Is Sector-level Still Relevant for Employment Bargaining Relations in France?

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Numerous studies have focused on the sector -- historically the pillar of the French collective bargaining system. They have wondered about the characteristic features of this area of regulation and its evolutions (Jobert 2000); about the functions performed by industry-level regulations (Saglio, 1991); about the changing role of the sector-level in a context where, since the Auroux laws were passed, it is facing competition by the enterprise level as a norms-production space (Morin, 1996) or then again about the place of public action in the emergence and establishment of new sectors (Tallard, 2004). These studies have contributed to identifying three sets of factors central to the construction of sectors as bargaining level and to the development mode of the rules that prevail there: the economic or techno-organizational issues companies' activities are faced with, as well as the organization of labour markets and the "resources" necessary for their operation; the way stakeholders play their roles, especially employers, and the content of collective identities around which players organize; the role of the state, both on account of the collective bargaining rules of procedures it raises and owing to its economic policy or administrative action.

Since the mid-2000s, successive French governments have implemented their employment policies through social dialogue, and to do so, have favoured multi-sector bargaining as well as at enterprise level. Our paper questions how much room is left for sector-level collective bargaining under the strain of the new forms of employment regulation.

Sector-level wage bargaining, though it is in other countries at the heart of the foundations of contractual autonomy, has from the outset been framed by State intervention, through the minimum wage (SMIC), which turns it into very decentralized wage practices (1). The State has also been very active in the very development of sector-level bargaining, particularly in the early 1980s, and this action continues in a less compelling way (2). Finally, over the last two decades, the regulation of employment has become a major challenge for governments but they no longer rely so much on sector-level bargaining (3).

I - The establishment of industry-wide wage-bargaining: an old story

Compared with the other European countries, collective bargaining was set up belatedly in France (in 1950). In the following decades, the extension mechanism enabled all employees in a sector to enjoy the advantages, mainly at wage level, that had been negotiated by unions and employers’ organizations (see box).
Main Developments in collective bargaining: a "virtuous circle" fading away as a result of an early decentralization

Collective bargaining in France is set at three levels: nationwide, at sector level, and at company level. From the 1950s to the 1980s, industry-wide bargaining was the most common level at which collective agreements were negotiated; enterprise level bargaining only took place in large companies. Since the Auroux Act of 1982, annual bargaining is compulsory in any firm hosting a one or more trade unions, even though no pay settlement is required. Despite the steady development of common agreements, legislation has still remained the main source of regulation today. This pre-eminence is of course attributable to France’s well-known republican tradition according to which the government is responsible for protecting workers and their individual rights. The key role of labour law in collective bargaining adds to the outcome of a long-standing mutual distrust between employers and trade unions. In order to compensate for the weakness of bargaining regulations, a specific procedure was implemented in 1936: since then, the contents of sector-level agreements are binding all the employers in a similar activity, with or without registered membership with a professional association. This extension procedure helps to offset the weakness of employee and employer representation as well as the employers’ lack of incentives to bargain. In the 1950s and the 1960s, such a mechanism, along with the technical support provided by the Ministry of Labour through joint consultative committees, ensured the rapid diffusion of locally-bargained benefits to the entire workforce within industries. Later on, the benefits from collective negotiations spread out on a macroeconomic scale at variable speed, depending upon the employers’ strategy at the time, among other things. The Collective Labour Agreement Act of 1971 legalized the triple space where collective bargaining takes place: the multi-industry level, sector level and company level, in descending order of priority. The social advantages attained at multi-industry level take precedence over any inferior content of the latter two. In other words, the most favourable clause shall prevail over any other one that is less favourable from the employee’s perspective (derogation in mejus or 'favourability clause').

In order to gain flexibility, to get around the domination of sector-level agreements, and eventually get rid of them, MEDEF has been advocating since 2000 a type of firm where the employee's status has to be tied to a collective contract, with or without trade union mediation. In July 2001, four trade union confederations -- CFDT, CFE-CGC, CFTC and CGT-FO, and the three employers' organisations agreed on a 'common position' setting out their wishes towards reforming the rules governing collective bargaining. The central plank of this proposed reform is the introduction of the 'majority principle'. This text did not contain a firm decision on the issue of the hierarchy of norms, which was demanded by employers’ associations. The overhaul of collective bargaining, also desired by some trade unions, finally occurred in 2004. The government thought that the new legislation merely transposed into law the 'common position' whereby, on the crucial matter of the hierarchy of norms, the government’s stance has undeniably changed over time. This is the main reason why they oppose the new legislation.

