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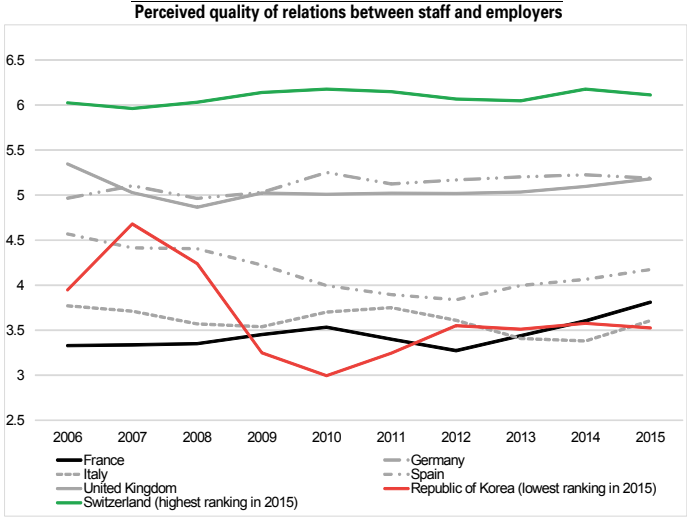
30 years of modernising social relations in France

- Economic studies have found that effective social relations between unions and management are key to ensuring the economy runs smoothly[1]. In surveys of the quality of labour relations, France tends to fare badly, however, although some improvement has been apparent over the last few years (see chart below).
- Numerous measures aimed at modernising social relations have been introduced since the 1980s, gathering pace since the mid-2000s. Collective bargaining has been gradually overhauled to offer companies greater management flexibility.
- The growing trend for unions and employers to negotiate labour standards at a more local level has gone hand-in-hand with increased legitimacy for the main stakeholders and the agreements reached. The rules according to which unions and employers' federations are considered representative and, as such, empowered to negotiate and sign collective bargaining agreements applicable to all of the workers they represent have been made even clearer.
- As regards unions, the Act of 20 August 2008, which came into full effect in 2013, has completely revamped labour relations by switching from a system where unions are de facto recognised as being representative to one in which this recognition rests on the outcome of staff elections. As regards employers, the Act of 5 March 2014 introduced for the first time a rule to measure the level of representativeness based on membership. This rule will come into effect in 2017. At the same time, the legitimacy of collective bargaining agreements has been bolstered by the strengthening of the majority principle and the introduction of the right of opposition if 50% of the votes cast are won.
- The Act of 17 August 2015 on labour relations and employment adds to these measures by streamlining labour-management relations at corporate level to boost their effectiveness. The French employee representation system stands out for its complexity and offers scant coverage to the smallest businesses. The new measures aim to correct this lack of representation for the latter and to authorise the largest companies to merge staff representation bodies subject to the agreement of labour and management representatives. In addition, requirements to negotiate and to provide employees with information and to consult them on relevant business matters have been rationalized. The frequency of negotiations can also be set by individual companies.
- There would still appear to be some scope for improving the quality and efficiency of labour relations. This would entail more collective bargaining when drawing up labour standards to simultaneously promote economic efficiency and social progress as per the recommendations made in several recent reports[2]. Furthermore, collective representation in companies with a headcount of 11-49 must be improved, and staff elections should be extended to include a wider range of active members of the labour force, whether they are employed or not.

Perceived quality of relations between staff and employers



How to read this chart: 1: conflictual working relations; 7: smooth working relations. In 2015, France ranked 116th out of 140 countries using this criterion.
Source: The Global Competitiveness Index Historical Dataset

(1) Ferracci M. & Guyot F. (2015), « *Dialogue social et performance économique* », Sciences Po.
(2) Combrexelle J.D. (2015), "Collective Bargaining, Jobs and Employment, France Stratégie" report to the government; Cette G. & Barthélémy J. (2015), « *Réformer le droit du travail* [Reforming labour law] », report sponsored by Terra Nova, Odile Jacob.

MINISTÈRE DES FINANCES ET DES COMPTES PUBLICS
MINISTÈRE DE L'ÉCONOMIE DE L'INDUSTRIE ET DU NUMÉRIQUE

1. The increasingly important role attributed to collective bargaining has led to the need for greater legitimacy for labour and management representatives and the agreements they sign

1.1 Built on the principle of the most favourable rule applies at a time when economic growth was strong, collective bargaining has changed considerably since then

Historically, labour law has been based on two key principles:

- **A hierarchy between standards:**
  - Legislation and regulations take precedence over agreements negotiated by labour and management.
  - National multisector agreements take precedence over sector agreements, and sector agreements take precedence over company-level agreements.
- **The principle of the most favourable rule applies (core workplace guarantees or ordre public social):** a lower-ranking provision can only take precedence over a higher-ranking provision if more beneficial to the employee, which means that labour and management representatives can agree on agreements that are an improvement on what is strictly required by law.

As the service sector grows and competition becomes fiercer as a result of globalisation, **this hierarchy has been modified gradually** to offer companies greater management flexibility.

Since the introduction in 1982 of the annual obligation to negotiate salaries, working hours, and the way in which work is organised within companies, collective bargaining, company-level agreements in particular, have been playing an increasingly important role. At the same time, **collective bargaining has moved away from the principle of the most favourable rule applies towards the principle of proximity**[1]. Exceptions allowing a lower-ranking standard to take precedence over a higher-ranking standard to the detriment of employees have mushroomed and take various forms:

- **Agreements that deviate from the law:** since 1982[2], collective bargaining agreements may deviate from legislation and regulations, even if they are less beneficial for employees, as long as this deviation is expressly authorised by law. Only working hours and organisation of working time are affected. A sector agreement can therefore set overtime limits in excess of those stipulated by decree. Furthermore, there is also the option of including in an extended sector agreement or in a company-level agreement a provision whereby working time is calculated on an annual basis , which relaxes the rules on working overtime.
- **Compagny-level agreements that deviate from higher-ranking agreements:** since 2004[3], lower-ranking contractual provisions need not comply with higher-ranking ones, apart from when dealing with topics such as the legal or conventional minimum wages, job classifications, and collective job guarantees (training and welfare) unless stipulated otherwise in the higher-ranking agreement.
- **Lower-ranking agreements that take precedence over higher-ranking agreements:** since 2008[4], when it comes to working hours, a company-level agreement need not comply with sector agreements, and the latter are unable to forbid this deviation.

