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Research Report

Board-level employee representation in France: Recent developments and debates

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REPORT

Mitbestimmungsreport Nr. 53e, 11.2019

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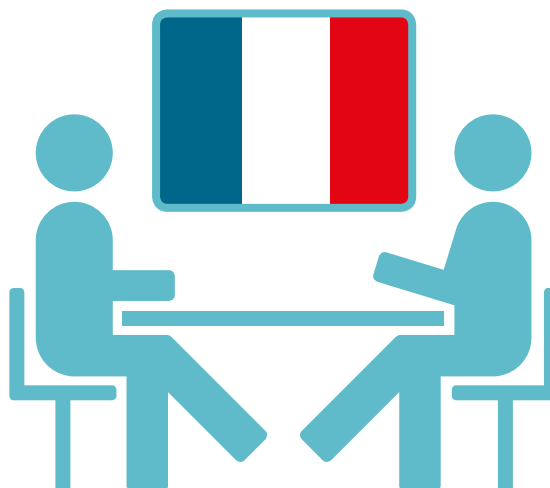
BOARD-LEVEL EMPLOYEE REPRESENTATION IN FRANCE

Recent Developments and Debates

Udo Rehfeldt

AT A GLANCE

- France is one of 18 EU countries with employee representation in the supervisory board or the board of directors. Since 2013 it has also been mandatory in the private sector, too, for companies with 1,000 employees or more in France or 5,000 worldwide.
- The traditional distrust between employers and trade unions has made it difficult for board-level employee representation in France hitherto. (Most) trade unions now support it, however, and are calling for parity-based board-level representation.
- In recent years the academic, trade union and political debate on board-level employee representation has conspicuously intensified in France. It has led, among other things, to a high profile appeal in *Le Monde*.
- Even President Macron promised to extend co-determination during his election campaign. To date, however, delivery on this has been somewhat limited.
- The Socialists in parliament have introduced a bill that, among other things, provides for parity-based co-determination above a threshold of 5,000 employees. As things stand at the moment, however, this is unlikely to be adopted.
- Increasingly, the issue of co-determination is being discussed not only in relation to economic and social imperatives, but also under the aegis of ecological sustainability.



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FOREWORD

In 18 of the 28 EU member states and in Norway employees have the right to depute representatives to their company's supervisory board or board of directors. In many European countries board level employee representation is a fundamental component of corporate governance and interest representation. German co-determination, in other words, is by no means an outlier, as is sometimes claimed, but rather one strong reference point among others in Europe.

Every national system of board-level employee representation is unique in its own way. They have developed over time and are embedded in an overall system of labour relations and corporate culture. This makes it difficult to compare them with one another directly or even to try to transpose one system to another country. Institutional and legal structures may differ from one country to another. At the same time, workers' voice at the top level appears to reflect country-specific responses to similar challenges. Regarded in terms of 'functional equivalents', however, such differences are more tangible and comparable (see [Mitbestimmungsreport No. 52e](#) for more on this).

For this reason it is well worth looking beyond the national context: on one hand, in order to learn from others and to make one's own tradition 'future-proof' and on the other hand, to try to achieve a common European understanding of what good corporate governance consists of and what role board-level employee representation plays in it. Employee representation at board level sees to it that companies do not confine themselves to bestowing substantial returns on their shareholders. It concerns itself with a lot more than market value, dividends and investment returns. It takes a broader view of corporate governance, oriented towards the sustainable success of the company. In a period in which companies are often little more than commodities board-level employee representation is an increasingly important corrective, ensuring the future prospects of employment and production locations and safeguarding long-term company success in harmony with the environment.

From a historical standpoint the introduction or extension of legislation on board level employee representation usually occurred in the wake of crises (of confidence) and major ordeals. For that reason it's all the more surprising that little was done to reinforce rights as a consequence of the great financial and economic crisis after 2008. Evidently the shock didn't last long enough to prevent business-as-usual from reasserting itself. The scale of this lost opportunity was set out recently in the impressive [study by Professor Marc Steffen Rapp of Marburg University and Professor Michael Wolff of Göttingen University](#). They traced the development of 280 Prime Standard German companies from 2006 to 2013 and compared it with that of European competitors. The result was clear: companies in which employees have board level representation in the supervisory board did significantly better economically during the financial cri-

sis and in subsequent years than firms without board level employee representation. Evidently, companies with employee representation at board level are more robust and future-oriented.

No doubt this has contributed to the fact that in a number of countries interest in employee representation in the supervisory board and the board of directors is now higher. Even where hitherto there has been little tradition of board level employee representation, stimulating debates are emerging.

Actors and political contexts differ. Nevertheless the same major challenge generally remains: establishing a counterweight to unfettered finance capitalism, in which workers' and the wider society's interests all too often lose out to relentless short-term pressure for returns that benefit only a few.

In these circumstances therefore it is gratifying that in many countries, in contrast to 2008, board level employee representation is openly being discussed as one possible answer to the major questions of our time. Within the framework of a brief 'country series' we take a look at current debates and developments in France and the United Kingdom. We asked the distinguished experts Udo Rehfeldt (IRES Paris) and Lionel Fulton (Labour Research Department London) to summarise the exciting discussions on board level employee representation in their countries, analyse them and outline the specific national context.

Interestingly, developments are by no means confined to the European continent. Interest in board level employee representation has emerged, seemingly out of nowhere, even in the United States. For example, for some time now US academics have been collecting information and facts on board level employee



Workers' Voice in European corporate governance – an invitation to open up new perspectives for participatory democracy. Series: Mitbestimmungsreport, Nr. 52e. Düsseldorf: 2019, ISSN: 2364-0413



Rapp, Marc Steffen / Wolff, Michael: Strong Codetermination – Stable Companies. An empirical analysis in lights of the recent financial crisis. Series: Mitbestimmungsreport, Nr. 51e. Düsseldorf: 2019, ISSN: 2364-0413

representation on the website codeterminationfacts.com. The most prominent advocate of board level employee representation is Democratic Senator and presidential candidate Elizabeth Warren. Her draft legislation envisages that employees would elect 40 per cent of members of the board of directors. It is embedded in a package of measures aimed at changing the one-sided market incentives of shareholder capitalism, which entices companies into focusing on 'maximising shareholder value' instead of investing in their employees and society. US journalist and author Steven Hill has contributed a vivid analysis of the American debate for the [Mitbestimmungportal](http://Mitbestimmungportal.de).