The May 2004 Act, amended by the August 2008 law, introduced four main reforms:

1. electoral success is required first, before trade unions can take part in collective bargaining. The minimum threshold at enterprise level, set at 10% of the votes in work councils elections, took effect in 2010 at firm level and is expected to be applied to other levels by 2013;

2. a majority criterion has been introduced: any agreement takes effect once unions have garnered 30% or more of votes at the latest elections and only if that was not blocked by the majority of unions at the level concerned;
3. Plant-level agreements could waive higher-level bargaining agreements, even towards less favourable provisions for workers, except in four areas: the minimum wage, classifications, vocational training, and supplementary social protection. At the same time, three provisions allowed to frame -- or actually to limit -- resorting to such waivers. First, the law granted the majority organizations more opposition possibilities. Second, industry-level negotiators could ‘lock-up’ other topics and exclude them from company-level waivers. Third, waivers could eventually be cancelled by an industry-level joint committee. In the end, this arrangement reinforced the decentralization process of the collective bargaining system;

4. Bargaining possibilities were extended by law to companies without union representatives.

It is tempting to say that nothing has changed, because reading the latest balance sheet collective bargaining highlights that wages are still the first bargaining theme at industry level. Actually, though, the content of what is being negotiated under the theme of wages as well as procedures for determining actual wages were profoundly transformed.

At industry level, trade unions and employers' organizations have always negotiated the conventional minimum values, which correspond to the wage below which an employee with a given skill level may not be compensated -- not actual wages, as is the case for example in Germany. Therefore, sector-level actors are not the only stakeholders regarding wage policies. Agreed union wages for workers and employees, that is to say those negotiated at industry level, are concentrated around the minimum wage. Increases granted to the lowest qualification levels, though often higher than those offered to higher levels, often only achieve compliance with the minimum wage (SMIC in France)\(^1\), which enables companies to juggle with bonuses and other parameters to adjust their wages to the legal constraint. This underlines the weight of the state mechanism of wage settlements to define hierarchies and wage developments. Such a mechanism of wage settlement reflected at first a "virtuous circle" that explains the similar patterns of real wages and productivity evolution over time (Delahaie, Husson & Vincent 2013). The importance of the firm in determining wages has increased since the mid-1990s and has considerably weakened the leading role of sector-level agreements. The erosion of the driving force conferred to sector-level negotiations on real wages rather induces a tightening of bargained wage, by crushing the wage hierarchy down, close to the SMIC (Delahaie, Husson & Vincent 2013).

However, the sector-level collective agreement remains the place for determining wage hierarchies, as it serves as a referent for extending increases throughout the wage scale. The regulatory capacity of sector agreements is no less highly variable (Jobert 2003). In some industries, the sector's regulatory function is still central, as it creates a real proximity of wage situations throughout all companies (construction, oil but also in industries composed of very small businesses like auto-repair shops). In most other areas, particularly in the major one –

\(^1\) In 2012, the percentages of increases granted at sector-level remained similar to increases in the minimum wage. Despite the obligation provided by the 22 March 2012 law to open sector-level wage negotiations within three months so long as the grid of “conventional minimum wages” has at least a lower coefficient than the SMIC, 15% of the 300 bargaining sectors covering more than 5,000 wage-earners still posted, in June 2012, a grid with at least one lower coefficient than the SMIC (see Bilans et rapports. La négociation collective en 2012, Paris, Ministère du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue social, 2013).
metal sector -- trade union capacity to provide strengths in large enterprises has enabled the extension to the smallest ones of part of the employment status they have bargained for. This “virtuous circle” between enterprises and sector is no longer insured, what with the decentralization trend of bargaining observed since the late 1980s. Henceforth, where wages are concerned, large companies seek to negotiate minimum wages at sector-level to preserve some leeway on the actual wages they practice, either through company-level negotiations, or for the implementation of individualized compensation (profit-sharing, employee savings...). By the early 2000s, besides, a trend towards complexifying and diversifying remunerations emerged, which has replaced across-the-board wage increases and brought about a form of wage management whose purpose is to adjust labour costs and offer incentive for higher performance (Barreau, Brochard 2003; Castel, Delahaie & Petit 2011). These individualizing devices may themselves be subject to negotiation in the enterprise but a significant difference may arise between agreements signed in leading companies and the content of the corresponding sector agreements. This erosion of the sector-level bargaining as a result of the decentralization of bargaining towards company level and in the current context of wage moderation is not specific to France, for that matter (Delahaie, Pernot, Vincent 2012).