1.2 The increasingly important role attributed to collective bargaining has led to the need for greater legitimacy for labour and management representatives and the collective bargaining agreements signed

As collective bargaining and company-level agreements grow in importance, rules have become stricter to ensure that the unions involved in negotiating and approving these agreements are representative of the employees they defend. Unions and employers' organisations deemed representative have the power to negotiate and sign agreements on behalf of all of the personnel they represent.

1.2.1 New representativeness criteria for unions and employers

Unions in France have for more than 50 years borne the hallmark of the post-Liberation landscape. Throughout the period, five trade union confederations (CGT, CFDT, CGT-FO, CFTC and CFE-CGC) have been de facto representative bodies at national multisector level[5]. UNSA, Solidaires and FSU, which were created at the end of the 20th century, have therefore been excluded from some trade union bodies.

The Act of 20 August 2008[6] overhauled labour relations. Following this Act, the de facto system was replaced by a system in which **a union has to garner a minimum percentage of the votes in staff elections to be considered representative**, i.e. 10% at company level, and 8% at sector and national multisector level (see Box 1 on results of staff elections). Collective agreements are "negotiated and signed by

(1) Gérard Couturier, Professor Emeritus in Law, University of Paris 1.
(2) Act no 82-957 of 13 November 1982 on collective bargaining and the settlement of collective labour conflicts.
(3) Act no 2004-391 of 4 May 2004 on negotiating agreements that deviate from higher-ranking agreements at company level.
(4) Act no 2008-789 of 20 August 2008 on reforming democracy in the workplace and working time.
(5) Under French labour law, five main unions (CGT, FO, CFDT, CFTC and CFE-CGC) have, since the end of the Second World War, enjoyed irrebuttable (in the sense that evidence to the contrary is not admissible) presumption of representativeness.
(6) Act no 2008-789 of 20 August 2008 on reforming democracy in the workplace and working time.

representative union organisations mandated to defend the rights and interests of employees and authorised to do so by the latter via direct elections" (Cass. Soc., 27 January 2015, No 13-22.179).

At the same time, this Act allows unions that have failed to be recognised as being representative to set up in a company and participate freely in the first round of staff elections and appoint a local union representative.

In a system in which staff elections play a pivotal role, voting rights are reserved for employees, and generally those on permanent contracts take the most advantage of this. Staff working for very small enterprises with no representative body and who do not vote in staff elections were originally excluded from the audience measurement process. An Act passed in 2010[7] enabled them to take part in an extraordinary vote organised at the end of 2012 to select the union that would defend their rights in negotiations on collective bargaining agreements or national multisector agreements. Authorising currently unemployed but members of the active workforce to participate in staff elections could help to not only improve democracy in the workplace but also the functioning of the labour market by defending a wider range of interests[8].

Turning to employers' federations, there is no official measurement for membership rates. However, some elements were provided by the 2011 edition of the Réponse survey carried out on a sample of establishments in the non-farm market sector with 11 or more employees[9]. In 2011, 44% of companies employing 56% of staff indicated that they were affiliated to an employers' federation. 34% were members either indirectly via other organisations or groups of organisations of the four main national employers' federations, i.e. Medef, CGPME, UPA and UNAPL. While 30% were members of one single employers' federation, 14% were members of at least two. In addition, 25.8% (equivalent to 40.2% of employees) were direct members of Medef and 16.6% of CGPME. UPA (5.3%) and UNAPL (1%) were less visible, with the former representing the arts and crafts sector and the latter self-employed professionals. Both are popular among very small enterprises, a significant portion of which is excluded from the scope of the survey.

Regarding national multisector and sector agreements, the Act of 5 March 2014[10] introduced for the first time a rule of measurement for representativeness based on membership (and not elections, as is the case for unions). This therefore required complete transparency from employers' federations. **As of 2017, a minimum of 8% of companies must be members of an employers' federation for it to be deemed representative.**

1.2.2 At the same time, the legitimacy of collective bargaining agreements has been bolstered by the strengthening of the majority principle

The rules of validity for collective bargaining agreements have changed. Previously, the signature of one representative union was enough. Now, the notion of majority agreement applies. When a majority of representative organisations (based on the former system, at least 3 out of 5) challenged an agreement, the Act of 4 May 2004 classed this as the right to opposition. The subsequent 2008 Act established the majority agreement as a general rule and defined it in electoral terms:

- To be valid, agreement must be signed by union representatives representing one or more organisations accounting for at least 30% of the votes cast in the first round of voting and by at least one employers' federation recognised as being representative.
- An company-level agreement is invalid if it is challenged by union representatives from one or more unions accounting for at least 50% of the votes cast. The same rule applies to sector and multisector agreements, although the percentages are calculated on the basis of votes garnered by representative unions.
- Employers' federations have a majority right of opposition to extensions to collective bargaining agreements; the 50% majority is based on the number of employees represented.

Lastly, the Act of 14 June 2013 sets a 50% threshold for signatories of agreements reached during difficult economic times, negotiated redundancy plans or job protection agreements.

(7) Act no 2010-1215 of 15 October 2010 supplements the provisions relating to democracy at the workplace included in Act no 2008-789 of 20 August 2008.

(8) As part of the discussions relating to the 2008 reform, some unions expressed a preference for a national election along the same lines as industrial tribunal elections, which would enable all workers (including unemployed and early retirees) to vote for the union of their choice, regardless of whether or not it was represented within their company.

