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Nikolka, Till; Poutvaara, Panu

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Labour Market Reforms and Collective Bargaining in France

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Till Nikolka and Panu Poutvaara

Labour Market Reforms and Collective Bargaining in France[1]

Till Nikolka
ifo Institute.

Panu Poutvaara
ifo Institute,
Ludwig-Maximilians
University Munich,
CESifo, CReAM
and IZA.

INTRODUCTION

After the financial crisis, Germany experienced a booming economy with steadily decreasing unemployment rates. The growth rate in France, by contrast, was considerably lower during this period, while unemployment increased steadily from 2008 until 2015, then declined modestly. High unemployment and low growth rates led to disillusionment with traditional political parties. Both traditional mainstream left and traditional mainstream right candidates failed to make it to the second round in France's 2017 presidential election. Instead, French voters faced a stark second-round choice between pro-European Emmanuel Macron who had launched a new centrist party and promised to reform the economy to boost growth and employment, and nationalist Marine Le Pen who represented the far-right National Front and promoted protectionist policies and opposed liberalizing reforms. Macron won 66% of second-round votes. His newly established party won an absolute majority in subsequent parliamentary elections, on a platform to promote economic growth and labour market reforms.

Less than 20 years earlier, Germany had suffered from high unemployment rates and low growth, performing worse than France and most other EU countries. During the 1990s, many collective bargaining agreements in Germany started to include opening clauses allowing for derogations and more flexibility at the regional or company level.[2] In 2003, a coalition government by the Social Democrats and Greens initiated the so-called Agenda 2010 reform package, with an aim of boosting growth and employment. The name Agenda 2010 refers to the European Union's Lisbon Strategy from 2000, with its ambitious (but ultimately unfulfilled) target of making the European Union "the most competitive and dynamic knowledge-based economy in the world" by 2010 (Lisbon European Council 2000). The German economy subsequently recovered, and the unemployment began to decline in 2005.

Germany's turnaround inspired French politicians to try and reignite economic growth in their country too. Back in 2015, the French government under President Francois Hollande and Prime Minister Manuel Valls proposed reform measures to address structural challenges facing the French economy. The proposed measures emphasized reforming labour market regulation and the collective bargaining system in France. As part of its evaluation of a proposed reform package, the French Senate invited the ifo Center for International Institutional Comparisons and Migration Research to compare the institutional settings of employee representation and collective bargaining in France and Germany, and to evaluate the proposed reforms. In this article, we describe the regulation of workplace representation and collective bargaining in France, compare the main features with the regulatory framework in Germany, summarise our 2016 evaluation for the French Senate, and discuss subsequent developments and perspectives for the French economy.

We start by presenting the institutional and economic situation in France before the 2016 labour market reforms were implemented. We then summarize and discuss selected reform proposals by Combrexelle (2015). This is followed by a description of the proposed and implemented reforms, first under the Valls government and then once Macron was elected president. Finally, we discuss the presented reform measures in the context of a shift towards more decentralised bargaining in Europe.

LABOUR MARKET DEVELOPMENTS IN FRANCE

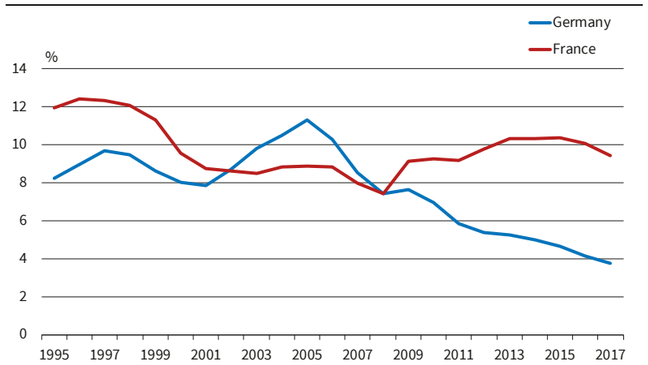
Figure 1 reports harmonised unemployment rates for France and Germany. During the 2000s and before the financial crisis unemployment rates were higher in Germany than in France. In Germany, the unemployment rate peaked at 11.3% in 2005, while it was at 8.9% in France during the same year. In 2008, the unemployment rate was 7.4% in both countries. After the financial crisis, the unemployment rate in France increased to 10.4% in 2015, then dipped to 9.4% in 2017. In Germany, unemployment steadily declined to 3.8% in 2017. The OECD (2017b) as well as the IMF (2009) document a significant deterioration in France's export performance during the 2000s due to a structural deterioration in competitiveness. Figure 2 illustrates that between 1995 and 2008 nominal unit labour costs increased by 20 percentage points in France, but remained almost unchanged in Germany, resulting in a major boost to German competitiveness vis-à-vis France. Subsequently, wage growth picked up in Germany, but in 2017 Germany was still considerably more competitive than France. Overall, unit labour costs increased from 1995 to 2017 by 14 percentage points more in France than in Germany.

