International seminar on Comparative Labour Law

"The binding effect of Collective Labour Agreements in France"

BERNHARD Eléna
DANGREAUX Auriane
GARCIA-DAGER Nathaly
HOFFMANN Antoine
MESSINA Christopher

Faculté de **droit**, de **sciences politiques** et de **gestion**
Université de Strasbourg

Summary

Part 1 : The binding effect of collective labour agreements

The Constitution in force in France dates from 4 October 1958. The Constitution incorporates :

- The Declaration of the Human Rights of the Citizen of 1789 ;
- The preamble to the 1946 Constitution ;
- The rights and duties set out in the 2004 Environmental Charter.

Collective bargaining does not appear in the Constitution currently in force in France. Nevertheless, it was deduced from a specific article in the preamble to the 1946 Constitution.

Indeed, with regard to collective bargaining and the Constitution, the text we are interested in is the preamble to the Constitution of 27 October 1946. Two articles are fundamental to collective bargaining :

- Article 6, which states that “every man may defend his rights and interests through trade union action and join the trade union of his choice” ;
- Article 8, which states that “all workers shall take part, through their representatives, in the collective determination of working conditions and in the management of undertakings”.

Thus, French collective bargaining was deduced from the eighth paragraph of the preamble to the 1946 Constitution.

This article allows workers to participate in the collective determination of "working conditions".
It does not refer to "their" working conditions, but rather to the working conditions. This makes it possible to extend the protection of workers as far as possible.

However, the fruits of collective bargaining, that is, agreements, are not formally protected by the Constitution.

1. Collective labour agreements : criteria

Collective agreements are concluded between an employer or group of employers and a union or group of unions representing workers.

They aim to regulate working conditions and employment within a specific sector or a particular company. They are mandatory for companies based on their APE code and activity.

Collective agreement used to be a case of negotiating for acquisition (importance of the labour code), but now it's more a case of negotiating for the company's competitiveness.

They adapt the provisions of the Labour Code to the specificities of each sector.

Three types of agreements exist:

- ordinary collective agreements
- extended agreements (following a ministerial extension order)
- and enlarged agreements (following an enlargement order).

These agreements cover working conditions, training, social guarantees, and adapt certain rules of the Labour Code.

Each industry branch has its own collective agreement, which may be more or less protective than the Labour Code. The Labour Code reform of 2017 revised the balance between company and branch agreements on several subjects such as leave and bonuses.

The collective agreement plays a crucial role in the employment contract, covering aspects such as salaries, leave, training, contract termination, end-of-career or dismissal indemnities, and many others.

Collective agreements apply to all employees of a company, and employers have specific obligations regarding their communication and application. Employers must inform their employees of the applicable agreement and comply with its provisions. In case of multiple agreements, identical clauses in each agreement define the applicable agreement.

Each collective agreement defines its scope of application. This can include all employers and employees in a specific sector (sectoral collective agreement), a particular company (company collective agreement), a given geographical area (territorial collective agreement), or a specific profession.

It is also important to note that there is no negotiations in the public sector.

2. The absence of difference between members and non-members of contracting parties

In French law, collective agreements have an *erga omnes* effect. As such, the texts negotiated by social partners apply to all employees within the scope of the agreement, whether or not they are members of the signing unions.

When a collective agreement applies to a company, all its employees, whether they are bound by a fixed-term contract, a trial period, an indefinite-term contract, etc., are concerned. A collective agreement has a binding nature, implying its application by all signing parties.

The collective agreement applies to individuals who have not signed it. This includes current and future members of signing groups, as well as non-signing groups adhering to the agreement (Labour Code, Article L. 2262-1).

3. The binding effect of the collective agreements

The binding effect of the collective agreement depends on its scope. Thus, concerning negotiation at the industry level, the collective agreement applies to all employers within the professional and geographical sector specified in the agreement. Regarding negotiation at the company level, the provisions of the collective agreement apply to all employees of the concerned company.

The application of the agreement is mandatory for the signatories of the agreement, for the members of the organizations or groups that signed it, for representative trade unions, for the employers' association, for individual employers who adhere to the agreement, for employers or associations adhering to a signing employers' association, and for employers resigning from a signing association, they remain bound by the

agreement concluded before their resignation, as well as by subsequent agreements after resignation when they are merely implementing the agreement.

Collective agreements and conventions are fundamentally (and legally) contracts. Logically, they should therefore have a relative effect, meaning they should only affect the parties who signed them. However, the legislator has granted them a broader effect. These contracts not only affect the signatories but also all employment relationships covered by their scope.