(9) Pignoni M.T. (2015), « *L'affiliation des entreprises aux organisations patronales en France* », *Dares Analyses* no 2015-069.

(10) Act no 2014-288 of 5 March 2014 relating to vocational training, employment and democracy in the workplace.

Box 1: **2013 staff election results**

The five "traditional" union confederations maintain strong positions at national multisector level

At national multisector and sector levels, reforms of representativeness rules did not come into full effect until the end of 2013 due to the need for time to hold elections at both company and sector levels. The five "traditional" union confederations won more than 8% of the votes cast at national multisector level and are still therefore the only representative unions at this level.

In 2017, the first representative employers' federations at national multisector and sector level will be selected at the same time as the second measurement of union audiences.

Multiple representation at sector level with the arrival of UNSA and Solidaires

At sector level, new rules on representativeness have enabled organisations like UNSA and Solidaires to set up shop (in 55 and 29 sectors, respectively), thus promoting multiple union representation at sector level[a].

Many sectoral branches of union federations affiliated to the CGT, CFDT, FO, CFE-CGC and the CFTC did not obtain the minimum requirement of 8% of the votes that would have enabled them to continue to participate in collective bargaining. Their right to participate is protected by law until 2017[b] but thereafter they will no longer be deemed representative.

There are now a considerable number of sectors where one single union can sign a majority agreement (and therefore not susceptible to opposition). But on the whole, bargaining at sector and multisector level tends to take place between union alliances that form a majority for signing or opposition purposes.

At company level: reduction in the number of representative organisations and stronger unionisation of employee representatives

In some companies, elections have shaken up the existing balance of power[c].

There has been a clear reduction in the number of representative union bodies. In 2011, 12% of corporate entities with 50 employees or more declared the presence of three representative union organisations or more compared to 15% in 2005. At the same time, the number of union organisations represented in negotiations that resulted in agreements has fallen to an average of 2.29 in 2012 from 2.68 in 2008. According to an Ires[d] study, union and management representatives often attribute this to the departure of traditional leaders. At the same time, coalition lists for staff elections were used frequently, particularly by UNSA and Solidaires.

Unionisation among employee representatives has increased: the percentage of unionised representatives increased between 2005 and 2011 in companies with 50 employees or more from 29% to 40% for staff representatives and from 27% to 36% for those elected to works councils. According to the same Ires study, the elections jeopardise the position of union delegates (by requiring unions to garner a minimum percentage of votes to be deemed representative) which strengthens the relationship between employee representatives and unions.

National representation, 2013-2017

Chart 1: percentage of votes won

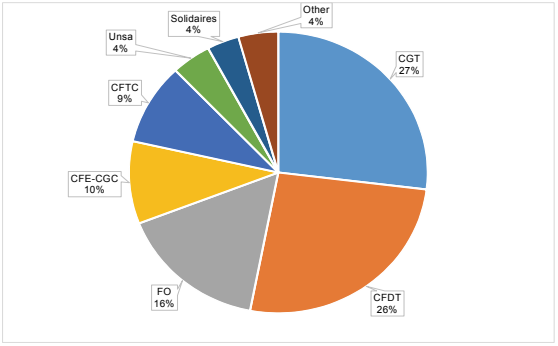


Chart 2: relative weight* of representative union organisations

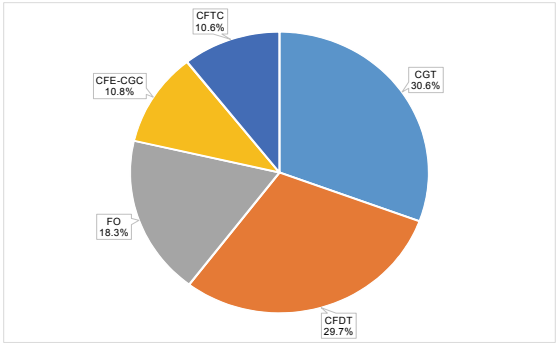
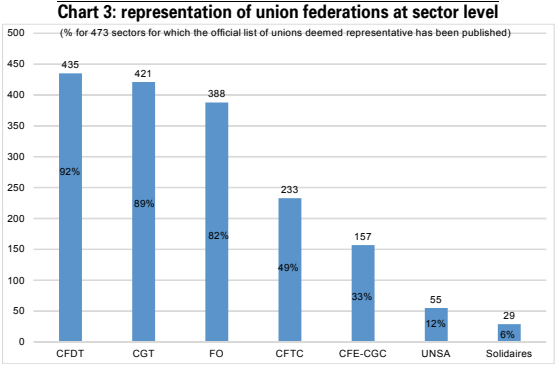
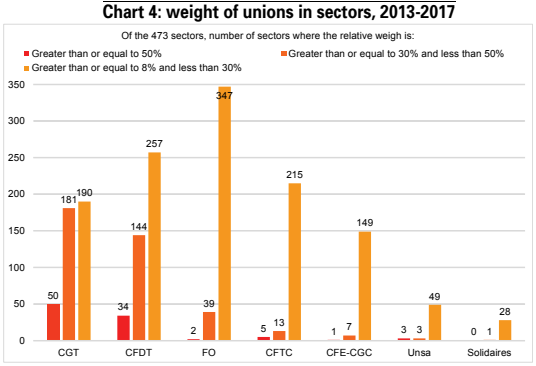


Chart 3: representation of union federations at sector level



How to read this chart: the CFDT is representative in 92% of sectors for which the official list of unions deemed representative has been published as it garnered more than 8% of the votes in 435 sectors.

Chart 4: weight of unions in sectors, 2013-2017



Source: Direction générale du travail (2014), La négociation collective en 2013. Chart: DG Trésor.