Needless to say, there can be no question of adopting German co-determination lock, stock and barrel. But it is an important reference point, along with other European models, to inspire discourses in other countries and support initiatives seeking to boost workers' voice. Even in Germany it is worth taking up debates from other countries and putting them to use in the domestic context. It is in any case important that such debates do not remain confined to individual countries. Not least developments in European company law show that board level employee representation rights today are safeguarded only

when a strong national foundation is accompanied by well functioning protection at European level. Board level employee [representation belongs on the EU agenda](#). Sustainable corporate governance and more robust collective rights must be a priority for the new European Commission over the coming five years. A draft European framework directive on information, consultation and participation, which the European Trade Union Confederation is calling for, would be an important step in the right direction.

Whether it be climate change, the erosion of social cohesion, digital transformation or the excesses of finance capitalism, more than ever we need reliable mechanisms for negotiating good and fair solutions, in which all those affected can participate on an equal footing. That is exactly what worker participation stands for. After years of stagnation with regard to worker participation policy in both Germany and Europe we need to fight, proactively and deliberately, for a revival of investment in the 'worker participation infrastructure'. Otherwise, the '[Workers' voice advantage](#)' is at risk of being lost.

Norbert Kluge, I.M.U. Director
Michael Stollt, Unit head at I.M.U.

Focus > Co-determination and Europe



Companies are able to operate across borders problem free. Co-determination too must be established on a European basis. Decisions will also be taken in particular about its future also in Brussels, Strasbourg and Luxembourg. On the [Mitbestimmungportal](http://Mitbestimmungportal.de) current developments and practical information are provided on the Focus page.

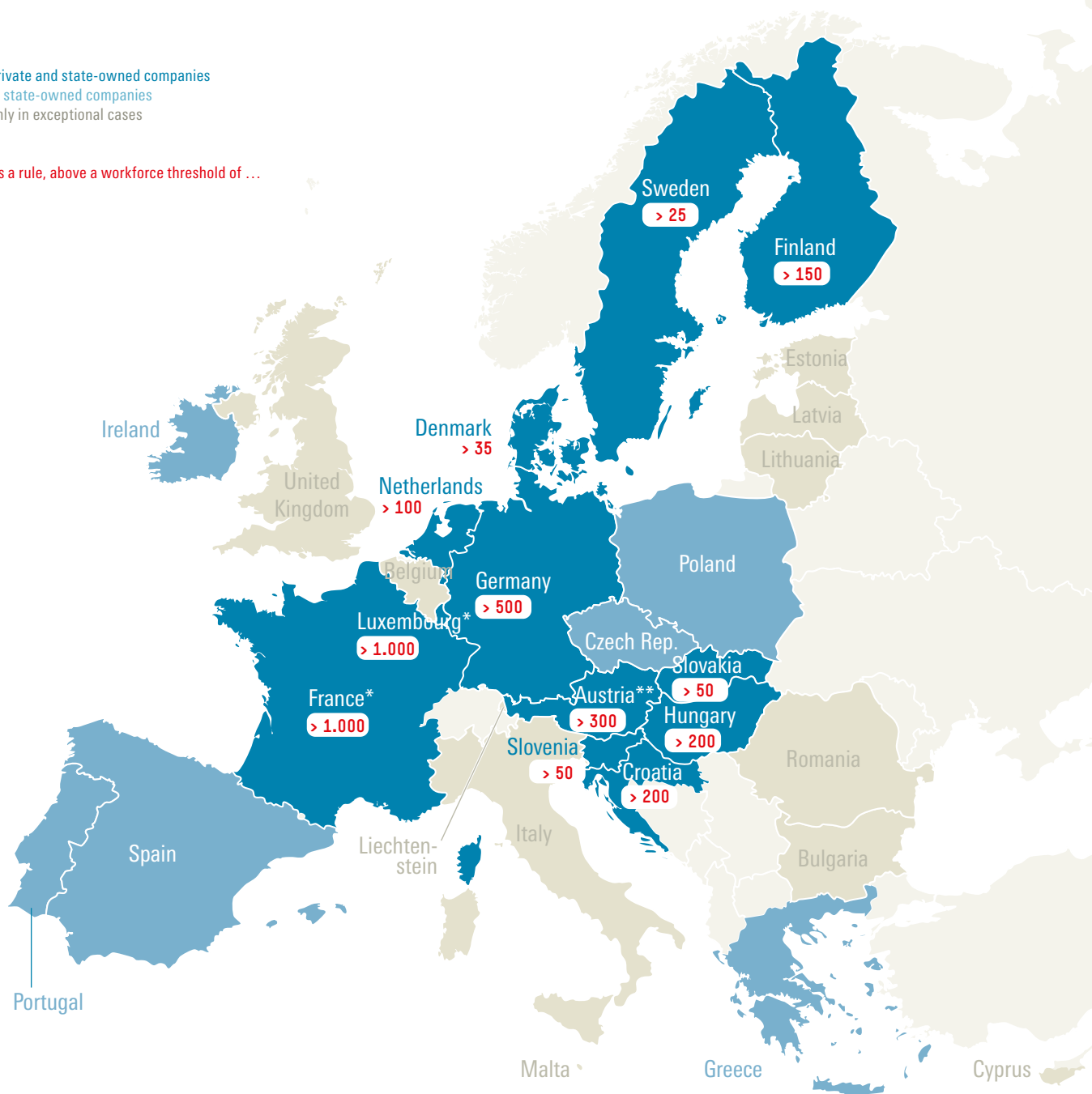
<https://www.mitbestimmung.de/html/thema-mitbestimmung-europa-7076.html>

Where workers have a say in the EU

There is a right to co-determination at board level ...

private and state-owned companies
in state-owned companies
only in exceptional cases

As a rule, above a workforce threshold of ...



