

**Between decentralisation  
of collective bargaining and social pacts:  
France, Italy and Spain since the crisis**

**IREC Conference 2017  
BETWEEN THE CORE AND PERIPHERIES  
Warsaw, 7-8 September 2017,**

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# The interest of comparison F-I-E

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- some common features:
  - trade union pluralism (“Mediterranean model”)
  - sector-level collective bargaining
- But also some divergence:
  - unionisation rate (F,E), compensated by:
  - extension,
  - minimum wage,

# The IR systems compared

	I	E	F
representation model	single	dual	dual
<b>bargaining rules</b>			
legislative framework	support	+	+
rules for representativeness	agreed	legal	legal
majority rule	agreed	legal	legal
extension	courts	erga omnes	Ministry of Labour
minimum wage	-	+	+
<b>bargaining level</b>			
tripartite concertation	+/-	+/-	+/-
inter-industry	+	+	+
industry	+	+	+
company/workplace	+	+	+
bargaining coverage rate	80	80	95
N confed. + autonom. unions	3+...	2+3+...	5+2
unionisation rate	37	17	8
employers org. rate	56	75	75

# Modification of the power relations during the crisis

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- Modification of the equilibrium between State and social partners
- Modification of the equilibrium between social partners
- General weakening of trade unions:
  - Indicators:
    - Unionisation rate
    - Strike rate
    - Bargaining coverage

# Four common trends during the crisis

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1. Growing unilateralism
2. Pressure towards decentralisation (derogation)
3. New rules for bargaining procedures and representativeness
4. Social concertation under pressure

# 1: Unilateralism without concertation: legislation and external pressures

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- Austerity policies, budget restrictions
- social deregulation (labour market reforms)
- external interventions:
  - “**Country Specific Recommendations**” of the EU
  - “secret” **BCE letter** (I,E)
  - Troika « **Memorandums** » (GR, P, IRL)
- Aimed at:
  - diminution of employment protections,
  - diminution of labour costs, wage moderation
  - lowering of wage dynamics through:
    - decentralisation of collective bargaining
    - derogation (abolition of the favour principle)
    - Abolishment of indexation and lowering of minimum wage
    - freezing of wages in the public sector
- Supposed to support employment creation

## 2a: Pressure towards **decentralisation** of collective bargaining (derogation)

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- Nearly everywhere in Europe
- Ancient demand of the employers' organizations
- For a long time supported by the OECD, now by the ECB and the EU Commission
- Various forms : wildcat, State imposed or coordinated by the social partners
- Comparative studies (ILO and OECD) show:
  - No link to employment creation
  - Growing wage inequality through the lowering of bargaining coverage

## 2b: Three national configurations

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1. Legislation to allow more employer unilateralism and/or derogation: **Spain**
2. Legislation to allow derogation: **France**
3. Decentralisation and derogation coordinated by social partners (through central agreements): **Italy**



# 3: Converging rules for company bargaining

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	<b>Spain</b>	<b>France</b>	<b>Italy</b>
Right to participate in collective bargaining	Works council or representative union (at national level or with 10 % score at workplace level)	Union with 10 % score at workplace level; if no union delegates: possibility with WC or mandated employees	RSU, if not: RSA
Condition of validity of agreement	Majority vote in WC or negotiation committee	Agreement signed by unions which represent 50 % of the workforce (2017 Macron bill)	Majority vote in RSU; if agreement signed by RSAs, they must represent the majority of the unionized workforce; referendum at the request of a union which represents 30 % of the workforce

# 4: Divergent dynamics of concertation

## France:

- first phase: reactivation of tripartite concertation,
- second phase: Legislation without concertation and despite strong union opposition

## Spain:

- first phase: concertation,
- second phase: unilateral legislation,
- third phase: reactivation of central negotiations between the unions and the employers' organisations,

## Italy:

- first phase: unilateral legislation (Berlusconi),
- second phase: reactivation of central negotiations between the unions and the employers' organisations,
- third phase: renewal of State unilateralism (Renzi), followed by renewal of bilateral negotiations

# Italy (1):

## Agreements on representativeness

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- 2011 agreement Confindustria - union confederations
  - criteria for representativeness (right to bargain): vote + membership
  - rules for the validity of company agreements:
    - vote by RSU or signature by majority unions (membership),
    - possibility for referendum
- 2013 application agreement
  - rules for the validity of sector agreements:
    - signature by majority unions and referendum
- 2014 and 2017: further application agreements
  - Certification of membership and RSU
  - Non-strike clause

# Italy (2): controversies and agreements on derogation

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- 2009: tripartite agreement (without CGIL) allows derogatory company agreements
- 2010 Fiat Pomigliano agreement (without CGIL): wildcat derogation
- 2011: Berlusconi law: derogation by "proximity agreements"
- 2011: agreement Confindustria – union confederations: modifying company agreements with restrictive conditions and majority rule
- 2012: tripartite "pact on productivity" (without CGIL): company agreements on flexibility with fiscal support
- 2013 application agreement (with CGIL): possibility to negotiate with SMEs