* Relationship between the number of valid votes cast for each representative union and the number of valid votes cast for all representative unions. It is used to measure the validity of agreements negotiated at national multisector level.

a. See Ministry of Labour (2013), Rapport sur l'application des dispositions de la loi n°2008-789 du 20 août 2008 relative à la démocratie sociale.
b. They benefit from a simple presumption of representativeness.
c. Op.cit. footnote a.
d. Hege A., Cothenet A., Dirringer J., & Dufour C., (2014), « *L'influence de la loi du 20 août 2008 sur les relations collectives de travail dans les entreprises* », Ires, RRS-CGT.

2. Sector reorganisation should help to clarify applicable labour standards by reducing the number of collective agreements

2.1 The fragmented nature of the collective bargaining landscape at sector level was confirmed by audience measurement results

Alongside the traditional economic sectors (hairdressing, plastics manufacturing, etc.), there are a certain number of sectors that cover a particular job function (e.g. journalists), a region, *département* or geographic area, a socio-professional category (managers, manual or non-manual workers, etc.) or sometimes all three.

In 2012, there were 710 sector-level collective agreements (excluding farming sector) varying considerably in size; 13% of aggregate agreements covered 73% of total salaried employees within the sectors[11]. In total, 15.3 million employees (i.e. over 90% of total employees) were covered by a sector agreement thanks to procedures overseen by the government that extend the benefit of agreements to all sector employees even if their company is not affiliated with a signatory employers' federation[12] [13]. In 2014, 640 agreements were extended, including 351 applying to remuneration[14] (see Box 2 on the economic impact of this extension).

Configurations vary greatly from one sector to another. At the last elections, the majority of sectors covered fewer than 5,000 votes and only 23 sectors had more than 100,000 registered members[15]. The members of the High Council for Social Relations (*Haut Conseil du dialogue social*) found that a number of sectors have not reached the critical mass that would enable them to offer an appropriate framework for negotiations or to regulate competition[16].

The official list of representative unions that generally follows the audience measurement was not published for close to 200 sectors due to the low number of votes won (less than 11) or because no agreement has been signed in the sector in the last twenty years.

The large number of sectors and small influence of some of them hold back employee mobility. It is a source of complexity and lacks clarity for both companies and employees, and has a negative impact on social relations.

2.2 The Act of 5 March 2014 has provided the Minister with new tools to support sector reorganisation

Since the Act of 5 March 2014 was passed, for sectors in which representative employers' federations comprise less than 5% of companies falling within the scope of the agreement, and based on the opinion of the National Commission for Collective Bargaining (CNNC), the Minister may[17]:

- Refuse to extend an agreement if the scope is deemed too restrictive.
- Extend an agreement to a sector with little activity or merge several agreements.
- Not produce an official order listing representative employers' federations or unions in sectors where few collective bargaining agreements have been signed.

The CNNC began sector reorganisation on 22 September 2014 and a sub-committee was created[18] to monitor progress.

2.3 At the Social Conference held in October 2015, the government announced that sector reorganisation would pick up speed

The government announced that sector reorganisation would significantly pick up speed in line with labour law reforms. It set itself the target of reducing the number of sectors to 400 by end-2016, 200 by end-2017 and 100 in the long run (Germany currently boasts some 150 sectors).

To this end, it has offered labour and management representatives to set up a model agreement as to how the reorganisation should be tackled. It may result in a future law that would:

- Provide for, by end-2016, the disappearance of sectors that have not signed any collective agreements for the last ten years or more, and of regional sectors (mainly metallurgy and construction) without hampering regional bargaining; any agreements signed at this level will be included as appendices in the national collective agreement.
- Give labour and management representatives three years to take steps to voluntarily merge sectors.
- Outline the criteria that would apply to mergers imposed by regulatory authorities (sectors with fewer than 5,000 employees, sector coherence, etc.) if sufficient progress was not made within the stipulated timeframe.

The thinking behind the reorganisation is to restore the primary goal of sectors, i.e. provide a suitable and dynamic framework for employment and the way in which work is organised within the sector.

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(11) Neros B., Boudjemaa F. (2014), « *Portrait statistique des principales conventions collectives de branche en 2012* », *Dares analyses* no. 2014-097.

(12) The extension procedure can be triggered either via request by one of the representative employers' federations or unions, or by the Minister pursuant to the provisions of Article L.2261-24 of the Labour Code.

(13) Dufresne A. and Maggi-Germain N. (2012), « *L'extension des conventions et accords collectifs de travail en France. Entre interventionnisme étatique et liberté conventionnelle* », WSI Mitteilungen, special edition: « *L'extension : outil de stabilisation du système des conventions collectives et relations socioprofessionnelles ?* ».

(14) Direction générale du travail (2015), « *La négociation collective en 2014* ».

(15) Op. cit footnote a.

(16) Direction générale du travail (2014), « *La négociation collective en 2013* ».

(17) L. 2261-32 of the Labour Code.

(18) Decree of 5 March 2015.

Box 2: **Economic impact of extensions of sector-level collective agreements**

In France, collective wage bargaining takes place:

- At sector level: employers' federations and unions negotiate on an annual basis minimum wage levels below which employees with a given level of qualifications (based on a job classification table) cannot be paid.
- At company level: the Auroux Acts of 1982 made it compulsory to hold annual negotiations on real wages (but there is no requirement to reach an agreement).

From a theoretical standpoint, the introduction of a minimum wage levels as part of collective agreements strengthens downward nominal wage rigidity, particularly when there is an economic shock. The existence of minimum wage levels may therefore have a negative impact on employment, particularly among the less well-qualified and younger members of the workforce, and may contribute to labour market segmentation. This impact would be amplified by extended sector agreements. Several empirical studies carried out by OECD countries have highlighted the negative impact on employment of extended agreements.

In Portugal, where wage bargaining is very similar to the French procedure (in 2010, 90% of collective agreements had been extended), a study (Martins, 2014[a]) found that employment and payroll in sectors where a collective agreement had been extended were seen to fall by some 2% on average in the four months following the extension. This fall was even larger in very small enterprises with fewer than ten employees (–2.6%). The dip in employment was a result of less recruitment and an increase in company insolvencies.