* Different threshold values for state-owned companies

** only limited companies (Ltd or GmbH) – there is no threshold for plc's or AGs, if there is a works council.

Source: Data from Conchon, Aline / Kluge, Norbert / Stollt, Michael (2015): Worker board-level participation in the 31 European Economic Area countries. ETUI, Brussels. Illustration based on Böckler Impuls 9 / 2019, S.5. German Graphic Download: bit.do/impuls1558

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Further information

Basic information on co-determination in individual countries can be found on the Mitbestimmungsportal:



<https://www.mitbestimmung.de/html/mitbestimmung-in-europa-166.html>

1 INTRODUCTION

France finds itself in a paradoxical situation. As early as 1945 it was the first European country to introduce industry-wide board-level employee representation, albeit initially only in the public sector. Since 2013 it has also been mandatory in the private sector, although with the highest workforce threshold and the lowest number of employee representatives of any European country with board-level employee representation. The obstacles to extending such representation were rooted in France's industrial relations culture. This was characterised by distrust between employers and trade unions, as well as a rejection of co-determination by employers' associations and, for a long time, the majority of trade union organisations. In common with his predecessor President Hollande in 2012, President Macron promised to expand board-level employee representation during his election campaign. This promise has been fulfilled only to a limited extent, however. In the meantime, the issue has been gaining traction in the academic, trade union and political debate, increasing pressure on the employers. We shall outline the latest developments here.

2 THE HISTORICAL LEGACY

In March 1944, still under German occupation, the National Council of Resistance, in which the parties and organisations of the resistance – including trade unions – were represented, developed a programme of 'economic and social democracy'. It was supposed to pave the way for employee participation in company management. This goal was reaffirmed in the (still valid) Preamble of the Constitution of 1946. This states that '[a]ll workers shall, through the intermediary of their representatives, participate in the collective determination of their conditions of work and in the management of companies'. In the private sector, this goal was initially achieved through the establishment of works committees (*comités d'entreprise*) (see Rehfeldt 2019). According to Alexandre Parodi, Labour Minister in the first post-War government, a 'labour elite' was to be created gradually, who would 'draw more attention to the company's financial and industrial problems'. Under the law as finally adopted, however, the works committees had the right only to information and consultation. What remained of the original aim of participation in company management was merely the attendance of between two and four representatives at meetings of the board of directors, although without voting rights.

Industry-wide board-level representation in economic matters was initially restricted to public companies. It was introduced first in the state railways (SNCF) in 1937, then on a large scale after the nationalisations of 1944 and 1945. The composition of the

administrative boards¹ at that time was 'tripartite' in response to a demand from the CGT union federation in 1918. A third of the seats went to workers' board-level representatives (*administrateurs salariés*). Generally speaking, they were proposed by the trade unions and appointed by the government in accordance with the results of workplace elections.

The debate on industry-wide board-level employee representation in private companies got going only in the 1960s. The protagonists of the debate came from 'modernising' circles, such as the political Club Jean Moulin, which were dominated by social Catholic and left-wing Gaullist technocrats. These projects were strongly influenced by the German model of co-determination (*Mitbestimmung*). In a book on company reform published in 1963 by the Club Jean Moulin, François Bloch-Lainé advocated the introduction of a dual company model with the participation of workers' representatives. This idea was further developed in 1975 by the Sudreau Commission set up by President Giscard d'Estaing. Its report proposed a model of 'co-supervision', with one-third worker representation without voting rights on the supervisory board or the board of directors. This participation was to be optional for companies with between 1,000 and 2,000 employees and compulsory for those with 2,000 or over. This proposal came to naught at the political level, however, having been rejected, not only by the employers' associations (with the exception of a group of progressive employers), but also by the three big trade union federations CGT, FO and CFDT (on the trade unions see **Infobox 3**). On the trade union side, only the small Christian trade union the CFTC and the General Confederation of Executives (CGC) were in favour. At that time the CFDT was committed to an alternative model of 'employee self-management' (*autogestion*), although it renounced this again after 1978.

After the election victory of the United Left in 1981 and further nationalisations the Law on the democratisation of the public sector was passed in 1983. This extended participation in the supervisory board or board of directors to all companies in the public sector. At the same time, the principle of appointing workers' representatives to the supervisory board/board of directors through direct elections on the basis of trade union lists was universalised. The law also introduced restrictions, however: one seat would henceforth be reserved for executives (*cadres*).² Elected workers' representatives are required to relinquish all representative mandates in the company.

In 1986/87 and again after 1993 the Right, which had returned to power, instigated a series of privatisations. The Privatisation Act of 1994 obliged companies to retain workers' representation as it existed at the time of privatisation: in supervisory boards or

¹ At that time companies only had a monistic structure. Today, many companies have a dual structure, in other words, a supervisory board and a board of directors (*directoire*).

² In French law this category is broader in scope than in Germany. It also encompasses engineers and technical and commercial executives.

board of directors with fewer than 15 members there had to be at least two workers' representatives and in other cases at least three. On the other hand, a general meeting of shareholders would have the option of reducing the number of workers' representatives once their mandate had expired. A law of 2006 provided for a minimum of one representative in a supervisory board or board of directors with fewer than 15 members for companies privatised in 1986 that retained workers' representatives voluntarily, a minimum of two in other cases. This law, however, did not distinguish between representatives of employee shareholders and representatives of all employees of the company.³ Until the passing of a new law in 2013 it was thus legally possible to eliminate the latter completely.

