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Article

Labour Market Reforms and Collective Bargaining in France

ifo DICE Report

Provided in Cooperation with:
Ifo Institute – Leibniz Institute for Economic Research at the University of Munich

Suggested Citation: Nikolka, Till; Poutvaara, Panu (2019) : Labour Market Reforms and Collective Bargaining in France, ifo DICE Report, ISSN 2511-7823, ifo Institut – Leibniz-Institut für Wirtschaftsforschung an der Universität München, München, Vol. 16, Iss. 4, pp. 44-49

This Version is available at:
http://hdl.handle.net/10419/199048

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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 the far-right National Front represented by 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. In 2003, a coalition government by the Social Democrats and Greens initiated the Agenda 2010 reform package, with an aim to boost growth and employment. The name Agenda 2010 refers to the European Union’s Lisbon Strategy from 2000, with its ambitious (but ultimately unfilled) 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 rate 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 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 represented a wide range of 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 conditions 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 survey). In France, trade unions, employers or employers’ associations in Germany generally participate in collective bargaining. There are three main trade union organisations and a smaller number of smaller 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 varia-
tions in collective agreements by region within the same industry, especially concerning wage levels and working conditions. To improve the economy’s performance, in particular between Eastern and Western German states. In 2015, a new law regu-
late that only one collective agreement is valid for an establish-
ment or a specific group of employees. In France, agreements in a company are covered by collec-
tive agreements, irrespective of union membership. The extension of collective agreements by the state to companies that do not participate in collective agree-
ments 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 employees’ 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 “peaceful 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

Combrelle (2015) suggested several points for reform in French labour law to overcome structural challenges and improve the economy’s performance. In general, the Combrelle 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, and derogations from the legislation on the 35-hour week and overtime payments. Table 1 gives an overview of cen-
tral proposals in the Combrelle report and the 2016 evaluation by the Ifo Institute, which is available in Eng-
lish in Pouvaara et al. (2017).

DEVELOPMENT SINCE COMBREXELLE PROPOSAL

In general, the Combrelle 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 Combrelle 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 con-
trast to the proposals by Combrelle (2015), however, the 35-hour working week and overtime regulations should not be open to derogations. At its presenta-
fion in February 2016, the draft was rejected by all trade unions, as well as the main leaders of the Social-
ist Party, leading to numerous strikes and mass demonstra-
tions 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 associ-
ations MEDEF for being too restrictive 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 parliamen-
tary debates, the proposal for capping severance pay-
ments 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 Hol-
lande. Labour unions and other organisations still opposed the law and organised mass protests (Boring 2016). Table 2 summarises the contents of the El Khomri bill referring to the mentioned proposals by Combrelle (2015).

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REFORM MODEL

The El Khomri law aims at 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 upper weekly limit to 40 hours. The El Khomri law also adopted a 12-hour weekly limit for overtime work and reduced 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 dismiss employees with extended redundancy.

Regarding issues on how work time is organised, due to the El Khomri law, a priority will be to give agreed to in companies between employers and employees. This decentralisation is a fundamental change in the construction of labour law in which company-wide collective bargaining agreements are set above industry-wide collective agreements and do not have any legal force. Additionally, the prior- al principle is loosened in cases where these decentralised 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.

30 The major agreement should gradually become the rule at company level. Before a collective company-level agreement is valid, it must be signed by the representatives of the employees and by the company, a vote must have been held in the company, and the agreement must be approved by at least two-thirds of the workers. Companies which do not have union representatives are allowed to agree on, for example, working hours deals with their employees in the same way as a larger company.

Secondly, the ordinances 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 agree-
ment, 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 with rep-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+ employee-
representatives, the majority 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. Accordingly, the agreement can be signed by elected representatives.

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The last topic, which had not been addressed by Combrellle’s proposal and reform in the El Khoumi 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 TRENDS TOWARDS MORE DECENTRALISED BARGAINING IN FRANCE

A central feature of the El Khoumi 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 (2014) states that since the 1970s 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 experience does not mean weakening labour standards, as 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 employee representation.

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 employee representation.