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Recent collective bargaining developments in France

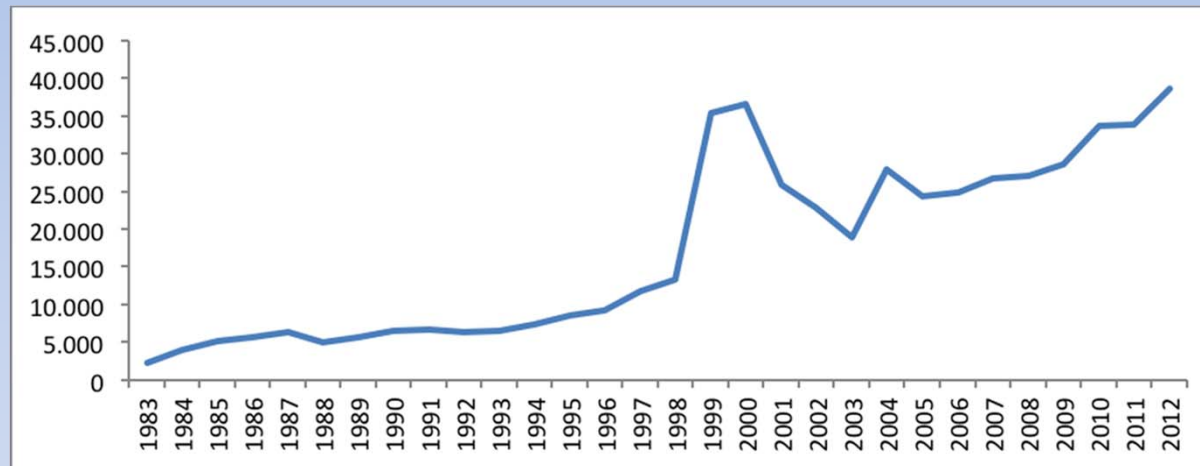
**The Macron reforms: a final step for
decentralisation through derogation?**

Udo Rehfeldt



The rise of **company level** bargaining since 1983...

Annually concluded workplace agreements 1983-2012



... but **not** at the expense of **sector** level bargaining

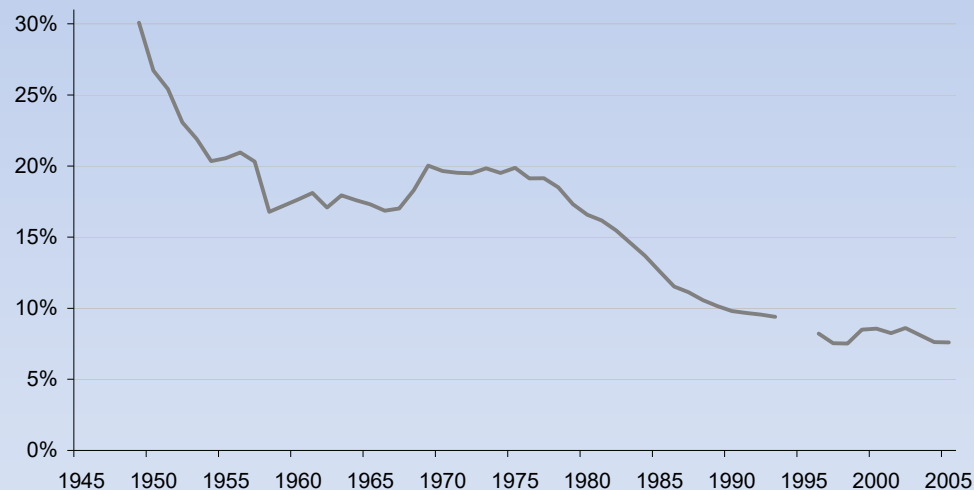
Annually concluded collective agreements 1919-2014

| | Sector level | Company/ workplace |
|---------|--------------|-----------------------|
| 1950-59 | 420 | 143 |
| 1960-67 | 990 | 356 |
| 1968-70 | 1395 | 608 |
| 1980-81 | 1952 | 1544 |
| 1982-85 | 1118 | 3397 |
| 2012 | 1236 | 38799 |

Explanatory factors for the rise of company bargaining

- 1982 Auroux Laws: legal **obligation to negotiate annually** both at sector and workplace level (if union present) on wages and working time
 - other themes latter added by law,
- The employers, initially opposed to company bargaining, changed their strategies in order to take advantage of the weakening of the trade unions.