Nevertheless around two-thirds of privatised companies retained their employee representatives, albeit in smaller numbers. In 2007 there were around 160 companies in France with at least one employee representative on the supervisory board/board of directors: 61 per cent of them were in the public sector and 39 per cent in the private sector. Of the latter, in turn, 87 per cent were privatised companies. Although since 1986 it has been legally permissible to introduce worker representation voluntarily up to a maximum of one-quarter of the supervisory board/board of directors virtually none have taken advantage of this possibility. At that time the number of employee representatives in all companies was, on average, 3.4 in a supervisory board/board of directors of 17 members. Because of the higher statutory obligation in public companies the average number of workers' representatives per supervisory board/board of directors was twice (4.1) that of private companies (2.3).⁴

3 FIRST STEPS TOWARDS STATUTORY BOARD-LEVEL EMPLOYEE REPRESENTATION IN THE PRIVATE SECTOR UNDER HOLLANDE

During the presidential election campaign in 2012 Socialist candidate Francois Hollande promised to extend workers' participation in the supervisory board/board of directors to all large private companies. After his election, by way of keeping his promise he entrusted Louis Gallois⁵ with producing a report on French competitiveness. His report, published in November 2012, lamented the loss of France's industrial base, with industry now accounting for a mere 10 per cent of value creation and employment. This decline was blamed on the subjugation of French companies to finance capitalism's fixation on short-term gains. In order to boost industrial investment and reorient company strategies to long-term goals the report called for a 'Competitiveness Pact' and recommended that it should be compulsory for firms with 5,000 employees or more to have at least four workers' representatives on the supervisory board/board of directors (up to one-third). The report also made explicit reference to the German co-determination model as an example of good practice, contributing as it does to maintaining the international competitiveness of German industry (see Gallois 2012). Although Prime Minister Ayrault welcomed the proposal he immediately reduced it to 'at least two' workers' representatives. Furthermore, its implementation was not enshrined in law, but palmed off onto the ongoing negotiations between the social partners on protecting jobs. A social partner agreement was signed in January 2013 by the employers' associations and the three trade union confederations the CFDT, the CFTC and the CFE-CGC, although not by the CGT and the FO (see Rehfeldt 2018 on 'social concertation'). The agreement contains some issues on which the chief negotiators agreed mutual concessions. In the short Article 13 the employers associations conceded the introduction of one workers' representative in the supervisory board/board of directors at companies with more than 5,000 employees in France (or more than 10,000 worldwide) or two workers' representatives if the supervisory board/board of directors has more than 12 members. The ban on cumulation with other representative mandates was to remain in place.

As promised, the government implemented this agreement, in the form of a law on safeguarding employment. It was adopted in June 2013. The ministerial bureaucracy, however, imposed all kind of restrictions and modifications on the appointment of workers' representatives. It can easily be imagined that these changes were the outcome of intensive lobbying by the employers' associations and firms that were likely to be affected. Henceforth, as already mentioned,

3 Many large companies have such employee shareholders. France is the European country in which employee share ownership is furthest developed, above all as a result of privatisation. This provided employees with the opportunity to buy shares in the companies they worked for on very favourable terms. Since 2002 one or more employee representatives has to be appointed by the general meeting if employee shareholdings exceed 3 per cent of the company's share capital. There is no such obligation if employee representatives have already been elected. In practice, these two kinds of employee representative exist side by side. A law on financial participation of 2006 provides that the representatives of employee shareholders must be elected by them. As a rule, the trade unions put up candidates for election as employee shareholder representatives. The major trade union federations, such as CGT and FO, are very critical of further development of such workers' participation.

4 In contrast to the other forms of workers' participation, on which the Labour Ministry regularly publishes statistics, there are no public surveys on the number of companies with workers' participation, workers' representatives and the distribution of seats. The figures cited here come from the work of Aline Conchon, who completed a thesis on this topic in 2014 (see Conchon 2014). Part of her quantitative survey is available on the HBS website and in the journal *Mitbestimmung* (in German).

5 Formerly head of several large public companies, notably the state railways SNCF and EADS-Airbus. Since 2014 Gallois had been chair of the supervisory board of car company PSA.

corporations with 5,000 or more employees in France or 10,000 employees globally, with their headquarters in France and as yet no workers' representation on the supervisory board/board of directors would have to introduce it. Direct or indirect affiliates were to be exempt, even if they met the relevant conditions in their own right. Holdings with fewer than 50 employees were also initially exempt. The law applies to public limited companies and partnerships limited by shares, but not limited liability companies, 'simplified public limited companies' or cooperatives.

The appointment of workers' representatives by direct election is no longer mandatory. There are now four alternatives: appointment by

- direct election,
- the works committee (or by the central or group works committee),
- the trade union or the two trade unions with the most votes in the workplace elections,
- the European works council (or the SE works council) in the case of a second representative.

If there are two workers' representatives they must be appointed in accordance with the principle of gender equality.

The company's general assembly has to choose between these four options after consultation with the group works committee. If the assembly does not

France's main political parties

La République en Marche (LREM) ['The Republic on the move'] is the party founded in 2016 by now President Emmanuel Macron, who was previously an adviser to President Hollande and then Minister of the Economy, Industry and Digital Affairs in the Valls cabinet. Together with the centrist party MoDem (Mouvement démocrate) LREM received 32 per cent of the votes in the first round of the parliamentary elections in 2017. Because of the majority system LREM obtained an absolute majority in the National Assembly after the second round of voting, with 306 of the 577 seats. On top of that, MoDem obtained 46 seats. The government is composed mainly of defectors from other parties (LR, UDI, PS, Greens) and representatives of civil society. At the European elections in May 2019 the joint LREM and MoDem list obtained only 22 per cent of the votes.

Les Républicains (LR) [The Republicans] were formed in 2015 by renaming the UMP (Union pour un mouvement populaire [Union for a Popular Movement]), who had dominated the political scene until 2012. At the parliamentary elections in 2017 this traditional party of the right received 18 per cent of the votes, together with the centre-right UDI (Union des démocrates et indépendants [Union of democrats and independents]). At the European elections in May 2019 the LR list only received 9 per cent of the votes, that of UDI only 3 per cent. LR has 104 seats in the National Assembly. The 16 UDI deputies have formed a joint parliamentary group with dissidents from the LR.

Rassemblement National (RN) is the new name (since 2018) of the former Front National, the extreme right party led by Marine Le Pen. In the first round of the 2017 presidential elections the party obtained 21 per cent of the votes and 34 per cent in the sec-

ond round. At the parliamentary elections in 2017 the party obtained 13 per cent of the votes and at the European elections in May 2019, 23 per cent. The RN has 8 deputies in the National Assembly, insufficient to form a parliamentary group.