In a bid to boost an economy with falling international competitiveness, persistently high unemployment, and a structural public budget deficit, Prime Minister Manuel Valls took the initiative and launched a major reform of the French Labour Code and commissioned a report in 2015 from an expert committee headed by Jean-Denis Combrexelle, President of the social department of the Conseil d'État. The resulting proposal (Combrexelle 2015) aimed at improving the functioning of the collective bargaining system, by giving priority to company-level agreements regarding wages, working time and working conditions.

[1] We thank Anne Schönauer for her excellent research assistance.
[2] According to the OECD (2017a) "opening or derogation clauses [...] allow to set lower standards, i.e. less favourable conditions for workers".

Figure 1

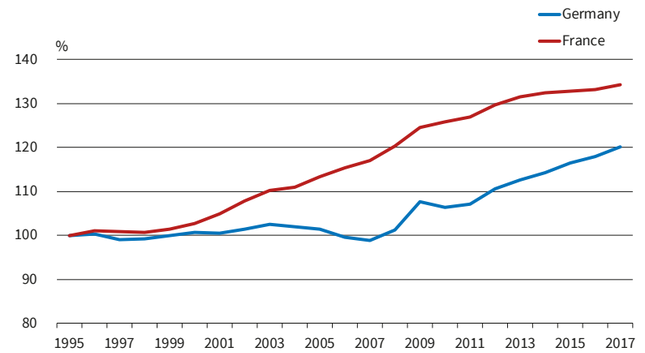
Harmonised Unemployment Rates in Germany and France
As a percentage of the civilian labour force



Source: OECD (2018). © ifo Institute

Figure 2

Nominal Unit Labour Cost, % Changes and Index
Index baseline 1995 = 100



Source: Eurostat (2018). © ifo Institute

Note: 1995: 100%; Nominal unit labour cost are defined as the ratio of total labour costs to total labour productivity; 2016 and 2017 data for France provisional, Source: Eurostat (2018).

COLLECTIVE BARGAINING IN FRANCE COMPARED WITH GERMANY BEFORE THE 2016 REFORMS

Labour unions and employer organisations play an important role in both France and Germany. Before the 2016 labour market reforms, a central difference between collective bargaining in France and Germany was that the French system was far more fragmented, and the state played a much more central role. France has five major trade unions, each with its own distinct political profile. Several labour unions could be active in one firm, and strikes could be started by employees, even without the backing of a union, and the lack of a "peace obligation" to rule out strikes, even once an agreement has been reached resulted in a large number of strikes. Furthermore, strikes could also be initiated on topics not covered by collective bargaining, like government policies.

Before the recent labour market reforms in France, participants in collective bargaining were exclusively trade unions and the employers or employers' associations. Trade unions represent distinctive professions, so several trade unions are usually present in one company and take part in collective negotiations.

Even before the recent changes to the labour law, only those unions that fulfilled criteria of representativeness, which means they need a minimum of 10% of votes by employees at a company level (8% at industry and national level) could be represented in a company. Furthermore, collective agreements were only valid if the representative trade union won 30% of votes at elections at a company/industry or national level. If different collective agreements were valid for one company, usually the one with the better condition for the employees applied – the so-called favourability principle. Even although collective agreements were possible at the regional or company level, the scope of collective bargaining was usually the national level. The possibility to extend collective agreements in France if they contained subjects defined in the Labour Law, was frequently used. Due to the practice of frequent extension of collective agreements by the state, the collective bargaining coverage has remained consistently high in France (98% in 2012 according to worker-participation.eu (2018)).