In South Africa, Magruder (2012[b]) found that sector-level collective agreements pushed employment down by 8-13% in the relevant sectors, with small companies suffering the greatest losses.

In France, according to Murtin et al., (2014[c]), the low rate of union membership compared to the very wide coverage of sector wage agreements combined with high taxes are the two factors behind the higher rate of unemployment in France compared to other countries: unions, which are significantly represented in major companies, negotiate wage levels that major companies can afford; however, the levels negotiated are much less bearable for smaller companies that are often not party to the negotiations.

Nevertheless, according to Dares[d] analyses, the impact of the extension of agreements in France on wage dynamics should be looked at in context:

- Since 2008, wage increases have slowed even though negotiations have kept a regular pace.
- This increase in wages has been driven more by annual increases in the minimum wage than by a rise in wage levels as part of collective bargaining. The latter are affected by changes to the minimum wage which have a direct impact on wage levels close to the minimum and a knock-on effect on wages up to 1.5 times the minimum[e]. Numerous sector agreements merely reflect the increase in the minimum age in salary scales resulting from the collective bargaining process and raise the lowest levels on the scale where appropriate.
- Stripping out the minimum wage effect, wages resulting from collective agreements slowed by 0.4 points a year between 2009 and 2012 compared to 2003-2008. In addition, the impact of the sector negotiation on real wages remains modest: on a like-for-like basis, a 1% rise in wage levels set in collective agreements results in a 0.12% rise in real wages.

As regards regulating competition, extending sector agreements has a mixed impact:

- By setting minimum wage levels, the extension helps to avoid unfair competition from posted workers for employees in the host country. According to EU case law (CJEU, Ruffert judgement of 3 April 2008), only extended collective agreements apply to posted workers. The extension of sector-level collective agreements are therefore thought to protect French employees from competition from workers sent from another country to work in France. Furthermore, labour and management representatives believe that it limits social dumping between companies in the same sector by ensuring that companies not party to the agreement do not indulge in unfair competition by exercising downward pressure on prices and wages.
- By imposing working conditions and higher wage levels via the extension procedure, the companies that negotiate sector agreements may look to reduce competition in their sector by limiting the arrival of new players on the market[f].

According to Martins (2014), sector agreements and their extension may help achieve important economic and social goals, such as underpinning purchasing power, improving income distribution, introducing working conditions and training policies or additional social protection policies adapted to the company's sector, etc. The effectiveness of this regulatory role is nevertheless dependent on:

- The collective bargaining landscape, and whether it accurately reflects the economic situation of the sectors, which should be improved by reducing the number of sectors.
- The degree of representativeness of unions and employers' federations, which improved as a result of the Acts passed in 2008 and 2014. The existence of an extension has a positive impact on membership rates of employers' federations as it is in companies' best interests to influence the rules that all of the companies in the sector will have to follow once the extension goes through; on the other hand, the extension can have a negative impact on union membership as it encourages a free-rider behaviour (Martins, 2014).

Lastly, some experts believe that the extension should be maintained in the short run as long as there has been no in-depth sector reorganisation. Via the extension, the government monitors the legality of the agreements negotiated and ensures that all sector employees receive equal treatment[g]. This role may be necessary at a time when collective bargaining is set to gain in importance in labour relations. Nevertheless, to give companies greater flexibility in applying certain provisions in the collective agreements, opt-out clauses negotiated by labour and management representatives could be introduced, as is currently the case in Germany.

a. Martins P. (2014), "30,000 Minimum Wages: The Economic Effects of Collective Bargaining Extensions", IZA DP no. 8540.
b. Magruder, J. (2012), "High Unemployment Yet Few Small Firms: The Role of Centralised Bargaining in South Africa", *American Economic Journal: Applied Economics*.
c. Murtin F., de Serres A. and Hijzen A. (2014), "Unemployment and the coverage extension of collective wage bargaining agreements", *European Economic Review*.
d. Naouas A. & Combault P. (2015), « *L'impact des relèvements salariaux de branche sur la dynamique des salaires de base, accentué pendant la crise, reste modéré* », *Dares Analyses* no. 33 & Pignier J. & Combault P (2015), « *Évolution des salaires de base par branche professionnelle en 2014* », *Dares Analyses* no. 37.
e. Aeberhardt, Givord and Marbot (2012), "Spillover Effect of the Minimum Wage in France: An Unconditional Quantile Regression Approach".
f. Haucap J., Pauly U. & Wey C. (2001), "Collective wage setting when wages are generally binding: an antitrust perspective", *International Review of Law and Economics* 21(3), 287 307.
g. Combrexelle J.D. (2015), "Collective Bargaining, Jobs and Employment", France Stratégie, report to the government.

3. At company level: streamline social relations while adapting to a wide variety of situations

3.1 In most of the major European economies, employees are represented by unions and/or a works council equivalent

In the UK, Ireland and Scandinavia, employees are generally represented by unions, while a "dual" system prevails in countries in continental and southern Europe, i.e. employees are represented by unions and elected works council representatives.

In Germany, the *Betriebsrat*–the local version of a works council–is the only form of employee representation within companies. German employees can decide to elect a *Betriebsrat* (although it is optional) if there are at least five employees in the company. The *Betriebsrat* has extensive powers, ranging from the right to information-consultation to codetermination with the right of veto in certain areas provided for by law. It is also the body involved in collective bargaining.

3.2 France has several organisations with theoretically different roles...

3.2.1 Staff representative bodies

These comprise representatives elected directly or indirectly by employees whether they are on the union list or not.

Founded in 1936, **staff representatives (*délégués du personnel*) ensure that employees' individual voices are heard** vis-à-vis the employer and that the labour code and applicable agreements are applied within the company. They are consulted when redundancies are made. There is no equivalent body elsewhere in Europe's major economies, apart from Spain.