The **Parti Socialiste (PS)** had an absolute majority in the National Assembly in the legislative period from 2012 to 2017 under President Hollande. In 2017, however, together with the Greens and the left-wing PRG (Parti radical de gauche [Radical party of the left]) they received a mere 11 per cent of the votes. At the European elections in May 2019 the PS declined even further, to 6 per cent. It forms a group in the National Assembly, initially named Nouvelle Gauche [New Left], but now PS once more, with 31 deputies.

The French Greens **Europe Ecologie Les Verts (EELV)** managed only one deputy in 2017. He was elected with the support of the LREM and promptly switched allegiance to it. At the European elections in 2019 they received 14 per cent of the votes.

La France Insoumise (LFI) [literally 'France unbowed'] is the party of the extreme left led by Jean-Luc Mélenchon, who came fourth in the 2017 presidential elections with just under 20 per cent of the votes. At the parliamentary elections in 2017 the party, together with some Communist Party candidates, obtained 11 per cent of the votes, although at the European elections they managed a mere 6 per cent, level pegging with the PS list, while the Communist Party received 2.5 per cent and PS dissident Benoît Hamon's Génération.s managed 3.3 per cent. The LFI is represented by 17 deputies in the National Assembly, the Communist Party by 13.

make a decision the representatives are appointed by election. According to the available information most companies prefer appointment by the works committee or the European works council.

In 2013 the threshold for company co-determination was lowered to 1,000 employees in France and 5,000 worldwide on the initiative of Socialist deputies (members of parliament) and against the expressed wish of the Socialist Labour Minister. On the other hand, the Labour Minister did prevail against a proposal from the Socialist deputies in the parliamentary committee. They had called for the minimum number of workers' representatives to be increased to two. The proposal was defeated at a plenary sitting of parliament by a majority consisting of Socialist and right-wing opposition deputies. Holding companies with fewer than 50 employees were no longer exempt from the obligation to permit co-determination, apart from financial holding companies that have no decision-making authority over the business strategy of their affiliates.

4 THE PROMISES OF PRESIDENT MACRON

With the election of Emmanuel Macron in 2017 a new phase in the extension of board-level employee representation rights seemed to be opening. During the election campaign Macron had stated his intention to strengthen supervisory boards/boards of directors and to create incentives for better workers' representation in them. The issue 'improving workers' representation in the board of directors' duly surfaced in the enabling act of 2 August 2017. The aim was to accelerate the labour law reform commenced in 2016 with the El Khomri Act and to proceed by means of ordinances (*ordonnances*), with no need for prolonged parliamentary debates (see Rehfeldt 2017). On this basis, in September 2017 the government issued five ordinances, on which parliament conferred legal force in December 2017. By and large, these ordinances have two aims: annul the primacy of collective agreements at sectoral level and extend the options available to conclude company agreements even without trade unions. The French employers' association MEDEF had been calling for both of these things since 2000. The ordinances contained even more bad news for employees. They also satisfy employers' demands for a 'simplification' of the structures of workplace representation, which had come to nothing in the social partner negotiations in 2015. With the Macron reform henceforth all statutory representative bodies, with the exception of trade union delegates, had to be merged to form a 'social and economic committee' for all workplaces.

As in the case of the El Khomri Act the Macron ordinances were drafted without the involvement of the trade unions. Thus they once more triggered union

protest demonstrations. Mysteriously, the issue of co-determination was absent from the ordinances. This moved the general secretary of the CFDT to declare himself 'disappointed'. In fact, the CFDT was the only trade union that had not only backed Macron's election but was also prepared to go along with some of the downgrading of workers' rights in the ordinances in the hope that the government would concede the promised extension of company co-determination in return. Although the CFDT did not participate in the protest actions with the other trade unions, it subsequently became clear that all trade unions now oppose the labour law reforms, both those already adopted and those in the pipeline.

In a television interview on 15 October 2017 Macron announced that there would be a 'second wave of reforms' that would complement the first wave with improvements in workers' participation. Only financial participation was mentioned specifically, however.

5 THE PROPOSALS OF THE COLLÈGE DES BERNARDINS

In the meantime, the academic, trade union and political debate on board-level employee representation had intensified. A small group of scholarly experts had set the ball rolling. The Collège des Bernardins,⁶ which since 2009 has been running a multidisciplinary research programme on corporate governance and corporate social responsibility, played a key role in this. The Collège organised, as early as March 2015 and then in March 2017, two conferences, in association with the Institut Français des Administrateurs (IFA), with the title 'Assises des Administrateurs Salariés' (Meetings of workers' board-level representatives). Participants included both workers' board-level representatives and representatives of trade unions and employers' associations, as well as some business leaders well disposed towards board-level employee representation.⁷

The topic of the last of the Collège's research programme's three-year cycles, from 2015 to 2018, was corporate governance. Three working groups were involved: one, coordinated by economist Olivier Favereau, dealt with co-determination understood as workers' participation in economic decision-making in the enterprise. The working groups' findings and proposals were presented to the public at a conclud-

⁶ A cultural and academic institution of the diocese of Paris. It is housed in a former college of the Cistercian Order.

⁷ The programmes of the two meetings, as well as film footage of contributions to the first meeting are available on the website of the Collège des Bernardins: <https://www.collegedesbernardins.fr/recherche/les-assises-des-administrateurs-salaries> [18.7.2019]. Documents concerning the second meeting and a list of participants are available at: <https://media.collegedesbernardins.fr/content/pdf/Recherche/secondes-assises-syntheses-enquetes.pdf> [18.7.2019].

Appeal for the Expansion and Embedding of Co-determination

This appeal is available on the Hans-Böckler-Stiftung's Mitbestimmungsportal in German:

<https://www.mitbestimmung.de/html/die-mitbestimmung-muss-gesetzlich-6192.html#hintergrund> [18.7.2019].

The long version in French is available on the Le Monde website:

https://www.lemonde.fr/idees/article/2017/10/05/la-codetermination-est-une-idee-porteuse-d-avenir-qui-doit-trouver-sa-place-dans-la-loi_5196511_3232.html [18.7.2019].