Like in France, trade unions, employers or employers' associations in Germany generally participate in collective bargaining. There are three main trade union organisations and a bulk of smaller non-organised single unions mostly for specific professions. The unions are not politically motivated and differ according to the industry or profession they represent. Since the 1990s, many collective agreements at the national level

include opening clauses to allow for derogation by regional or firm-level agreements. This leads to variations in collective agreements by region within the same industry, especially concerning wage levels and weekly working hours, in particular between Eastern and Western German states. In 2015, a new law regulated that only one collective agreement is valid for an establishment or a specific group of employees. As in France, employees in a company are covered by collective agreements, irrespective of union membership. The extension of collective agreements by the state to companies that do not participate in collective agreements is possible by law, but can only be conducted by the Ministry of Labour: "if there is a general interest by the public" and if 50% of the employees are already covered by the negotiating employers and if the employers' representatives agree. In practice, this state intervention is quite rare and the number of extended collective agreements by the state declined in the past. In Germany, there is a "peace obligation" for strikes: if a collective agreement has been signed, there is the duty not to go on strike for the duration of that agreement and on grounds covered by it.

REFORM PROPOSALS IN THE COMBREXELLE REPORT AND THEIR EVALUATION

Combrexelle (2015) suggested several points for reform in French labour law to overcome structural challenges and improve the economy's performance. In general, the Combrexelle report made a set of proposals to improve the functioning of the collective bargaining system, by prioritising company-level agreements in establishing the rules governing working time, wages, working conditions and employment, including derogations from the legislation on the 35-hour week and overtime payments. Table 1 gives an overview of central proposals in the Combrexelle report and the 2016 evaluation by the ifo Institute, which is available in English in Poutvaara et al. (2017).

DEVELOPMENT SINCE COMBREXELLE PROPOSAL

In general, the Combrexelle report was welcomed by the Valls government (Rehfeld and Vincent 2018). Based on the reform proposal, labour minister Myriam El Khomri presented a first draft of a bill in February 2016, which included most of the reform measures laid out in the Combrexelle report. It added the reduction of severance payments, and provisions to enable the existence of minority unions representing at least 30% of the workforce (Rehfeld and Vincent 2018). In contrast to the proposals by Combrexelle (2015), however, the 35 hour working week and overtime regulations should not be open to derogations. After its presentation in February 2016, the draft was rejected by all trade unions, as well as the main leaders of the Socialist Party, leading to numerous strikes and mass demonstrations over a period of four months (Rehfeld and Vincent 2018). After consultation with trade unions Prime Minister Valls presented a revised draft of the bill (Laulom 2016). The trade union CFDT agreed with the new draft, but it was opposed by the employer association MEDEF for being too protective for workers to the detriment of businesses (Rehfeld and Vincent 2018). Other trade unions criticised that workers' rights may be negatively affected and the balance of power in labour negotiations would shift too much in favour of businesses (Henley and Inman 2016). After parliamentary debates, the proposal for capping severance payments was removed from the bill. The bill passed both houses of parliament on July 21st, 2016, was reviewed by the Constitutional Council, and took effect on August 9th, 2016 after being signed by President Hollande. Labour unions and other organisations still opposed the law and organised mass protests (Boring 2016). Table 2 summarises the contents of the El Khomri law referring to the mentioned proposals by Combrexelle (2015).

Table 1

Reform Proposals and Their Evaluation According to Poutvaara et al. (2016).

Reform Proposal No.	Content	Evaluation
30	Extension of collective negotiations to working conditions, working time, employment and wages. Allow new forms of working contracts in collective negotiations under a framework predefined by the law.	Suggestion to enlarge the scope of collective bargaining can improve the competitiveness of firms. More flexibility of firms can be expected to boost job creation and promote economic growth. The legal framework should ensure the socially desired minimum standards.
35	The priority which is given to firm agreements, the supplementary regulations of industrial agreements and the law which only apply if no firm agreement has been reached.	Collective bargaining between labour unions and employer organizations reduces negotiation costs, compared with bargaining carried out separately in each firm and strengthens employees' bargaining position. However, allowing firm agreements can be expected to increase flexibility.
9	Legal limitations of the duration of firm agreements and industrial agreements.	Well-defined, mutually agreed contract periods reduce uncertainty for both firms and workers. A peace obligation would reduce costs of strikes during the contract period.
18	Maintaining of extensions of industrial agreements by the Labour Minister.	Maintaining frequent use of legal extensions would be counterproductive and eliminate part of the gains from other proposal. Eliminating the extensions of industrial agreements would boost competition and encourage job creation and lead to more balanced regional development as firms in economically weaker regions could agree with workers on lower wages.
43	Generalization of the principle of majority agreements in a company.	Due to increased flexibility it would be beneficial to have a negotiation environment in which employees' representatives would be able to negotiate majority agreements on the company level. However, there is a risk that no binding agreement is reached by majority rule.
38	Provision of standardized firm agreements on the industry level.	This could save negotiation costs for small companies but could even give access to a more favorable contracting environment and impede firm growth beyond some given threshold.