In 1993, François Sellier put forward the thesis that company-level negotiation was the centrepiece of the French industrial relations system. The changing patterns of wage determination has gradually delineated the coupling between the central level -- where the State acts a referee on the evolution of the SMIC --, and the company level, where bargaining has all the more easily become a way of life to employers, since the balance of power is favourable to company managements. Such priority given to the enterprise is now tearing apart solidarity among workers in the same industry, and hinders extension to all of past bargained payroll conditions.

II - Strengthening sector-level bargaining: a dynamic between public policy and employers' organizations

In France, sector contours for bargaining are essentially determined by the combined actions of employers' organizations and the State's, as unions are confined to the role of mere bystanders in the process. Indeed, the government deploys a two-tiered action plan: through the administration's discretionary power in determining the quality of a representative employers' organization for sector-level bargaining, and by means of the criteria it retains to validate collective agreements field of application, when it comes to extending them. In fact, the analysis of public action in establishing the boundaries for sectors-level bargaining makes it possible to trace the choice made since the beginning of that period: to turn this level of bargaining into one of public action vectors.

The proliferation of sector-areas for bargaining

There is a general consensus today that the French bargaining coverage rate, 90%, is among the highest in OECD countries while, in the early 1980s, it never exceeded 80 %. Taking advantage of the 1981 reformist political change, in line with a series of laws aimed at developing employees' rights, a strong impetus was given towards extending bargaining coverage. This generalization process of collective bargaining coverage was based on the
labour administration's deliberate policy, which is now constrained by the weakness of some of the new employers’ organizations and the latter's uphill struggle to emancipate themselves from their tight dependence vis-à-vis the labour administration².

More recent work on the construction of new areas of bargaining (Dressen, Mias 2008; Delignières 2007) do not contradict these findings but underline a less proactive multi-stakeholder public policy, not limited to the Ministry of Labour, less determined, but a multifaceted one. By resorting to multiple cognitive devices financed in part by public funds, namely, prospective studies on changes in employment and skills; incentives to implement employment observatories; expert reports on the construction of diplomas repositories or then again economic expert reports, employers’ organizations exploit public action to their strategies advantage. The request of having a representative of the labour administration -- acting as a legal and social conciliation expert -- to provide assistance in writing and negotiating the collective agreement is one more step in that direction. These studies also show that, while trade unions are involved in monitoring the implementation of these devices, employers' organizations have become public officials and experts' privileged interlocutors.

The employers' sector organization as one of public action's lever

In the 1990s, public policies designed to encourage the development of vocational training supported by contracts with employer's sector organizations also intended to turn sector-level bargaining into intermediation levers for public policies (Besucco, Tallard, Lozier 1998; Brochier, Lecoutre 2000). After an initial period of direct contracts with companies or with territorial economic groupings, the choice was made to sign contracts primarily with employers' sector organizations so as to reach SMEs. These organizations have reaped benefits in terms of legitimacy and have therefore been able to consolidate their training schemes. During the 1990s and 2000s, changes in these devices materialized into joint bodies for monitoring employment and training being more tightly associated to the implementation of these policies. As a result, both employers and unions’ stakeholders have been able to acquire expertise in terms of trades and qualifications.

In more recent years, to contain the effects of the 2008 crisis, these contracting policies took the form of framework agreements binding the employers' organizations with the State and the joint agencies in charge of collecting the vocational training tax. Analyses of these framework agreements show that, beyond improving short-time working devices, employers' sector organizations are actual relays for vocational security policies (Baraldi, Durieux 2013). State aid aims to strengthen the engineering capabilities of joint bodies for vocational tax collection, so as to improve these institutions' cognitive resources. Although these agreements are presented to the sector-level joint bodies for monitoring employment and training, they result in the marginalization of trade unions, since the latter have little means to intervene at this stage. However, these agreements do have an innovative character but only at large industries level, such as metal working industry. In the other sectors, the same dynamic policies can be found as the ones deployed in the 2000s, exacerbated besides by efforts to

² In most of these sectors, unions and employers’ organizations keep negotiating in committees chaired by the Labor administration, and the SMIC repeatedly catches up with their minimum wage grid.
achieve greater coherence between an anticipatory approach and training strategies. While this policy facilitates access to a number of devices, it also aims to turn the sector-level bargaining into the "one institution available to the State to enable it to implement its anti-crisis action plan" (Baraldi, Durieux 2013: 147)

These agreements are little binding, which raises questions asked about their real scope -- beyond displaying government institutions’ intentions to secure jobs and the employers’ sector organization's vitality. In the same way as the boundaries set for bargaining fields discussed above, don't these agreements also betray the heterogeneity of employers' sector stakeholders? Indeed, the former manipulate public action in favour of their reinforcement strategy while the latter prove to be dependent on it to merely exist.