Campaign "More Democracy at Workplace"

Information on the campaign and a list of the first signatories is available at: <https://www.etuc.org/en/pressrelease/european-appeal-companies-and-employees-blazing-new-european-trail> [18.7.2019]

A German version of the European appeal can be found at: http://european-appeal.org/app_ge.pdf [18.7.2019] and an updated list of signatories is available at: <http://european-appeal.org/select.php> [18.7.2019].

ing colloquium on 16/17 March 2018, at which representatives of the trade unions, the employers and policymakers gave their views.⁸ The research group's core message amounts to a repudiation of Anglo-Saxon agency theory, which legitimises the supremacy of shareholders on the basis of property rights. Shareholders are not the owners of a company, however, but only of shareholdings in it. The company functions, by contrast, on the foundation of cooperation between a number of stakeholders. In order to ensure some balance between the profit interests of the shareholders and the interests of the employees, the environment and society as a whole, company law must be reformed. Specifically, the research group proposes that the company statute set out in Article L1833 of the Code Civil (which has been in force since the time of Napoleon I) should be amended. The article currently states that 'each company shall serve the common interests of the shareholders' ('Toute société doit avoir un objet licite et être constituée dans l'intérêt commun des associés'). On the other hand, it's important to point out that a company, in its own right, has an interest in its sustainability, in keeping with which it needs to act with social responsibility in line with the interests of other stakeholders. To that end, companies should define their business aims –

⁸ For the programme see <https://www.colleledesbernardins.fr/recherche/programme-du-colloque-gouvernement-participation-et-mission-de-lentreprise> [18.7.2019]. The findings of the cycle are summarised in Segrestin/Vernac 2018. The contributions of the co-determination working group are presented in Favereau 2019.

their 'mission' – clearly. In doing so they should be allowed, within the framework of an 'extended mission' – to be defined – to also pursue collective goals, for the sake of society as a whole. Among a company's stakeholders two actors play a special 'constitutive' role: the shareholders and the employees. Both bear the risks of the company in common. Its success depends first and foremost on their commitment and their cooperation. This justifies their representation on an equal footing in the form of parity employee representation in the supervisory board/board of directors.

Two members of the co-determination working group, Olivier Favereau and Christophe Clerc, took the initiative in 2017 to issue a call for the statutory extension and anchoring of co-determination. It was published in Le Monde on 6 October 2017 (see **Infobox 2**). Among the first signatories were trade union representatives, including the general secretary of the CFDT, Laurent Berger,⁹ and the president of the CFE-CGC, François Hommeril, as well as academics and experts from France and other European countries. The appeal also attracted interest and support from the European Trade Union Confederation (ETUC), which expanded it to a European appeal and integrated it in its campaign 'More Democracy at Work' (see **Infobox 2**).

The appeal and the work of the Collège des Bernardins inspired several other initiatives. In November 2017 the Socialist parliamentary group in the National Assembly, under the leadership of deputy Dominique Potier, introduced a draft law, aimed at establishing '*codétermination à la française*'.¹⁰ It envisages parity-based co-determination in companies with 5,000 employees or more and one-third participation in companies with 1,000 employees or more. In companies with 500 employees or more there should be at least two workers' representatives on the supervisory board/board of directors. In the draft's explanatory statement the authors refer explicitly to the work of the Collège des Bernardins and the appeal by Olivier Favereau and Christophe Clerc.¹¹ The draft law also envisages a rewording of Article L1833 of the Code Civil, in which for the first time the company management is tasked with 'the interests of the company' (and not only of the shareholders) and taking into account the 'economic, social and environmental effects of its activities'.

The main aim of Potier's draft law is to influence the debate on board-level employee representation. Given the balance of power in the National Assembly there is little likelihood that the entire proposal will be adopted in the current legislative period 2017 to 2022. The President's party LREM has an absolute majority of 577 deputies, while the Socialist group has a mere 29 deputies (see **Infobox 1**).

⁹ He was elected president of the ETUC in May 2019.

¹⁰ That was the title of the pamphlet by Beffa/Clerc 2013.

¹¹ See <http://www.assemblee-nationale.fr/15/propositions/pion0476.asp> [18.7.2019].

6 TRADE UNION DEMANDS

In the meantime, four of the five representative trade unions have come to support board-level employee representation in the private sector. Only FO continues to oppose it, invoking the syndicalist tradition. André Bergeron, FO general secretary from 1963 to 1989, summarised this opposition by saying that ‘you can’t govern and be governed at the same time’. The CFDT and the CGT have gradually changed their positions. Since 2006 they have been demanding the extension of board-level employee representation to the private sector, although only the CFDT expressly uses the term ‘*codétermination*’.¹² Within the CFDT the extension of *codétermination* is supported in particular by the subsidiary organisation for professional and managerial staff, CFDT Cadres, in whose domain most CFDT workers’ representatives in supervisory boards/boards of directors are to be found. CFDT Cadres is demanding that one of the workers’ representatives should not be from the company itself, but, as an external trade union representative, should also represent the interests of other employees, especially suppliers.¹³

The CGT is calling for parity-based board-level employee representation in all companies, regardless of size. Workers’ representatives should be restricted to one-third only in public services, while the other two-thirds on the supervisory board/board of directors should represent the public authorities and users (see CGT 2016). The CGT is also demanding the abolition of the ban on the cumulation of different representative mandates because that leads to the isolation of a few workers’ representatives in the supervisory board/board of directors and hinders coordination with works councils and trade union representatives. This coordination is a key factor in the proper functioning of the German co-determination model.¹⁴ In order to overcome this isolation CGT, CFDT and CFE-CGC organise regular meetings of their workers’ representatives in the supervisory board/board of directors. The CFE-CGC regrets the abolition of the seats reserved for executives and is calling for their restoration, if the proportion of workers’ seats in the supervisory board/board of directors is raised to one-third, as has been demanded (see CFE-CGC 2015). In the past these

seats were generally taken by trade unionists from the CFE-CGC and the CFDT. All the trade unions are calling for a return to the principle of direct election of workers’ representatives.

In January 2019 the CFDT took up the idea of *co-détermination à la française* and, under this heading, compiled a list of demands for legal reforms.¹⁵ It contains exactly the same co-determination proportions as the Socialist group’s draft law. The CFDT is also demanding that henceforth cooperatives should be subject to the co-determination requirement. Furthermore, the CFDT has got behind the Collège des Bernardins’ other proposals on amending the legal status of stock corporations.

