

Towards extended codetermination in France

Reviving economic democracy in Ireland after the crisis

Board-level employee representation:

A European perspective and exchange of experience

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Board-level employee representation (BLER) in France: a paradox

- France is historically the **first** of the 18 EU countries with BLER,
- but it is the country but with the **weakest** form of BLER in the **private** sector
- Historical reasons:
 - opposition of employer organisations,
 - but also of the three biggest unions (CGT, CFDT, FO)
 - syndicalist heritage (CGT) and “self-management” rhetoric (CFDT 1968-78)
 - initial support only by CFTC and CFE-CGC
 - today: rhetorical opposition reduced to FO
- 1963 and 1974: reform projects of social catholic and left-wing Gaullist technocrats, without political majority
 - influenced by German codetermination

The historical compromise of 1945: BLER in the public sector

- 1919 reformist CGT demands nationalisation of the industries
 - with tripartite boards (German model)
- 1936: nationalisation of railways (SNCF) with BLER
- 1944: National Council of Résistance (underground parties and unions) programme
 - “**economic and social democracy**”:
 - Nationalisation, economic planning, union participation
- 1944-45: nationalisations (basic industries, banks, Renault) with **tripartite** boards:
 - one third appointed by the government
 - one third appointed representative unions
 - one third “competent personalities” (appointed by the government)
- 1945: creation of **works committees**
 - only information and consultation rights
 - 2-4 representatives on management board, but without voting rights
- 1946: Constitution of the Fourth Republic: Preamble (still valid):
 - *“Every worker participates, via his delegates, in the collective determination of working conditions and the management of businesses.”*

1981-83:

Extension of BLER in the public sector with later effects on the private sector

- 1981: victory of the Left (with support of CGT and CFDT): Mitterrand President
- 1982: extended **nationalisations** (main industrial and financial companies)
- 1983: law on **democratisation** of the public sector
 - BLER in parent companies and subsidiaries (>200 employees)
 - one third in all parent companies and subsidiaries with >1.000, otherwise 3
 - elected on union lists
 - 1 seat reserved for professional and managerial staff
 - Elected reps must abandon all other representation mandates
- 1986-1993: **privatisations**
- BLER conserved in two thirds of the privatised companies
 - partially on legal obligation, partially voluntarily
- but smaller number of reps:
 - on average 2.3 employee reps per board in private companies with BLER
 - In state-owned companies: 4.1 reps.

2013 peak-level agreement: first statutory BLER in the private sector

- May 2012: victory of the Socialist Party, Hollande President (with support of CGT),
 - In his electoral programme: BLER in all big private companies,
 - including in remuneration committee
- Gallois report “pact for competitiveness”:
 - critique of de-industrialisation and perverse effects of financial capitalism
 - BLER needed to restore competitiveness and long-term investment
 - proposal: one third BLER (minimum: 4)
- government leaves this to peak-level employers-unions negotiations
- 2013: peak-level agreement on competitiveness and job security
 - signed by employers’ organisations and three unions (CFDT, CFTC, CFE-CGC)
 - BLER in companies with >5.000 employees in France or >10.000 worldwide
 - 1 employee representative , 2 in boards >12
 - obligation to abandon other mandates maintained

2013 law on job security:

Biased transposition of the 2013 agreement

- obligation to introduce BLER (if not previously established) for
 - public limited companies and limited partnership companies
 - with seat in France
- exempted:
 - limited liability companies (LLCs)
 - direct or indirect subsidiaries
 - holding companies with <50 employees
- appointment method to be chosen by the shareholder meeting between 4 options:
 1. election on union lists
 2. appointment by the most representative unions
 3. election by the works committee
 4. election of the second representative by the EWC
- Most of the companies opt for model 3 and 4.
- 2015: Parliament votes an amendment (against the wish of the government):
 - threshold lowered to >1.000 in France and >5.000 worldwide
 - holding companies with <50 employees no longer exempted, but only financial holdings without decision power on their subsidiaries

France compared to other EU countries with BLER

- **exclusion of LLCs:** does not exist in the majority of other countries
- **threshold of 1000 employees:** by far the highest in Europe (with Luxembourg)
- **exclusion of subsidiaries :** does not exist elsewhere.
- **minimal number of AS (1 or 2):** generally one third elsewhere
- **4 modes of appointment:** only one elsewhere (except Sweden and Finland: by negotiation - in the absence of agreement appointment by the union)
- **prohibition of multiple mandates:** unique in Europe (except in privatized companies in Poland)

- **possibility of appointment by the EWC:** unique **positive** exception
 - exists in some SEs
 - BLER for foreign subsidiaries possible in the Nordic countries (Denmark, Sweden, Norway)

2017-19: Towards a further extension of BLER?