III - A weak legitimacy of sector-level bargaining regarding employment

The matter of employment has dominated multi-sectoral negotiations in recent years: no less than 19 agreements “resulting from or affected by the crisis” have been signed between January 2008 and October 2011 (Freyssinet 2011) concerning labour market operations, GPEC, short-time working, youth employment, training... and that issue is also rampant in company negotiations. In such a context, one may wonder about the consistency of the regulatory space of the sector-level in terms of employment.

Sitting on the fence between the multi-sectoral and company levels, industry-wide bargaining is struggling to find its place

Since the issue of employment has been governments’ major concern, that is to say since the early 2000s, legislative changes have made bargaining a key tool for the implementation of employment policies. Multi-sectoral social dialogue has existed since the early 1970s, with various forms of articulation between the law and bargaining. The 1970s were marked by a number of multi-sectoral agreements translated into law and providing an improvement for employees, especially as regards job-security and vocational training. Alain Supiot (1996) has coined the term “legislating bargaining”. With few exceptions3, the following two decades were marked by the absence of centralized bargaining because employers refused to interact at this level: in the 1980s, they wanted to show their opposition to left-wing governments; in the 1990s – at least until 1997, when a left-wing Prime Minister left returned to power – because employers’ organizations rely on friendly governments to reform according to their own wishes.

Multi-sectoral bargaining made a forceful comeback in the early 2000s, with a new articulation between the law and negotiations. Successive governments showed a willingness to bargain with social partners before legislating in the field of labour relations. This consultation became mandatory with the 2007 Act and, as of the 2008 crisis, it has focused on employment and labour market reform. The January 2013 national multi-sectoral agreement (Accord national interprofessionnel, ANI) is a case in point, though it was signed by only three trade unions (CFDT, CFTC, CGC), while the other two were vigorously opposed to it

3 It is mainly in the field of joint management of social protection bodies that, all along that period, multi-sectoral agreements have been signed: unemployment benefits, supplementary pension rights, etc.
(CGT and FO). From now on, clearly, the stabilization of a type of relationship between the State and social partners is occurring at the heart of social regulation and it can be compared to the “social pacts” implemented by other European countries in the early 1990s (Pochet, Fayertag 2001). However, two conditions are still lacking: either side’s ability to ensure homogeneity in its positions, because the current trade union division cannot allow it; and stakeholders’ autonomy in relation to the State is yet to be ensured (Lerais, Pernot, Rehfeldt & Vincent 2013).

Bargaining on employment, however, is a recent practice at firm-level, where it failed to develop until the second half of the 1990s (Katz 2007). Company level bargaining then became a vector of public policies for maintaining employment, particularly regarding the expected impacts of bargaining on the reorganization and reduction of working time or even of bargaining focused on restructuring prevention and anticipations. As of 2003, legislation created the method agreements allowing to bargain on collective redundancies procedures at company-level, and especially, since the 2005 law on social cohesion, when enterprise-level bargaining became a way of managing employment in the company – public authorities’ ideal mode of industrial relations regulation (Fabre 2011). Trade unions are encouraged to participate in anticipating economic changes and their impact on employment as expected by company managements. According to this “commitment” logic, described by C. Didry and A. Jobert (2010) in their study of method agreements, managements and unions are developing common conceptual tools, sharing diagnostics and eventually a particular perspective on employment. That same logic can be found in bargaining on employment that incorporates GPEC, training and internal mobility dimensions (the disabled, the elderly, restructuring etc.). These negotiations are often the result of powerful government incentives. This is called “negotiated public action” (Groux 2005)

Managing employment – an intrinsic element of companies’ human resource management – has been developed by managements, and then admitted to bargaining: it remains a managerial initiative, in the form of managerial social dialogue (Groux 2010). Within the same logic, since the beginning of the crisis, opportunities have been offered to companies experiencing financial difficulties to derogate from sector-level provisions through competitiveness and job-safeguard agreements. Major automakers in particular have seized that opportunity and company-level bargaining is enjoying a new level of growth.

In the implementation of legislative provisions governing bargaining, the sector-level is taken into account in its subsidiary role only, to cover SMEs that had not engaged in bargaining. Somehow, this echoes employers’ organizations’ role as corporate service providers, which is their “core business”, and this consequently becomes important at industry level, too. That role, precisely, has become very important in vocational training matters.