The demands of the Collège des Bernardins, the Socialist Party and the trade unions are partly backed by think tanks, including – not surprisingly – the Jean Jaurès Foundation. It is close to the Socialist Party and presented a report on the issue in February 2018 (see Schmite/Valiergue/Victoria¹⁶ 2018). It is non-committal on the proportion of workers’ representatives in the supervisory board/board of directors, however. In March 2018 the think tank Terra Nova (see Richer 2018) published a report that also advocated reform of company law and an extension of co-determination. Terra Nova was formerly close to the Socialist Party and now backs President Macron’s reforms. The author of the report, Martin Richer, is a corporate consultant and was a member of the Collège des Bernardins’ co-determination working group. His report calls for two workers’ representatives on the supervisory board/board of directors in companies with between 500 and 1,000 employees, and one-third participation above that, but no parity-based board-level employee representation in big companies.

7 MODEST IMPROVEMENT IN COMPANY REFORM FROM 2017 TO 2019

After his televised speech in October 2017 President Macron assigned Minister of the Economy and Finance Bruno Le Maire the task of drafting a bill on company reform. The outcome was the so-called PACTE law, the ‘Plan d’action pour la croissance et la transformation des entreprises’ (Action plan for growth and enterprise transformation). Le Maire is a defector from the traditional right-wing party Les Républicains (LR) (on political actors in France see **Infobox 1**). ‘Transformation’ in this instance refers to both environmental sustainability and digitalisation. The law was also supposed to tackle simplification of the legal requirements for founding a company and company management, as well as the promotion of innovation, international

¹² In the public and trade union debate in France ‘co-determination’ was long – and often even today – translated as ‘cogestion’, which means ‘co-management’. This has undoubtedly contributed to the misunderstanding of the German model and to the opposition from trade unions and employers’ organisations already mentioned.

¹³ This demand, incidentally, is also supported, to some extent for different reasons, by Jean-Louis Beffa, one of the few top managers in France who advocates the extension of employee board-level representation (see Beffa/Clerc 2013).

¹⁴ The demand that the cumulation can be abolished is also supported by the working group of the Fabrique de l’Industrie. In their report on the implementation of employee board-level representation on the basis of the law of 2013, dealt with in Section 3, they evaluate the German co-determination model positively (see Gauron/Charlet 2014). The Fabrique de l’Industrie is a think tank founded by UIMM, the metal industry employers’ organisation, in which trade unionists and economists participate under the co-presidency of Louis Gallois.

¹⁵ See https://www.cfdt.fr/portail/actualites/economie/-developpement-durable/-video-construire-une-codetermination-a-la-francaise-srv1_580098 [18.7.2019].

¹⁶ Pierre Victoria is CFDT workers’ representative on the supervisory board of a large company.

Trade union actors in France

The **Confédération Française Démocratique du Travail (CFDT)** is currently France's largest trade union confederation. It received 26 per cent of the votes in workplace ballots in the private sector between 2013 and 2016. It came into being in 1964 through the renaming of the Christian trade union confederation the CFTC, founded in 1919. In the 1970s the CFDT's stance was that of a left-wing socialist trade union with the objective of bringing about workers' self-management (autogestion). In 1978 it launched a reorientation towards strictly trade union methods and goals, to be realised by means of social concertation and collective bargaining. This reorientation was aimed at promoting the 'modernisation' of the economy and labour relations.

The **Confédération Générale du Travail (CGT)** is France's oldest trade union confederation, founded in 1895. After the Second World War its leadership was dominated by communists. In the 1990s, however, the CGT officially broke away from the Communist Party. Under Bernard Thibault, secretary general from 1999 to 2013, the CGT underwent a strategic reorientation with a dual identity, being both a social movement and a negotiating trade union. In 2014 it experienced a severe internal crisis, from which no new strategic direction has yet emerged. It won 25 per cent of the votes at the workplace elections in the private sector from 2013 to 2016.

Force Ouvrière (FO) was founded in 1948, splitting from the CGT as an anti-communist confederation. Its secretary generals were usually members of the Socialist Party, but there are also syndicalist, Trotskyist and Gaullist tendencies. FO has a stronger presence in the public sector than in the private one. Long the pre-

ferred partner of employers' organisations and governments, FO has since the 1990s pursued an autonomous trade union policy. Anti-communism, along with anti-clericalism, is still the main ideological cement that holds FO together. Of late, the trade union has sporadically been practicing unity of action with the CGT. FO received 16 per cent of the votes in workplace ballots in the private sector between 2013 and 2016.

The **Confédération Générale des Cadres (CGC)**, founded in 1944, was renamed the Confédération française de l'Encadrement-CGC (CFE-CGC) in 1981. Its stance can be described as the apolitical representation of professional and managerial staff (cadres). It received 11 per cent of the total votes in the workplace elections from 2013 to 2016 and 19 per cent in the electoral college of professional and managerial staff (in which the CFDT is the strongest trade union, with 30 per cent of the votes).

The **Confédération Française des Travailleurs Chrétiens (CFTC)** has continued the Christian tradition under the same name since 1964. It received 9 per cent of the votes at the workplace elections in the private sector from 2013 to 2016, just clearing the 8 per cent threshold that allows it to retain its status as representative trade union at national level.

The **Union Nationale des Syndicats Autonomes (UNSA)** was founded in 1993 through a merger of autonomous trade unions, mainly from the public sector. It obtained 5 per cent of the votes in the workplace elections between 2013 and 2016 and thus does not enjoy the status of representative trade union at the national level that it enjoys in the public sector.

competitiveness and corporate social responsibility. The issue of participation was initially taken up only in terms of financial participation.