# Italy (3): the reality of company agreements

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- Very few (lack of statistics): only in the big industrial companies
- Few « territorial agreements
- Coverage rate by company agreements in the industry sector:
  - 1990s: 64%
  - 2000s: 54%
- 2010-12: only 5% of the agreements were derogatory
- Big companies prefer *Cassa integrazione* (partial unemployment) to derogatory company agreements
- 2015: Renzi “Jobs Act”: restrictive conditions for CI

# Italy (conclusion):

## Voluntaristic IR model consolidated, but with limits

- Consolidations:
  - unionisation and coverage rate,
  - successful union resistance to derogation,
  - union unity recovered
- Limits:
  - Weakness of company-level bargaining,
  - difficulty to implement agreements on representativeness,
  - division inside CGIL,
  - tripartite concertation contested by government

# Spain (1):

## The 2010-2012 Reform

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- Regarding **derogations**:
  - 1994 law - derogations only authorised by sector-level agreements
  - 2012 Law - Widening of the possibilities of derogation for firms with economic difficulties (issues, conditions, etc.) and of unilateral employer's decision
- **Absolute priority** of the **company-level** collective bargaining agreements for the regulation of :
  - Based wages, wage supplements, overtime compensations
  - The schedule and the distribution of working time
  - Job classification

## Spain (2):

### Mitigated effects on bargaining dynamic

- Slight decrease in the annual number of agreements
  - Mainly at sector-level
  - Most of the new temporary derogation agreements signed by SMEs
  - Competitive agreements in large companies
- Heterogeneity at sector-level :
  - In industrial sectors: willingness of Eos to maintain a sector-level framework
  - In trade and services sectors: employers profit from new legal opportunities



# Spain (3):

## A difficult concertation

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- No reactivation of tripartite concertation
- Unions defend an organised decentralisation of collective bargaining
  - Fostering the negotiation of new *sectoral agreements*
  - Strengthening the *coordination* among the bargaining levels
- But a tough inter-sectoral bilateral bargaining, particularly on wages :
  - Signature of the III Interconfederal Agreement on Employment and Collective Bargaining (2015-2017),
  - Failure of the negotiation for its renewal in 2017

# Spain (4): Conclusion

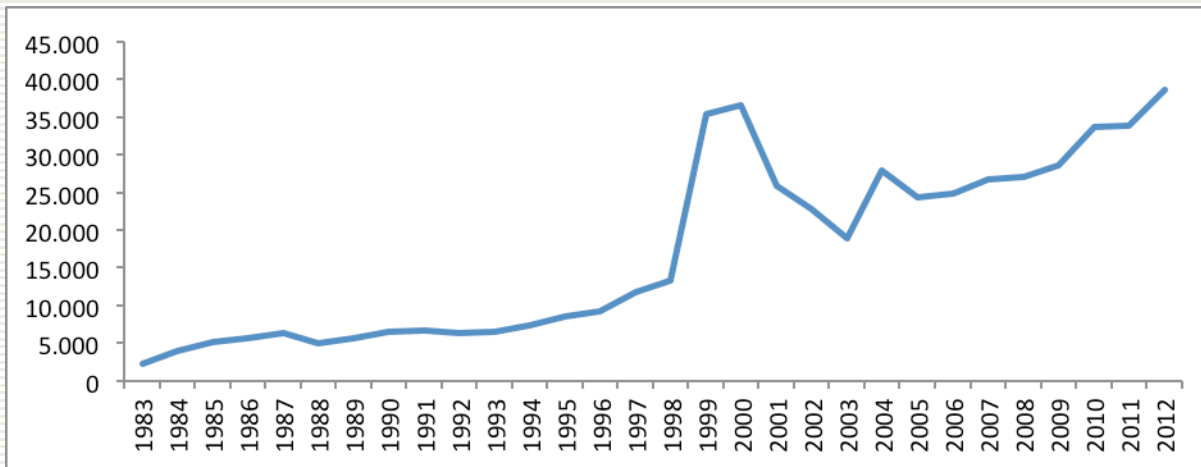
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- Limited effects of decentralisation
- Strengthening employers' power for unilateral regulation and derogation agreements of working conditions at a company level
- Risk of consolidation of a model of “disorganized decentralisation”

# France (1): The rise of company level bargaining

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Annually concluded workplace agreements 1983-2013

