion of a company agreement, which provides compensation for employees or on 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. CFTC and, above all, CFDT make the signing of agreements conditional on the quality of the counter-offer to employees. Conversely, CGT and FO are against it in principle and give strict instructions on this issue to their union delegates. Checking these instructions is not always easy, however, and may sometimes end with the withdrawal of the delegate's mandate. Looking at other industries, only in very rare cases do union federations replace union delegates who sign a company agreement that is considered a breach of internal union rules. Nevertheless, in many cases, union delegates bargain under the employer's pressure to accept less favourable provisions.

The depth of the bargaining process depends on company size and organisational complexity. In many enterprises, trade unionists at grassroots level have cut themselves off from their federation structures and are gradually retreating into their company or establishment. When it comes to company agreements, local union representatives have considerable negotiating autonomy.

Degree of control of collective agreements

Two dimensions can be distinguished regarding the control of collective agreements: the regulatory compliance of the agreement and the effectiveness of its implementation.

To assess the first dimension, we need to go back to the extension mechanism. In this procedure, the main role of the Ministry of Labour is to check that agreed provisions

are consistent with legal rights. The state's intervention goes further, as since 1936 a special procedure has existed to support industry-level social partners to negotiate. In the event of difficulties or blockages in the bargaining process, they can make a request to a Mixed-joint committee (Commission Mixte Paritaire, CMP). The purpose of the CMP is to assist in the negotiation with the help of a third party's technical and legal competence. The CMP is composed of representative union and employer organisations in the industry 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 a trade union requests it. In 2016, 89 instances of industry-level bargaining were followed by a CMP, of which 38 took place in retail. As a result, industry agreements comprise strict and detailed regulations, which explains why there are few disputes about their interpretation.

The other dimension of assessing collective agreements concerns their implementation. The Labour inspectorate (Inspection du travail) ensures that the terms of agreements are applied within workplaces. Their action relies on trade unionists for information on violations. Given their presence in the French social landscape for over 60 years, collective agreements are a well-established institution that employers respect more often than not. Nevertheless, control mechanisms are shared between the Labour Inspectorate and the labour tribunals. Labour inspectors ensure compliance with labour legislation and, where applicable, draw up official reports to criminal courts. In the field of collective bargaining, they can only oversee the application of minimum wage provisions with criminal penalties. For the rest, they may just order the employer to regularise the situation, for example, by means of observations made to the employer, advice or warnings. The use of courts by labour inspectors is fairly rare. This tool is highly dissuasive, however, and weighs in their power of persuasion, allowing labour inspectors to prevail on employers to respect collective agreements. In practice, the effectiveness of the intervention by the labour inspectorate relies on the ability of union delegates to provide them with information. It is therefore especially through reporting that they can intervene to enforce collective bargaining.

Scope of agreements

Bargained topics are not predetermined and provisions discussed at each level are subject to agreement. Collective agreements deal with a wide range of topics, whatever their level. Since the 1970s, the topics of negotiation have diversified well beyond traditional wage setting.

Interprofessional national agreements only covered the joint-management (*paritarisme*) of social protection until the early 1970s. Joint institutions have managed employees' supplementary pension funds and the unemployment compensation scheme since the conclusion of national agreements in 1947 and 1958, respectively. This management method was extended to vocational training in 1971. At the same time, a new type of ANI emerged, led by the government and allowed by employers, as they were afraid of May 1968-style strikes. This form of tripartite concertation can be considered to be a kind of 'pre-legislation'. In the following decades, very few ANIs were signed, but in order

Table 11.4 Breakdown of the topics of agreements in France (2015)

% of industry-level agreements on:	
wages	34.6
procedure (including derogations)	26.4
training	23.2
retirement and supplementary health schemes	23.2
employment contract conditions	20.7
gender equality	16.7
% of company agreements on:	
wages	38.0
working time	24.0
employment	11.0
profit sharing, participation	19.0

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

to combat the social impact of the economic crisis the practice restarted in spectacular fashion in 2007. No fewer than 19 agreements resulting from, or affected by, the crisis were signed between January 2008 and October 2011 (Freyssinet 2011) concerning, among other things, labour market operations, short-time working, youth employment and training.

Industry-level agreements lay down the regulatory system governing work norms on wages, terms and conditions of employment and working conditions. They are considered to be the 'law of the industry'. While wages are still the first bargaining topic, more qualitative agreements dealing with new issues, such as training, gender equality or supplementary health schemes, have developed in the past decade. The same trend towards broadening bargaining topics has developed at workplace level. While the number of agreements on employment and complementary health has remained constant, agreements on workplace gender equality or procedural agreements started to increase recently.