This changed abruptly in December 2017 when Environment Minister Nicolas Hulot demanded that the law should also encompass reform of company law along the lines of the proposals put forward by the Collège des Bernardins in order to ensure that company managements take on board the needs of the environment and of employees. The Minister of the Economy tasked Nicole Notat (secretary general of the CFDT from 1992 to 2002 and since then head of the Vigeo ratings agency) and Jean-Dominique Sénard (then president of the Michelin group, currently president of the Renault-Nissan group) with working out propos-

als. The report they produced in March 2018 (see Notat/Sénard 2018) adopts the Collège des Bernardins' proposals on reshaping company law almost in their entirety, in particular the reformulation of Article L1835 from the Potier draft law. With regard to board-level employee representation the report calls, rather modestly, for an increase in the number of workers' representatives in the supervisory board/board of directors, namely for two representatives if there are more than eight members and for three if there are more than 14 members.

The Minister of the Economy adopted these proposals only in part. The PACTE law, finally adopted in May 2019, contains a reformulation of Article L1835, which now reads: 'The enterprise will be run in terms

of its social interests, taking into account the social and environmental aspects of its activities'. On top of that, the obligation for board-level representation will be extended to cooperatives. The number of workers' representatives will be lower than proposed in the Notat/Sénard report, however, with an increase to only two in supervisory boards/boards of directors with more than eight members. According to the calculations of the Institut Français des Administrateurs (IFA) this will have only modest quantitative effects: while to date there were 111 workers' representatives in the supervisory board/board of directors of the 120 most highly capitalised companies this will be increased only by 12. The average proportion of workers' representatives in each supervisory board/board of directors will increase only from 7.5 to 8 per cent.

In response, the trade unions stepped up their efforts and formed new alliances. In March 2019 the CFDT, the CFTC and UNSA, together with some NGOs, presented '66 proposals for a social and environmental pact', No. 63 of which called for parity-based employee representation in the supervisory board/board of directors.¹⁷ The alliance between the CFDT leader, Laurent Berger, and Nicolas Hulot played an important role in this. The latter resigned as Environment Minister in August 2018 after condemning the government's neoliberal drift and the obstruction of his work by powerful lobbies.

Macron himself had already repeatedly expressed his rejection of coordination with 'intermediary bodies' such as trade unions, who he fears may block his reform plans. The circumvention of the trade unions led to their further weakening; their protest actions remained ineffective and were unable to prevent the adoption of the reforms. Surprisingly, in November 2018 a planned increase in fuel tax and a speed restriction on highways led to spontaneous demonstrations by the so-called 'gilets jaunes', which took both the government and the trade unions by surprise. After initially being caught on the hop the government responded adroitly by convening decentralised forums within the framework of a 'national debate'. The topics put forward for debate primarily concerned tax relief and new forms of political participation (for example, through citizens' initiatives and referendums), but not participation in workplace and economic decision-making.

8 POLITICAL OUTLOOK

The PACTE law provides that after three years the government should present a report on its implementation with regard to board-level employee representation. It is supposed to evaluate the effects of such representation on businesses and the national economy

and to consider whether (i) the number of workers' representatives should be raised and (ii) workers' representatives from subsidiaries abroad should also be incorporated in the supervisory board/board of directors. The report will coincide with the presidential and parliamentary elections in 2022.

It is of course premature to speculate about the outcome of these elections. Nevertheless at present the chances of Emmanuel Macron being re-elected and retaining his parliamentary majority look very good. Despite Macron's rapid decline in popularity in the opinion polls, which even got worse in the first period of 'gilets jaunes' demonstrations in late 2018, his LREM party did unexpectedly well in the European elections in May 2019. As in the presidential and parliamentary elections in 2017 they are level-pegging (22.3 per cent) with Marine Le Pen's extreme-right (22.4 per cent). Even more significant was the decline of the traditional right (Les Républicains, LR) to 8.5 per cent, leading to this party's veritable collapse. Local elected LR representatives are jumping ship to LREM en masse, thereby boosting their chances of a good result in the coming municipal elections in 2020. This is also changing the balance of power within LREM, however, to the detriment of the left wing. Some LREM voters who voted PS or Greens before 2017 are returning to the fold.

The left overall has not yet recovered from its historic defeat in 2017. Within the left, however, significant shifts were discernible at the European elections in 2019: the extreme left around Mélenchon has dwindled substantially again and, at 6.3 per cent, is once more level pegging with the PS list, on 6.2 per cent. This represents something of a reprieve for the latter, which had every reason to fear a descent into irrelevance. The absolute winners on the left are the Greens, with 13.5 per cent of the votes. The environment thus proved to be a central issue in this political shift, for which the resignation of Environment Minister Hulot was only the prelude. The LREM continues to stress the environment issue, however, symbolised by the appointment of a defector from the Greens as environment minister after Hulot's resignation.

It is important for the issue of board-level employee representation that it is increasingly being discussed not only in connection with economic and social imperatives, but also those of environmental sustainability. All the expert reports and board-level employee representation projects presented here are banking on this interaction between ecological and economic sustainability. This interaction is also a component of Hulot's demands, as mentioned in [Section 7](#)), first as Minister of the Environment and subsequently as protagonist in a new social alliance between trade unions and NGOs. Only political parties have as yet refrained from getting on board. Nevertheless everything indicates that the environment is turning into a central issue in the competition for the voters' favours. A possible future extension of board-level employee representation could benefit from this competition.

¹⁷ See https://www.cfdt.fr/upload/docs/application/pdf/2019-03/pacte_pouvoir_de_vivre.pdf [18.7.2019].

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ABBREVIATION

CFDT	Confédération française démocratique du travail	LR	Les Républicains
CFE-CGC	Confédération française de l'encadrement – Confédération générale des cadres	LREM	La République en Marche
CFTC	Confédération française des travailleurs chrétiens	MoDem	Mouvement démocrate
CGC	Confédération générale des cadres	PRG	Parti radical de gauche
CGT	Confédération générale du travail	PS	Parti Socialiste
CNAM	Conservatoire national des arts et métiers	RN	Rassemblement National
EELV	Europe Ecologie Les Verts	SE	Societas Europaea (= European Company)
ETUC	European Trade Union Confederation	SNCF	Société nationale des chemins de fer français
FO	Force ouvrière	UDI	Union des démocrates et indépendants
IFA	Institut Français des Administrateurs	UIMM	Union des industries et métiers de la métallurgie
LFI	La France Insoumise	UMP	Union pour un mouvement populaire
		UNSA	Union Nationale des Syndicats Autonomes

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