4. Duration of collective labour agreements (Labour Code Art. L. 2222-4)

- **Beginning of application**

The collective agreement applies from the moment the employment relationship occurs in a company where the employer is either a signatory, adherent, or member of a signing or adherent group to the agreement and which belongs to the territorial and professional scope of the agreement.

- **End of application**

In French labour law, the binding effect and duration of collective labour agreements are governed by specific legal provisions, sometimes complemented by conventional provisions.

Thus, these agreements typically have a specified duration agreed upon during negotiation, which can vary depending on the terms stipulated within the agreement itself.

This duration can be determined, undetermined, and if nothing is specified, the duration will be a maximum of 5 years. The French standard was for an indefinite period, and in order to stimulate collective bargaining, it was changed to a definite period (if nothing is specified).

The agreement ends and there is a mechanism to ensure continuity during the negotiation period.

- Once a collective labour agreement expires, its provisions may remain binding until a new agreement is negotiated and implemented, if provided for in the collective agreement; otherwise, the agreement ends, along with its effects.

- However, in the case of termination of the collective labour agreement, the agreement continues to have effect for all employees until the entry into force of the agreement that replaces it or, failing that, for a period of one year from the expiration of the notice period, unless a clause provides for a longer determined duration.

- When the agreement that has been terminated has not been replaced by a new agreement within one year from the expiration of the notice period, employees who benefited from it during the notice period retain a remuneration whose annual amount cannot be less than the remuneration paid during the last twelve months, under the terminated agreement and their employment contract.

This ensures continuity in employment regulations and collective bargaining processes while allowing for adjustments and updates through negotiation. Similarly, it ensures the retention of benefits, in terms of remuneration, obtained through these agreements for the benefit of employees.

5. Sectoral agreement and company agreements

The law sets out the different standards for articulation.

- Sectoral agreements

In French labour law, sectoral agreements, negotiated between employers' organisations and employee representatives within an industry, establish standards such as wages, bonuses, working hours, and other conditions applicable to all companies within that sector.

To determine the sector we have to take an interest in the activity actually carried out by the company, and look at the collective bargaining agreement that will apply territorially or according to the employee's category.

These agreements serve as a fundamental framework, typically ensuring minimum rights, in addition to legal standards, for employees in the relevant sectors.

- Company agreements

Company agreements, on the other hand, are negotiated directly between employers and employees (or their representatives) at the company level, allowing for adaptations and customisations to meet the specific needs of the company. All of this is expected to be done within the framework of sectoral agreements.

⇒ **Thus**, sectoral agreements set minimum standards, and company agreements can provide more favourable conditions for employees, as long as they do not compromise the minimum requirements established by the sectoral agreement or where the law provides for the primacy of the company agreement over the sectoral agreement.

Therefore, while company agreements offer flexibility and customisation, they operate within the hierarchical structure of sectoral agreements, with the latter prevailing in case of conflict unless the company agreement provides more advantageous conditions for employees in certain aspects.

Overall, this hierarchy aims to ensure a balance between industrial standards and the specific needs of companies, promoting fair work practices across different sectors while allowing for flexibility and negotiation at the company level.

⇒ The hierarchy of standards was overturned by the Macron ordinances of 22 September 2017. The aim was to promote collective bargaining closer to companies, by giving primacy to company agreements over sectoral agreements (with some exceptions).

6. Extension Procedure

When extended by the Minister responsible for labour, following an extension procedure, the collective agreement acquires the status of "extended".

It then becomes mandatory for all employers and employees in the sector, regardless of their union affiliation.

However, certain employees, such as sales representatives (VRP) for example, may be excluded from the scope of the agreement due to their specific status.

Almost all sectors of activity and the companies operating within them are covered by a collective agreement, regardless of the number of employees.

7. Nullity of agreements or their provisions

In the case of French law, collective Labour agreements or their provisions are not inherently void "in se."

Instead, they may be subject to declaration of nullity by a competent authority, such as a court, if they are found to contravene applicable laws, public policy, or other legal requirements. Thus, while they are not automatically void, they can be declared void through a legal process if they are found to be invalid for any of the reasons outlined in French Labour law.

- The reasons for which collective Labour agreements or their provisions may be declared void in France are as follows:
    1. **Violation of Binding Laws:** Collective Labour agreements must adhere to the current national and European laws, such as those regarding non-discrimination, minimum wages, working conditions, etc. For instance, a discriminatory provision in a collective Labour agreement, which treats employees differently based on their origin, gender, religion, sexual orientation, or other protected characteristics, would contravene the law and could be declared void.
    2. **Lack of Legality**: Collective Labour agreements must be concluded by unions or employee representatives with the legal capacity to negotiate on behalf of workers. If an agreement is signed by entities not legally authorized to represent workers' interests, it could be deemed invalid. Lack of legality can arise when collective Labour agreements fail to meet the representativity criteria required for validity. Indeed, according to French Labour law, only unions that meet representativity criteria can sign collective Labour agreements on behalf of workers. These criteria include:

Electoral audience : The union must have obtained a certain percentage of votes in professional elections to be considered representative. Typically, this involves a minimum threshold of 10% to 30% of votes depending on the level of negotiation (company, sector, national).