Founded in 1945, **the *comité d'entreprise*–the French version of a works council–ensures that employees can voice their concerns as a group.** It has to be informed and consulted on working conditions, corporate organisation and management, corporate business and financial results, and individual and mass redundancies. In addition, it manages or oversees cultural and social activities (leisure activities, canteen, childcare, etc.) on behalf of the company.

Founded in 1982, **the health and safety committee (*comité d'hygiène, de sécurité et des conditions de travail - CHSCT*) is responsible for ensuring the protection of workers' physical and mental health and safety and for improving their working conditions**. In most European countries, an ad hoc works council committee (if such a council exists) carries out these functions.

3.2.2 Union representatives

Appointed union representatives (*délégués syndicaux*) represent employees and defend their interests vis-à-vis the employer. Introduced in 1968, union delegates appointed by representative unions are the only ones that can be involved in collective bargaining negotiations. In larger companies, representative unions may appoint a union works council representative (*représentant syndical au comité d'entreprise - RSCE*) in addition to the union delegate who is an ex officio member of the works council. Since the Act of 20 August 2008, non-representative unions may appoint a local union representative (*représentant de section syndicale - RSS*).

3.3 …but over time their division of responsibilities has become less clear

Staff representatives may carry out the following functions:

- All works council responsibilities as a single employee representative body.
- All works council economic responsibilities and/or health and safety committee responsibilities in the absence of a council or a committee.

The creation of union delegates reduced the relevance of staff representatives: while staff representatives are in charge of ensuring that both labour law and collective agreements are applied, the union delegate is responsible for changing and modifying said law and agreements, and therefore encroaches upon the staff representative's role.

The ban on representatives other than union delegates being involved in collective bargaining is waived if the latter do not exist. In companies with no union delegate, elected representatives (works council members or staff representatives) can be involved in collective bargaining. If there are no elected representatives, employees (or a local union representative in companies with more than 200 employees) appointed by a representative union organisation within the sector[19] can take part.

The boundary between consultation and bargaining has become blurred:

- Since the Act of 20 August 2008, to be appointed a union delegate, candidates must obtain a minimum of 10% of the votes cast in staff elections; consequently, some union delegates are also elected as a works council member.
- Since the Act of 14 June 2013[20], the works council must be consulted before the signature of any job protection agreements or redundancy plans.

Staff representatives frequently hold more than one office. In 59% of companies with 50 employees or more with at least one staff representative body, the staff representative surveyed held more than one office (within the plant or company represented)[21].

(19) See factsheet 5 of circular no 20 of the French General Directorate of Labour (DGT) on the Act of 20 August 2008 to overhaul democracy in the workplace and working hours.
(20) Act no 2013-504 of 14 June 2013 on job security.
(21) 2010-2011 edition of the REPONSE survey on business relationships and business negotiations.

Lastly, **since 1993, in companies with 50-199 employees, the employer may decide to appoint a single employee representative body** combining the functions of staff representative and works council within the same elected delegation but maintaining the two bodies (and therefore the number and frequency of meetings). According to Dares[22], between 1999 and 2005, there was a sharp increase in the proportion of companies that appointed such a body before it stabilised at around 28% from 2005 onwards.

3.4 Staff representation requirements, essential to ensuring effective social relations, increase with the size of the company

Appointing staff representatives within a company is key to promoting effective social relations which can be beneficial to both staff and the company in terms of improved economic performance[23]. Staff representation systems vary from country to country. It is therefore difficult to assess their respective impact on social relations. For comparison purposes, however, this section focuses strictly on how much these systems cost companies (in terms of hours spent as a delegate, attending meetings, etc.) as stipulated in the regulations.

In France, due to the existence of legal thresholds, staff representation and the various guises it takes grows with the size of the company:

- 11 employees and above: elections to appoint staff representatives must be held.
- 50 employees and above: a works council must be set up, members of the health and safety committee must be appointed by elected members of the works council and staff representatives, each representative union may appoint a staff representative and each non-representative union may appoint a local union representative.
- 300 employees and above: unions may appoint a union works council representative.

While French managing directors have four different representative bodies to deal with, their German counterparts have only one (the aforementioned "*Betriebsrat*").

Table 1: staff representation in France

	11-49 staff	50-199 staff	200-299 staff	>300 staff
Staff representative bodies	Staff rep.	Staff rep. Works council Health & safety committee		
		Option of appointing a single employee representative body		Option of merging via majority agreement
Union representation		Union delegate Local union delegate		Union delegate Local union rep. Works council rep.

Source: DG Trésor.

The number of representatives for each body increases with the size of the company. To carry out their functions, staff representatives are allocated a certain number of hours which also increase with the size of the company. In addition, the employer organises regular meetings which are attended by elected representatives and their replacements.

While a company with 49 members of staff has only two staff representatives who between them spend a total of 26 hours performing their duties (hours as delegate + meetings) every month, **a company with 50 members of staff has nine elected representatives (2 elected staff reps, 3 elected works council members, 3 appointed members of the health and safety committee, and at least 1 union delegate[24]) plus 5 replacements**. This equates to almost 155 hours spent per month[25], i.e. one full-time employee. With a single employee representative body, although the company must still hold meetings for all three elected bodies, the number of hours spent falls to around 139 per month.

3.5 The Act on labour relations and employment[26] aims to streamline labour relations and make them more efficient

3.5.1 Representation adapted to suite the size of the company

- **For very small enterprises (11 employees or fewer), the Act introduced a universal right to representation for employees via joint regional committees modelled on the joint regional committees implemented for craftspeople (CPRIA).** Under the terms of the Act, these committees are responsible for informing and advising employers and employees, helping solve individual and collective conflicts, and proposing social and cultural activities. However, they are not authorised to initiate negotiations.
- **For companies with 50 employees or more, the Act extends the option of appointing a single employee representative body to companies with up to 300 employees; this option has also been extended to include the health and safety committee.**

(22) Pignoni M.T. and Raynaud E. (2013), « *Les relations professionnelles au début des années 2010 : entre changements institutionnels, crise et évolutions sectorielles* », *Dares Analyses* no. 2013-26.
(23) Cheuvreux M. & Darmaillacq C. (2014), "Unionisation in France: paradoxes, challenges and outlook", *Trésor-Economics* no. 129.
(24) Or even one local union representative, although this is relatively unusual.
(25) In France, the legal working week for employees lasts 35 hours or 152 hours per month on average over the year (35 hours x 4.33 weeks/month = 152 hours/month).
(26) Act no 2015-994 of 17 August 2015 on labour relations and employment.