Source: Poutvaara et al. (2016).

Table 2

Content of El Khomri Law Based on the Reform Proposal

Reform Proposal No.	Content of the El Khomri law
30	The El Khomri law aims to softening the legal upper limit of weekly work. Even though the legal duration of work remains 35 weekly hours, the new regulation allows employees in exceptional circumstances to raise the weekly upper limits to 60 hours. Furthermore, there were adoption on the daily legal limit (10 hours increased to 12 hours a day) and new rules on overtime payments. Furthermore, it is easier for companies to dismiss workers on the basis of economic problems. This law should make it easier for especially small and medium-sized enterprises to make economic redundancy.
35	Regarding issues on how work time is organized, due to the El Khomri law, a priority will be to given to agreements made between individual employees over industry-wide agreements. This decentralization is a fundamental change in construction of labour law in which company-wide collective bargaining agreements are set above industry-wide collective agreements and over default options in the law. Additionally, the favorability principle is loosened: even in cases where these decentralized agreements result in worse condition than the industry-wide agreements, they are valid for the employees.
18	No legal changes were introduced by the El Khomri law.
43	The majority agreement should gradually become the rule at company level. Before a collective company-level agreement is valid, the agreement must be signed by the representatives of the employer and by the one or several unions, which represent 50% of the workers. However, if there no agreement is reached, any union representing more than 30% of employees is enough to organize a direct referendum of employees on the company agreement
38	Companies which are too small to have union representatives are allowed to agree on, for example, working hours deals with their employees in the same way as a larger company.

Sources: Laulom (2016), Rehfeld and Vincent (2018), Henley and Inman (2016), Boring (2016), European Law Firm (2016), Euronews (2016).

In the latest French presidential elections, Emmanuel Macron promised to pursue further labour market reforms to improve the performance of the French economy. To accelerate the implementation of new reform measures, the new labour minister Muriel Penicaudi prepared a framework law. This framework law was passed in parliament by a majority in July 2017. Most of the trade unions opposed this law, which was welcomed by employers' organisations (Rehfeldt and Vincent 2018). The new framework law and article 38 of the French constitution authorises the government to use ordonnances (government decrees) in the legislative process without lengthy subsequent parliamentary debates. The Macron government introduced five "ordonnances" on the 31 August 2018 with a view to tackling persistently high unemployment rates and to make the country more competitive in the global economy (Greenacre et al 2017). The changes under the new framework law can be summarised under five main topics.

The first topic concerns rules for the negotiation of collective bargaining agreements. Industry level agreements are empowered to cover themes that were previously covered by law. Furthermore, company-level agreements can take precedence over industry level agreements in certain areas (Mercier 2017). This new rule further strengthens the implication of the El Khomri law that company-level agreements are supposed to become the standard norm in certain matters. In the absence of successful negotiations at a company and industry level, legal standards apply (Rehfeldt and Vincent 2018).

Secondly, the ordonnances aim to simplify employee representation. For companies with fewer than 20 employees, and therefore without employee representatives, employers may directly negotiate with the employees. The employer can propose an agreement, which needs to be approved by at least two-thirds of the workers. For companies with fewer than 50 employees, the agreement can be signed either by representatives of the employees, if they represent the majority of votes; or it can be signed by employees mandated by a union. In companies with 50+ employees and without an employee representative, the agreement can be signed by elected representatives. This makes it easier for small and medium-sized companies not to follow standardised firm agreements, but to draft their own company agreements (Rehfeldt and Vincent 2018). Furthermore, companies with 50+ employees no longer need to separately appoint works councils, health and safety commissions and employee representatives. These three bodies are now merged into one body called the social and economic committee (SEC), which has distinct tasks depending on the size of the company (Greenacre et al. 2017).

Thirdly, employers and employees' trade unions have the possibility to negotiate new terms and conditions for fixed term contracts, for example extended durations within the frame of the collective bargaining agreements. In the absence of successful negotiation at company and industry levels, the national law will continue to apply (Greenacre et al. 2017).