- **Seniority and independence :** The union must have had legal existence for a certain period and must not be controlled by the employer. It must be free to defend workers' interests without external interference.

- **Respect for democratic values :** The union must operate democratically, with transparent decision-making procedures and fair representation of its members.
- **Respect for republican values :** The union must not promote ideas contrary to the values of the French Republic, such as discrimination or violence.

If a collective Labour agreement is signed by a union that does not meet these representativity criteria, it could be considered invalid due to lack of legality, and therefore be subject to a declaration of nullity by competent authorities.

3. **Failure to Comply with Formalities:** Collective Labour agreements must adhere to the legal procedures outlined in the Labour Code, particularly regarding negotiation, signature, notification, and registration. Failure to comply with these formalities can render an agreement invalid, even if its content is compliant with the law. The required formalities include negotiation, signature, notification, and finally registration. Collective Labour agreements must result from negotiation between employer and employee representatives, typically unions or elected employee representatives.
    - Once negotiation is concluded, the agreement must be signed by all parties involved, including employer and employee representatives.
    - Subsequently, the signed agreement must be notified to the competent authorities, usually the Labour services of the Regional Directorate for Business, Competition, Consumption, Labour, and Employment (DIRECCTE).
    - Finally, the agreement must be registered with the relevant authorities, which makes it officially enforceable against third parties and courts in case of dispute.

Non-compliance with any of these steps can render the agreement invalid, even if its content is legally compliant. Thus, adherence to the legal procedures outlined in the Labour Code is essential to ensure the validity of a collective Labour agreement in France.

Part 2 : Extension of collective agreements by public authorities (Labour Code Arts. L. 2261-15 to L. 2261-31)

The normative effect of a sectoral agreement, an industry or multi-industry agreement, concerns initially only the companies that are members of the signing employers' associations within their scope.

In this context, it would therefore be sufficient for an employer not to join any employers' association in order to escape the social obligations that apply to their competitors if they are members of a group signing an agreement or a sectoral convention and fall within its scope. This would ensure a competitive advantage at the expense of its staff (who would not benefit from the collective status provided by the convention).

It is to avoid these distortions of competition and ensure equality among employees regarding the collective status governing the same professional sector that the French law of June 24, 1936 introduced the technique of 'extention of collective agreements'.

1. Extension of collective agreements

This technique consists of making a sectoral agreement, an industry or multi-industry agreement, mandatory for all employers and employees within its territorial and professional scope, not just the signatories or members of a signing organization. The extension is decided by the Minister of Labour, who has a genuine power to decide its opportunity. The mechanism thus allows for state intervention in the field of collective bargaining.

a. Who can request the extension ?

Extension can be requested by a representative employers' association or trade union within the scope of the convention or agreement. The extension procedure can also be initiated by the Minister of Labour, following reasoned advice from the National Commission for Collective Bargaining, Employment, and Vocational Training.

The minister carries out a control. He may extend clauses subject to conditions, exclude clauses from the extension, and also refuse extension for reasons of general interest, particularly for excessive infringement of competition rules or in light of employment policy objectives.

In certain situations, and according to a specific procedure, the Minister responsible for labour may, considering the general interest attached to the restructuring of industry-wide unions, refuse to extend the collective agreement after consulting the national commission for collective bargaining**.**

b. Requirements for a collective agreement to be extended

- **Negotiation of the collective agreement in a special joint committee**

To be extended, first and foremost, the agreement must have been negotiated and concluded in a joint committee between the employers' associations representative in the scope of the text, and the trade unions also in the relevant field.

The agreement may also have been negotiated in a joint mixed committee, meaning with a representative of the ministry presiding over the committee, at the request of one or more representative employers' association and trade unions, or at the initiative of the Minister of Labour itself.

- **Mandatory clauses on certains topics**

The sectoral agreement concluded at the national level must contain clauses regarding the determination of negotiation and conclusion rules, as well as clauses relating to certain subjects such as the exercise of trade union rights, essential elements for determining professional classifications, paid leave, among others, as provided for in Article L.2261-22 of the Labour Code.