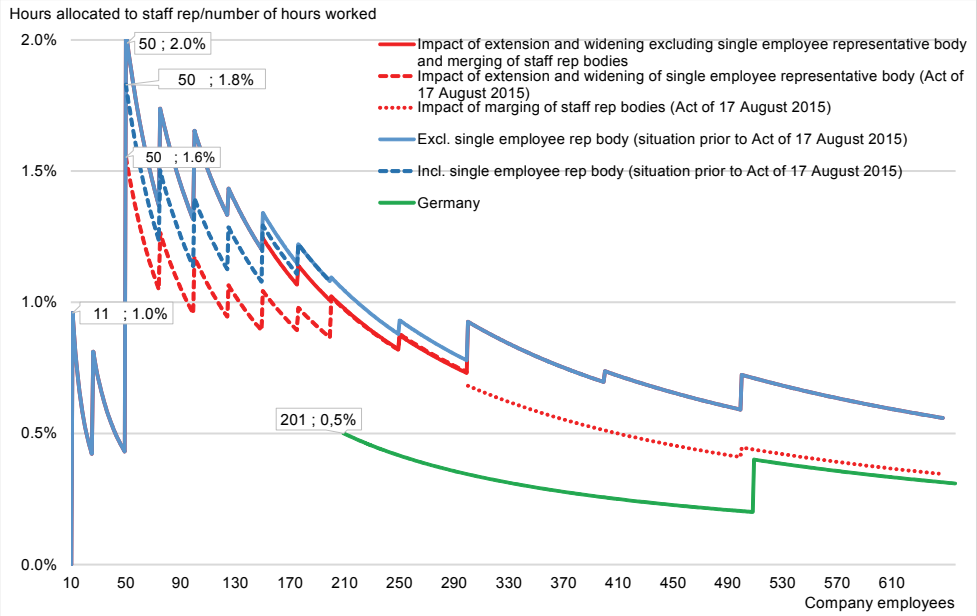
The staff representation requirements applicable to companies crossing **over the 50-employee** threshold mean–at a maximum–additional costs equivalent to 2.0% of the legal number of hours worked compared to 0.4% for companies with 49 employees (see blue curve in Chart 5). Beyond this threshold, the cost decreases with the size of the company to below 0.5% of the legal number of hours worked in the biggest companies (not on the Chart). By way of comparison, in Germany the legal obligation to allow one member of the works council (if it exists) to devote him/herself full-time to works council duties only applies to companies with 201 employees or more. This is less than 0.5% of the number of hours worked (see green curve in Chart 5)[27].

The introduction of a single employee representative body helps to significantly reduce the cost for companies with 50-199 employees and reduces by 0.2 basis points the peak for 50 employees (see blue dotted-line curve in Chart 5).

The Act of 17 August 2015 extends the option of appointing a single employee representative to companies with 200-299 employees and to the health and safety committee. The minimum number of annual meetings for this new body has been set at 6 (compared to 12 for the current single employee representative body). This measure should help to reduce the cost to the company by 0.2-0.3 basis points compared to the single employee representative body before this Act was passed (see dotted line curves in Chart 5).

For companies with 150-300 employees that have not opted for a single employee representative body the works council must meet at least six times a year compared to the current 12 times[28], equivalent to a saving of 0.1 basis point (see red curve in Chart 5).

Chart 5: hours allocated based on number of employees (as a percentage of hours worked)



Calculations: DG Trésor[29].

- Lastly, companies with 300 employees or more will have the option of merging staff representatives, works council representatives and health and safety committee representatives together into one single body, or only two of these staff representative bodies via a majority agreement at company level (50% of the votes) with a minimum of six meetings a year plus 4 if the body comprises the health and safety committee rep (compared to a total of 28 minimum if there is no merger).

(27) For companies with fewer than 200 employees, the hours allocated to staff reps are not stipulated in the law on corporate organisation (Betriebsverfassungsgesetz; BrtVG). According to Article 38 of this Act, companies must allow employees acting as staff representatives to carry out their representation duties as frequently and for as long as required and with no loss of wages. The Betriebsrat establishes the frequency of its own meetings, which is only outlined in the legislation as "as often as necessary". Due to the lack of any more detailed information, it is therefore very difficult to estimate the related cost for companies.

(28) Based on current legislation, for companies with more than 150 employees, 12 meetings a year for the comité d'entreprise compared to 6 below this threshold.