Unionisation rate:



However: union presence at the workplace still important (in 2011: 56 % of the workforce >10 covered by union delegates)

A need for further promotion of decentralisation by law?

2000: employers' initiative for the "overhaul" (*refondation*) of the bargaining system

- The **employers'** organisations seek to
 - abolish the **favour principle**,
 - reverse hierarchy of norms through **derogation**
 - allow negotiation in small workplaces **without unions**
- The big **trade union** organisations CGT and CFDT seek to
 - impose a **majority principle** (based on workplace elections) for the validity of collective agreements
 - institutionalize the role of unions as bargaining partners for **small workplaces**

Overview of reforms laws 2004-2017: A success for the employers' demands

| | Employers' demands 2000 | Reforms 2004, 2007, 2008, 2013, 2015 | El Khomri Law 2016 | Macron reform 2017 |
|--|--|--|---|---|
| Prior negotiations | like EU (Maastricht protocol) | Obligation by 2007 law, agreements in 2001, 2008, 2013, failed in 2015 | no negotiation | no negotiation |
| Derogation | from sector agreement and from law, except social public order | 2004: from sector agreement, unless forbidden by the agreement. Derogation forbidden for: minimum wages, job classification, supplementary social protection, multi-company vocational training funds | From sector agreement, except social public order and "social collective order". first step: only working time | Priority for company agreement, except social public order., derogation from sector agreement forbidden for enlarged list of matters |
| Majority principle | No | 2004: right to opposition of majority unions, 2008: need for 30 % "majority" added 2013: need for >50 % majority for derogatory job protection agreements | >50 % majority principle at company level; signatory unions with 30-50% can ask for ratification by a referendum | 50% majority for all subjects. But: employer can ask for a referendum , if signatory unions with 30-50 % and no signatory union opposes. |
| Bargaining competence if no union delegates | mandated employees or elected representatives | 2015: elected representatives, otherwise mandated employees | unchanged | >50: elected reps, otherwise mandated reps 20-50: elected or mandated <20: referendum on employer project |

Transition from **co-ordinated** to **State-imposed** decentralisation – **why?**

- official arguments for the 2016-2017 reforms:
 - **urgent** need for further stimulation of collective bargaining
 - employee protection better ensured by company agreements (“proximity”)
 - stimulation of competitiveness, growth and employment
- ILO and OECD reports show however:
 - No link between decentralisation and economic performance,
 - Negative effects on bargaining coverage, equality and wage dynamics
- New element: **EU country-specific recommendations** for France 2015:
 - reduce labour costs
 - facilitate derogations,
- Need for accommodation:
 - France under UE scrutiny for excessive deficit

What future for the use of the legal possibilities of derogation by the actors?

- Up to now **not used** by the actors:
 - after 2004 Fillon law: sector agreements prohibit derogation,
 - After 2013 law: only 10 “job protection agreements” signed
- Will employers use the new legal tools in order to cut cost under the threat of plant closures or redundancy plans?
- safeguard in the 2016-2017 laws: need for a majority agreement
- possible use of referendum for blackmailing of the workforce
- resilience of a “high road” model of competitiveness in big companies?
 - good relations with trade unions as a precondition for cooperative work relations needed for productivity and quality production

References for further reading

- Rehfeldt U., “Industrial Relations in France: From the underdevelopment of collective bargaining to the failure of neocorporatist concertation”, *Employee Relations*, special issue “Industrial Relations in the 21st century Europe”, Vol. 40, No. 4, February 2018; pp. 617-633.
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