The shift in the level of bargaining has changed the link between the industry and company levels, but only in very large firms. Regarding wages, as mentioned above, the content of what is being negotiated under this topic, as well as procedures for determining wages, have been transformed significantly.

Above all, for the public authorities, company-level bargaining has become a way of managing employment (Fabre 2011). Trade unions are encouraged to participate in anticipating economic changes and their impact on employment as expected by management. According to this 'commitment' logic (Didry and Jobert 2010), managements and unions develop common conceptual tools, share diagnostics and, as the case may be, a particular perspective on employment and staff mobility. Despite the fact that managing employment, an intrinsic element of human resource management within companies, has been admitted to bargaining, it remains a managerial prerogative, in the form of

‘managerial social dialogue’ (Groux 2010). In accordance with the same logic, large companies, major automakers in particular, have signed so-called ‘competitiveness-employment agreements’, which are a French version of concession bargaining. In these agreements, unions exchange guarantees on employment against the lowering of social standards laid down in past company agreements (see also Chapter 29). 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 was to be implemented through ‘natural wastage’ 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 union federations in Renault, CFDT, CFE-CGC and FO, but not the CGT, agreed to increase working time and to freeze wages in 2013, followed by wage moderation in 2014 and 2015, depending on the group’s financial situation and economic performance.

For their part, trade unionists in large companies try to put new bargaining issues on the agenda. Wage bargaining is still an essential means for reducing inequalities and ensure fair distribution throughout the wage scale. In a period of wage moderation and worsening of workloads, however, they are pushing forward new themes in order to ease the strain on employees: quality of work conditions, work–life balance or innovative provisions on incompressible expenses, such as housing, energy and transport. On the issue of transport, for example, union delegates at Orange (telecom company) negotiate travel plans with their employers that reduce employees’ fuel bills.

In many small companies, the rare agreements signed offer little benefit to employees and industry agreements remain the reference. Regarding recent and upcoming legal changes, however, and, in particular the introduction of ballots, the balance of power is increasingly unfavourable to trade unions in enterprises.

Conclusions

The decentralisation of collective bargaining has developed dynamically since the 1980s, without hampering the development of collective bargaining at the industry and cross-industry levels. Some differentiation is observable, however. Bargaining has been encouraged at all levels by legislation. It has had the effect of increasing the number of negotiated topics, initially limited to wages and working time. In industries strongly exposed to international competition and to the business cycle, the crisis stimulated the negotiation of new types of company agreement in order to secure employment. It is important to stress that none of these negotiations needed any legal encouragement on derogation. Contrary to all other forms of legal stimulation, regarding company-level derogation or bargaining in enterprises without unions, the various laws have not produced very significant effects in practice.

Combined with the trend towards decentralisation, the economic crisis has constrained collective bargaining, because 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 for 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. In recent decades, an incremental institutional process has resulted in less and less coordinated decentralisation. As a matter of fact, the recent reforms have utterly changed the French collective bargaining system. It remains to be seen whether this changes social actors' collective bargaining practices.

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All links were checked on 17 January 2019.

Abbreviations

ANI	Accord National Interprofessionnel (National Interprofessional Agreement)
CFDT	Confédération Française Démocratique du Travail (French Democratic Confederation of Labour)
CFE-CGC	Confédération Française de l'Encadrement–Confédération Générale des Cadres (French Confederation of Management–General Confederation of Professional and Managerial Staff)
CFTC	Confédération Française des Travailleurs Chrétiens (French Christian Workers' Confederation)
CGT	Confédération Générale du Travail (General Confederation of Labour)
CPME	Confédération des Petites et Moyennes Entreprises (Confederation of Small and Medium-Sized Enterprises)
CMP	Commission Mixte Paritaire (Mixed-joint committee)
FO	Force Ouvrière (CGT-FO, General Confederation of Labour-FO) commonly referred to as FO
MEDEF	Mouvement Des Entreprises De France (Movement of French Enterprises)
SMIC	Salaire Minimum Interprofessionnel de Croissance (Growth-linked Interprofessional Minimum Wage)
U2P	Union des Entreprises de Proximité (Union of Local Businesses)
UIMM	L'Union des Industries et Métiers de la Métallurgie (Metal Employers' Federation)
UNSA	Union Nationale des Syndicats Autonomes (National Unions of Autonomous Trade Unions)
USS	Union Syndicale Solidaires (Trade Union 'Solidaires')