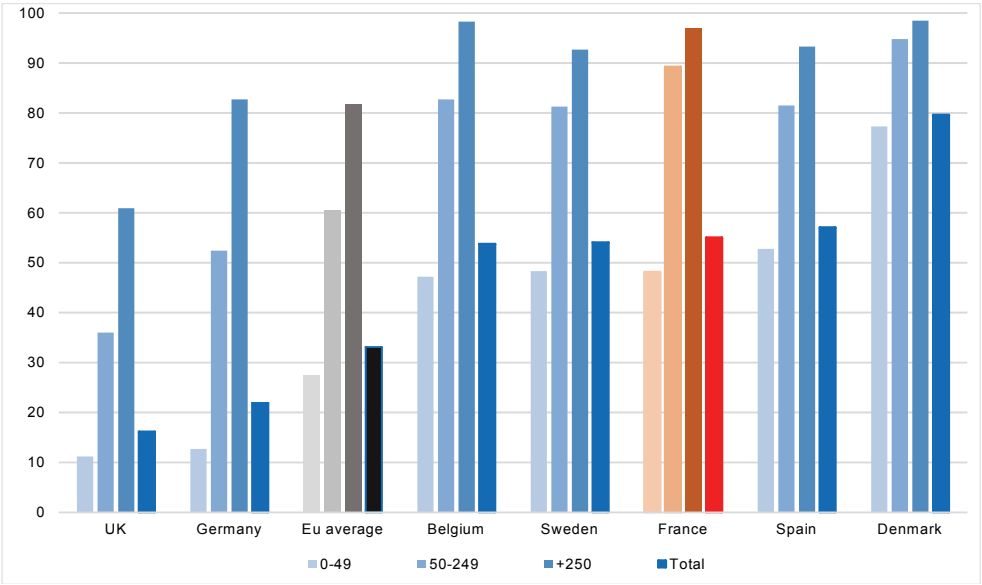
(29) Assumptions made:

- In France, hours allocated plus time spent in meetings (assuming a meeting lasts for three hours) for each representative in compliance with legal requirements as a percentage of hours worked (35).
- In Germany, hours allocated to Betriebsrat members as a percentage of average negotiated working week, i.e. 37.7 hours.
- Single employee representative body and merging of staff representative bodies as per the Act on labour relations and employment based on two draft ministerial decrees passed after consultation with the *Conseil d'Etat* stipulating minimum numbers for staff representatives and minimum number of allocated hours.

3.5.2 Representation could be improved by boosting the efficiency of staff representation in companies with 11-49 employees

Many of the smallest companies have no elected staff representation body due mainly to the lack of candidates. This is true for 63% of companies with 11-19 employees and 35% of companies with 20-49 employees, compared to only 6% of companies with more than 50 employees[30]. Therefore, despite the legal requirement for employers to appoint staff representatives for companies with 11 employees or more, many people working in companies with fewer than 50 employees have no staff representative body. Even though France is not poorly positioned compared to the rest of Europe (see Chart 6), the lack of staff representation means that almost 30% of total employees[31] are subject to unequal treatment.

Chart 6: European comparisons: rate of staff representation by size of company



Source: Eurofound, European Company Survey, (2013).

3.5.3 Streamlined social relations via:

- **Grouping together requirements to inform and consult employees**

The 17 requirements to inform and consult employees are grouped together into three annual consultations on: (i) the direction taken by corporate strategy; (ii) the company's economic and financial situation; and (iii) the company's social policy, working conditions and employment.

- **Streamlining subjects that must be negotiated**

Streamlining subjects that must be negotiated has begun with negotiations regarding the quality of working conditions[32]. The Act merges several compulsory subjects for negotiations into three separate groups: (i) remuneration, working hours and sharing added value; (ii) equality between male and female employees and the quality of working conditions; (iii) managing job functions and careers. The text also makes it possible to group these three together even further on the basis of a majority vote (50%) and to set a maximum frequency that suits the company (with a limit of three years for (i) and (ii) and five years for (iii)).

Jean-Denis Combrexelle[33] suggests going even further by providing the option via a majority agreement to group into two categories negotiations for company-level agreements and to set a four-year frequency with an annual review clause.

Marine CHEUVREUX

(30) Op. cit. footnote 22.
(31) Giraudeau J. (2012), « *L'emploi salarié en France au 31 décembre 2011* », Pôle emploi, *Repères et analyses* no 51.
(32) Op. cit. footnote 12.
(33) Op. cit. footnote g.

Comment...

Marc Ferracci

This paper demonstrates the significant changes social relations have undergone in the last few years. Generally speaking, these changes reflect a move towards a strengthened role for collective bargaining in labour relations, whereas the roots of France's labour law are primarily legislative and regulatory in nature. The principle of the most favourable rule, according to which a lower-ranking agreement can only take precedence over a higher-ranking agreement if more beneficial to the employee, has been relaxed to a certain extent, particularly regarding working hours.

Will this change result in an improvement in the economic performance of businesses and employment at macroeconomic level? At company level, greater flexibility for labour and management representatives when establishing the standards that apply to wages, working hours or even redundancy terms would take greater account of the wide range of situations that exist. In the longer run, this would also help boost productivity and employment. Academic literature on the subject shows that collective bargaining has an even greater positive effect when it touches upon a wide range of subjects and does not focus solely on wages. In this respect, the Rebsamen Act of August 2015 has made a useful contribution by reducing the number of information-consultations of employees by grouping them into themes. In the near future, plans to reform labour law due to be voted on in June 2016 would gain from including as wide a range of possible of topics that should be negotiated at company level.

Nevertheless, trust between labour and management representatives is an essential ingredient of any efficient social relations process. Numerous studies show that it is much lower in France than elsewhere. There is therefore no point in developing collective bargaining without improving the conditions governing both formal and informal social relations. Labour and management representatives must also be given incentives to take into account more systematically the interests of the least employable workers in the most precarious positions who are unemployed for increasingly longer and more frequent periods.

One way of reaching these goals would be to reform rules governing union representativeness even further. The Act of 2008 makes results at staff elections the foundation of representativeness. This is real progress but at multisector level, the 2013 elections showed that these new provisions had not modified existing positions. In reality, the multisector agreements signed and partially enacted in national law for almost ten years (law on vocational training, labour law reform, unemployment benefit agreements, etc.) have prolonged and even intensified the segmentation of the French labour market, strengthening the position of those already in stable employment without improving the lot of the least employable. From this perspective, boosting the rate of union membership among employees would help to extend their sociological base and would also strengthen their independence in relation to joint organisations in charge of training or unemployment benefits which underpin a bold labour market reform programme. Lastly, employers' representativeness criteria must also be clarified, and the Act of 5 March 2014 does not appear to have been completely successful in this respect.

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