- **The absence of opposition from representative and majority employer organizations**

Furthermore, to be extended, the sectoral agreement or the industry or multi-industry agreement, must not have been opposed by one or more recognized representative employers' associations in the relevant field. This opposition, to be valid, must occur within one month from the notification of the extension.

c. The effects of the extension of a collective agreement

The minister of Labour's order of extension has the effect of making the provisions of an industry agreement or multi-industry agreement mandatory for all employers within its professional and territorial scope, whose employers' associations are representative at the date of the agreement's signature.

The extension of the effects of the agreement is done for the duration and under the conditions provided by the agreement in question. The extension order becomes void from the day the agreement it extends ceases to have effect.

The Minister of Labour may also, at the request of one of the interested representative organizations or on his own initiative, repeal the extension order to terminate the extension of the agreement, or certain of its provisions, when it appears that the texts in question no longer respond to the situation of the sector or sectors within the considered scope; he may also repeal the enlargement order of an agreement for all or part of the professional or territorial scope mentioned in that order.

2. Widening of collective agreements

The minister has also been endowed with an additional instrument: the power to broaden the scope of application of a convention already extended within its field of application, to a different professional or geographical scope where there is a persistent impossibility to conclude a convention. Unlike extension, this 'widening technique' primarily serves as a threat, with the possibility of being subjected to a convention negotiated elsewhere intended to encourage social partners to establish their own convention.

This technique is only possible for the collective agreements that have already been extended.

a. Criteria to decide de widening of a collective agreement: the presence of identical economic conditions.

The Minister may make mandatory, in the considered professional sector, all or part of an industry agreement already extended to another professional sector. In this case, the professional sector subject to the widening order must present identical conditions, concerning the jobs performed, to those of the sector in which the extension has already occurred.

b. Who decides the widening of a collective agreement ?

The widening can be initiated either at the request of one of the interested representative employers' associations or representative trade unions, or at the minister of labour's own initiative. However, it is the minister who has the authority to decide and order the widening.

c. Who can oppose the widening of a collective agreement ?

Members of an organ called "The National Commission for Collective Bargaining, Employment, and Vocational" Training may oppose the widening of an agreement by a majority vote. This opinion must be in writing and reasoned.

The minister of Labour, on the other hand, may refuse the widening for reasons of public interest, particularly in cases of excessive infringement on competition rules or in consideration of employment policy objectives.

The decision to expand is preceded by the publication of a notice in the Official Journal. This notice invites interested organizations and individuals to submit their observations within 15 days.

d. Cessation of the effects of the widening of the collective agreement

The widening order becomes obsolete as soon as the extension order ceases to have effect. Moreover, the minister may revoke it at the request of one of the interested representative organizations or on his own initiative when the texts in question no longer correspond to the situation of the sector or sectors within the specified scope, either in whole or in part of the professional or territorial scope mentioned in the order.

3. Who can challenge the decision of extension or widening of a collective agreement ?

Some companies may disagree with an extension or widening order that brings them within the scope of a collective agreement. In this case, they may refer the case

to a judge either to have it recognized that their activity does not fall within the professional or territorial scope of the agreement, or to challenge its validity.

In accordance with the principle of separation of powers, the ordinary judge does not have jurisdiction to verify the regularity of the negotiation and conclusion conditions of an extended collective agreement, since this control falls solely within the competence of the administrative judge as part of its legality review of the extension order.

However, it is the responsibility of the ordinary judge to rule on disputes that may be raised by one or more specific companies regarding the sectoral scope of an extended industry agreement, provided that the latter does not specify this scope.

Part 3 : The binding effect on the basis of the individual contract or employment relationship

1. Individual contracts and collective agreements

Collective agreements or collective agreements **establish standards and working conditions applicable to all employees** of a company falling within their scope, regardless of their union affiliation. Indeed, unions act as representatives of the collective interests of employees, not only of their members.

When a collective agreement applies to a company, all employees bound by an employment contract are subject to its provisions. In other words, an employee cannot waive the rights granted to them by a collective agreement. However, it is possible for contractual provisions to derogate from conventional standards, provided that these derogations are more favorable to the employees.

Thus, if a clause in the employment contract is more advantageous than what is provided in the collective agreement, that clause applies to the employee.

Conversely, if a provision of the collective agreement is more favorable to the employee than the terms of their employment contract, that provision prevails.

→ To determine which provision is more favorable, the comparison is made with regard to the individual interest of the employee, examining the benefits categorically, that is, by comparing similar benefits.

→ However, it should be noted that the principle of favor, although legally valid, is not enshrined in the French Constitution and can therefore be set aside. As a result, standards may derogate from other standards in a manner that is not more favorable to employees, or even unfavorable.