- May 2017: Macron President (with support of CFDT)
 - electoral programme: extension of BLER
 - BLER mentioned in August 2017 framework labour law,
 - but mysteriously disappeared in government ordinances of September 2017
- “disappointment” of CFDT, rejection of the reform by all unions
- October 2017: Macron announces “second wave” of reforms,
 - including (mainly financial) workers’ participation
 - assigns Finance Minister Bruno Le Maire to draft a bill on company reform,
 - later called **PACTE law** = “**P**lan d’**a**ction pour la **c**roissance et la **t**ransformation des **e**ntreprises” (Action plan for the growth and transformation of the companies)
 - “transformation” refers to environmental sustainability and digitalisation
 - Le Maire is a defector from the right-wing party *Les Républicains*

Intensification of the academic debate: the *Bernardins* projet

- 2015-2018: *Collège des Bernardins* research project on **corporate governance** and “**codetermination**”, March 2018: final conference
- critique of Anglo-Saxon theory of shareholder supremacy
- Proposals for reform of company law:
 - Company must not only serve the (financial) interests of shareholders, but also of other stakeholders
 - The company has its own interest in sustainability.
 - The company must define its business aims (mission”) - eventually “extended mission”.
 - Two actors among the stakeholder are “constitutive”: shareholders and employees.
 - Both bear the risks of the company whose success depends on their commitment and cooperation.
 - This justifies **parity** BLER (“codetermination”).
- October 2017: **appeal** for codetermination published by *Le Monde*
 - Initiative of the *Bernardins* project (Olivier Favereau, Christophe Clerc)
 - Signed by union leaders (including CFDT secretary general Laurent Berger) and experts
- later transformed into a **European** appeal with the support of the ETUC
- *Bernardins* project has inspired several political and trade union initiatives

Intensification of the political debate: new demands of the trade unions

- November 2017: draft law on “*codetermination à la française*” by the Socialist parliamentary group (initiator: Dominique Potier)
 - multiple references to *Bernardins* project and *Le Monde* appeal
 - >5.000 employees: parity BLER
 - 1.000:-5.000: one third
 - 500-1.000: minimum 2 representatives
- January 2018: similar CFTD proposal for “*codetermination à la française*”
- aim of parity codetermination (not the wording) shared by CGT
 - restricted to one third in the public sector (another third for user reps)
- parity aim also shared by CFE-CGC:
 - from one third BLER onwards: one seat reserved for professional staff
- union demands supported by “**think tanks**”:
 - February 2018: *Jean Jaurès Foundation* (close to the Socialist Party PS)
 - but no opinion of BLER proportion
 - March 2018: *Terra Nova* (formerly close to PS, now supporting Macron)
 - but only in favour of maximum one third BLER if >1.000

The preparation of the company law reform

- December 2017: Environment Minister Nicolas Hulot demands **PACTE law** should include reform of company law along the lines of the *Bernardins* proposals
 - for the needs of the environment and of employees
- Minister Le Maire tasks N. Notat and J.-D. Sénard with working out proposals.
 - Nicole Notat: head of the Vigeo ratings agency, former CFDT secretary general,
 - Jean-Dominique Sénard: then president of the Michelin group, currently president of the Renault-Nissan group
- March 2018: **Notat-Senard report:**
 - Proposals with multiple references to *Bernardins* project
 - rewording of Article L 1833 of the Code Civil: management is tasked with “the interests of the company” and must take into account the “economic, social and environmental effects of its activities”
 - modest BLER proposals: if 8-12 board members: 2 employee reps, if >12 members: 3
- August 2018: minister Hulot resigns and condemns lobbies and neoliberal drift
- March 2019: “66 proposals for a **social and ecological pact**” by 3 unions (CFDT, CFTC, UNSA) and 16 NGOs: alliance Berger-Hulot
 - Proposal n° 63: parity BLER

The PACTE law: a very modest outcome for BLER

- The PACTE law finally voted by Parliament in May 2019
- Notat-Sénart proposals adopted only in part
 - reformulation of Article L1835: “The company will be run in terms of its social interests, taking into account the social and environmental aspects of its activities”
 - BLER obligation extended to cooperatives.
 - **two** reps in boards with more than **eight** members.
- modest quantitative effects expected:
 - The number of workers’ reps in the boards of the 120 most highly capitalised companies will increase only from 111 to 123.
 - The average proportion of workers’ reps in each board will increase only from 7.5 to **8 per cent**.

Outlook and conclusion

- PACTE law foresees a government **report in 2022** on its implementation for BLER and to consider whether
 - the number of workers' reps should be raised
 - workers' reps from subsidiaries abroad should be incorporated
- report will coincide with the presidential and parliamentary elections
 - good chances for Emmanuel Macron to be re-elected
 - Left and traditional right-wing parties in bad shape
 - But: recent shift in favour of the Greens
- Environment becomes a central issue in the electoral competition
- BLER could benefit from this competition
 - BLER is increasingly discussed not only in connection with economic and social imperatives, but also with environmental sustainability.
- Interaction between **ecological and economic sustainability** might give a new impetus to BLER

References for further reading

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