Fourthly, the termination of an employment relationship is made easier for firms by placing limits on the damages granted to employees in case of unfair dismissal. Before the reforms, it was left up to tribunals to decide on the capping of damages for dismissal without legal cause, which could be so high that employers were put off hiring new staff to begin with. The dismissal regulations have now been modified so that the costs of damages are based on seniority, for example (Mercier 2017).

The last topic, which had not been addressed by Combrexelle's proposal and reformed by the El Khomri law, concerns the quasi-automatic extension of branch level agreements. The extension of an agreement is now subject to an evaluation of its potential economic consequences. Furthermore, the agreements must include provisions specifically to small firms (OECD 2018).

A TREND TOWARDS MORE DECENTRALISED BARGAINING IN FRANCE

A central feature of the El Khomri law and the subsequent ordonnances by the Macron government is that they make it possible to shift collective bargaining away from the industry towards the individual company level. Since the financial crisis, many governments in Europe have decentralised collective bargaining to reform labour market structures (Pedersini and Leonardi 2018). In fact, the OECD (2004) states that since the 1970 not a single country has moved towards more centralised bargaining.

France is characterised by a highly institutionalised labour market governed mainly by national legislation. This has become manifest in strongly regulated representativeness, the presence of a legal minimum wage and the mandatory social dialogue at national level. In the past, multi-employer bargaining agreements were often extended by law, instead of considering particular needs of economically weaker regions or companies. The recent labour market reforms mainly affected the so-called vertical coordination of the bargaining structure and an increasingly decentralised bargaining autonomy. This is primarily achieved by loosening the favourability principle. Decentralised agreements can now introduce provisions that are independent and potentially derogate from existing sectoral rules. For specific topics such as minimum wages, job classification systems, or gender equality, which are often horizontally coordinated between bargaining units, the favourability principle still maintains. In SMEs, where no trade unions are present, the agreement may now be concluded by elected employees who are not mandated by unions and agreements can be reached by majority rule.

In Germany, labour market partners agreed during the 1990s to an increase in decentralisation with respect to setting wages, working hours and other aspects of working conditions from the industry or region-wide level to the level of a single firm. These changes were implemented despite the fact that, in general, the system of industry-level wage bargaining remained in place. So-called opening or hardship clauses allowed firms to opt out from bargained contracts on the union level, provided that employee representatives agreed (Hassel 1999). According to Dustmann et al. (2014) these developments led to higher wage flexibility, especially at the lower end of the wage distribution. Export oriented industries profited from this development, which contributed to Germany's competitiveness on international markets today. Additionally, the so-called Hartz reforms, which were part of the Agenda-2010-programme, were implemented by the German government from the year 2003 onwards. Along with social benefit reforms, this included additional measures to foster labour market flexibility and incentivise employment in so-called mini-jobs, for example (Fabre 2012).

CONCLUSION AND OUTLOOK

Since the financial crisis, European countries have faced a stark divide in their labour market performance. Germany and some other countries have enjoyed fast growth and relatively low unemployment, while others have suffered from high unemployment and disappointing growth performance. In Greece, the outcome has been a disastrous recession that has forced radical cuts in public spending, including slashed salaries for civil servants and significant reductions in public pensions. In France and Italy and several other countries, the crisis has primarily meant stagnation and high youth unemployment.

Yet reforms are possible. Germany reformed its labour market rules and welfare spending to improve its competitiveness, and the reform helped to stimulate economic growth and employment. In recent years, France has started to reform its labour market, searching for ways to learn from the German experience. The first results of these reforms are already visible: The Economist (2018) reports that the share of those aged 15-64 who are employed on permanent contracts has increased during 2018; and that firms intend to hire more permanently than a year ago. Moreover, the number of court cases for unfair dismissal went down by 15%, most probably due to the limit that the recent reforms put on damages that labour courts can award. This reduces the risk and potential costs of firms hiring new employees, particularly on permanent contracts.

It is important to note that learning from the German experience does not mean weakening labour unions, as was the case with Margaret Thatcher's reforms in the United Kingdom or various anti-union laws in the United States. Instead, Germany attaches a great deal of importance to the autonomy of collective bargaining, and has strong employee participation in company boards and supervisory councils. The French government has, instead, often intervened in the labour market. With Macron's reforms, first as minister and subsequently as president, the aim is to move closer to the German system and highlight the role of employment creation.

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