*The sector-level’s role is focused on training.*

Since the 2000’s, training has often been the second major theme of sector-level bargaining – after wages. Despite this prominent place in quantitative terms, the situation actually paints a mixed picture. The articulation between multi-sectoral bargaining and the law has impacted this domain since its founding in 1970-1971 and until today. This two-fold bargained and
legislative source of norms-production in this area has brought about representations that have turned CVT (continuous vocational training) into the main locale where a real joint system has been developed. From the outset, however, training has been considered by employers’ organizations as one of entrepreneurs’ management prerogatives. Accordingly, that joint system is under employers’ hegemony, whether in joint multi-sectoral bodies whose secretariat is held by the main employers’ organization, or then again in joint sector organizations for collecting and managing the payroll tax. Within this logic, employers’ sector organizations claim a leading role in driving the joint system, whether in the working of joint sector commissions for monitoring employment and training, or in bargaining on training (Tallard Tushzirer 2011). Sector-level negotiations have been numerous since 1984, as various devices have introduced periodic bargaining at this level and because most multi-sectoral agreements have imposed their own application in sector-level agreements. Within this dynamic, the latter multiplied in the two years following the signing of a multi-sectoral agreement, by periodically placing training at the top of the bargaining agenda. Analyzing these sector-level agreements tends to show that this is dependent, little innovative bargaining, often dominated by management provisions and imposing weak constraints on enterprises (Guilloux 2000). Bargaining conducted within the dynamics of the 2009 device does not question the diagnosis of industry-level bargaining allegedly “subservient” to multi-sectoral bargaining (Luttringer, Willems 2010). More than half of the agreements signed in 2011 and 2012 are procedure-agreements aiming to restructure joint bodies’ operations following the restructuring imposed by the government.

However, due to the activities of institutions that are related to it, training is one of the pillars of employers’ sector organizations’ operations in business, an important source of their legitimacy, especially in their corporate services functions. The resources collected by these institutions are geared towards priorities that are defined more or less jointly according to occupational sectors and in any event they reinforce the sector and its stakeholders’ identity. Investment in training, particularly thanks to the presence in many joint (or tripartite) national or regional bodies is considered by employers’ sector organizations – representing service activities and that are in search of identity or having an image problem – as a means of promoting the interests of their profession, both within the main national employers’ association and with governments or regional authorities. Finally, defining qualifications – supported by the activity of joint committees for monitoring employment and training or by the operations of expertise public bodies – is a powerful vector fostering the construction or reinforcement of identities; besides, it fostered the emergence, at employers’ associations’ initiative, of new bargaining fields, especially in services.

But with the development of the theme of lifelong training, bargaining on training tends to become one chapter of broader negotiations on expectations about employment, resulting in gradual annexation of this field of bargaining to that of employment, in particular through GPEC or older worker’ employment bargaining, or then again negotiations on intergenerational. On these issues however, sector-level collective bargaining is struggling to find its place. Over the past three years, no more than 5 or 6 sector agreements have been signed per year over the GPEC, despite public orders as to the three-year bargaining provision
on this issue. Sector-level agreements on older workers’ employment are slightly more numerous because, due to more stringent laws, they substitute for company-level bargaining. This substitution role is particularly important in sectors where SMEs are numerous, but the content of agreements is rarely innovative and merely repeats the legal framing. Despite equally binding injunctions, sector-level intergenerational bargaining has not been very successful. On the whole, industry-wide bargaining on employment cannot flourish. In this area, the sector-level rather plays the role of equipping bargaining on training through the development of institutions such as employment and crafts observatories. While these joint institutions do, theoretically, exist in all sectors, they are really active only in a limited number of them.

Conclusion

Although it has earned a degree of centrality in French industrial relations, sector-level collective bargaining has never reached integrative capacity and the normative significance it can boast in other European countries.

In a changing environment, and in a context where employment is a major public problem, the sector-level bargaining is hard put to it to find its place. Its traditional role now seems to focus on bargaining at company-level and its legitimacy is currently based on the institutions that have developed around training or anticipating the way jobs are evolving. Despite the joint-managed nature of most of these institutions, employers’ sector organizations play a dominant role and use them to deploy their action to serve enterprises. Recent reforms of vocational training tend to undermine these institutions’ autonomy, highlighting their characteristics as vehicles of public employment policies. Sector-levels bargaining today seem to be taken in a broader movement that delegates to social stakeholders the development of norms-based enhanced social dialogue. Therefore, the sector-level has become one place among others for the promotion of it.

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