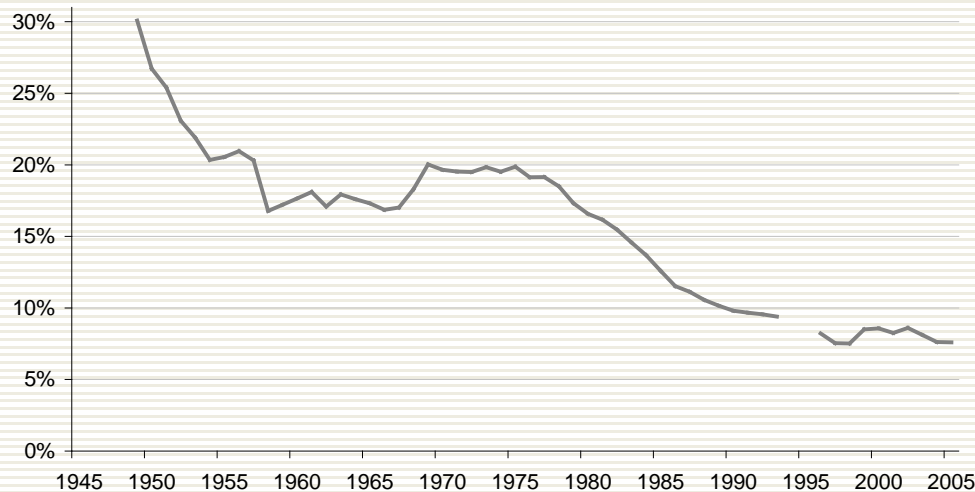


## France (2):

### Explanatory factors for the rise of company bargaining

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- Company-level bargaining favoured since 1982 by legal **obligations to negotiate** regularly,
- Change of **employers' strategies**: They discover that at the company level they can take advantage of the weakening of the trade unions - falling **unionisation rate**:



## France (3)

### The legal articulation of company/sector level

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- coexistence of sector and company level bargaining,
- articulation through favour principle (until 2004 unlimited)
- Since 2000: employers organisations seek to reverse hierarchy of norms through derogation

# France (4)

## Legislative reforms and projects 2000-2017

	employers claims 2000	“Common position” 2001 (without CGT)	Legislation 2004, 2008, 2013, 2015	El Khomri law 2016	Macron labour law bill 2017
derogation	From sector agreement and from law, except social public order	No derogation from sector agreement unless signatories decide otherwise.	2004: From sector agreement, unless forbidden by the agreement. Forbidden for: minimum wages, job classifications, supplementary social protection, and multi-company vocational training funds	From sector agreement, except social public order and “social collective order”. first step: only working time Second step: expert commission 2017-2018	New definitions for sector priority
Majority principle based on elections	-	At <u>sector</u> level: right to oppose for unions with “majority of numbers”. At <u>company</u> level: Sector agreement must choose between 50 % majority or right to oppose	2008: right to oppose for majority unions supplementary condition: 30 % majority 2013: 50 % majority for derogatory job protection agreements	50 % majority principle at company level; Minority union that has signed a 30 % agreement can ask for ratification by a referendum	50% majority for all subjects
Bargaining competence if no union delegates	Mandated employees or elected representatives	Sector agreement chooses between mandated employees and elected representatives	elected representatives, otherwise mandated employees	unchanged	negotiation with non-union representatives or referendum

## France (5) In the past: legal possibilities of **derogation not used** by the actors

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- 2004 Fillon law derogations:
  - Most sector collective agreements prohibit derogation
- 2013 employment protection law derogations:
  - Only 10 “job protection” company agreements signed
- Companies are reluctant to guarantee employment and “fair” distribution of sacrifices amongst the employees and with the shareholders

# France (6): The 2016 **El Khomri** labour law

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- adopted without prior consultation/negotiation (despite legal obligation since 2007 law),
  - Adopted without vote (procedure “motion of confidence”)
  - supported by CFDT, CFTC, employers’ organisations, right parties,
  - opposed by left parties and left wing of Socialist party,
  - strongly opposed by CGT, FO, and other unions which organize demonstrations, asking for the retreat of the bill,
  - criticized by two others (CFE-CGC, UNSA), asking for modifications,
  - opposed by majority of the population



# France (7):

## The 2017 Macron labour law bill

- legislation by government decrees (“ordonnances”) presented 31 August
  - based on framework law voted 2 August,
- no room for prior negotiations of the social partners,
  - social partner informed by a list of topics in June,
  - including topics withdrawn from the El Khomri bill in 2016,
  - formal consultation of social partners (separately),
  - common two-hours consultation on 150 pages decrees on 30 August,
- voted by Macron party and right parties
- opposed by the left parties (including PS),
- Union reactions:
  - strong opposition by CGT (mobilisation),
  - opposition by CFE-CGC and FO
  - “disappointment” by CFDT,
  - hesitation by CFTC.

# General conclusion

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Despite common challenges (crisis, external, legislation) and despite similar IR features: differentiated outcomes

- autonomy of IR systems and actors,
- different power relations according to moments and sectors
- Some common trends:
  - continuity prevails
  - Concertation under pressure
  - few use of derogation possibilities
- However: questions about the **future**:
  - Acceleration of reforms: future breaking point?
  - Differentiation companies/employers' organisations?
  - Unions: unity in Italy and Spain against climax of division in France?

# References

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- *Forthcoming 2017:*
  - DECOBA report for the EC
  - IRES report on social pacts in Europe
- All available on the IRES website: [www.ires.fr](http://www.ires.fr)