In summary, the articulation between collective agreements and employment contracts in France is **based on the principle of favor,** but can be modulated according to legal and conventional specificities, while ensuring the protection of employees' rights.

2. Collective performance agreement (Accord de performance collective APC)

A collective performance agreement is a collective agreement that makes it possible to adjust an employee's working hours, remuneration or mobility with the aim of preserving or developing employment or meeting the company's operating requirements.

This arrangement was created by one of the Macron ordinances of 22 September 2017. It has been very little used to date: fu 31 May 2020, only 360 agreements had been signed since their creation.

According to the French Labour Code, a collective performance agreement is negotiated with the aim :

- either to meet the needs of the company's operations ;
- preserve employment;
- develop employment.

This agreement makes it possible to adjust elements of the employee's employment relationship, even if what it provides is less favourable than the employment contract.

Part 4 : Characterization of the system of collective labour agreements in your country

The French system of labour law, particularly regarding collective agreements, remains unique in many aspects. Regarding :

1. The freedom of parties to contract

The French system of labour law, within the framework of collective agreements, strives to strike a balance between contractual freedom and the rules protecting workers.

Thus, while the parties have a certain freedom to negotiate and conclude agreements within the framework of collective agreements, this freedom is circumscribed by various legal requirements from the state designed to protect the rights and interests of employees.

To have the freedom to contract a trade union has to be representative. A trade union is representative if it meets the following 7 criteria:

- Respect for republican values (respect for freedom of political opinion, for example)
- Independence (e.g. financial independence)
- Financial transparency (compliance with accounting obligations, for example)
- At least 2 years' seniority in the professional and geographical field covering the negotiation level (from the date of legal filing of the articles of association)
- Influence, determined mainly by activity and experience
- Membership numbers and subscriptions (sufficient number of members for their subscriptions to represent the main part of their resources, which guarantees the independence criterion)
- Sufficient support in professional elections (the union must have obtained at least **10%** of the votes cast in the 1st round of the most recent elections of permanent members to the CSE (comité social et économique, meaning social and economic committee).

Although parties have the freedom to negotiate and agree upon terms that may be more favourable than the minimum standards set by sectoral agreements, they cannot

undermine or violate the fundamental rights and protections afforded to employees by law.

Additionally, certain legal principles, such as the principle of favourability, ensure that any provision agreed upon in collective agreements cannot be less favourable to employees than those provided by law or other applicable agreements.

Overall, the French system of labour law seeks to balance contractual freedom with the need to protect the rights and interests of employees, ensuring fair and equitable working conditions while allowing for flexibility and negotiation within the boundaries of established legal frameworks.

2. The place of collective labour agreements in labour law

Before the 2017 reform, France was the land of the Labour Code. Everything was governed by it.

Collective agreements may also provide for derogations from legislation, subject to certain conditions. Indeed, the Labour Code establishes what are called "blocks." There are three of them:

1/ The first block (Labour Code Art. L2253-1) sets out 13 themes (for example: classifications, gender equality) for which the branch always prevails;

2/ The second block (Labour Code Art. L2253-2) sets out 4 themes (for example: bonuses for hazardous or unhealthy work) for which the branch prevails if it expressly specifies OR the company agreement prevails if it includes "at least equivalent guarantees";

3/ The third block (Labour Code Art. L2253-3) concerns free company negotiation. In all other themes than those of the first and second block, the company agreement can decide to derogate in favor or against the branch agreement. The company agreement will prevail.

Now, the law imposes certain principles, but above all it gives priority to company agreements (for example in job protection plan, which in France means ‘plan de sauvegarde de l’emploi’).

Collective agreements may be less favourable than the law. Indeed, as mentioned earlier, French labour law can be divided into three phases:

- Public order norms,
- Norms related to collective bargaining,
- Supplementary provisions in the absence of collective bargaining.

Often, supplementary norms can be very restrictive and impose a significant number of obligations on employers, thus encouraging them to engage in collective bargaining.

Collective agreements may even, in certain specific cases, be extremely unfavourable for employees and infringe upon many employee rights. An example of this is the collective performance agreement, which allows for the modification of many elements such as remuneration, working conditions, and, in the event of refusal by the employee to be subject to it, may lead to dismissal with valid cause.

Collective agreements play a central role in French labour law. They allow for the customization of labour law standards that go beyond statutory requirements.

For instance, through sectoral agreements, this ensures that all companies within the same industry adhere to the same basic social rights.

Furthermore, company agreements enable further customization of standards, exceptions, and benefits tailored to individual companies. This allows them not only to distinguish themselves in the eyes of current and potential employees with offered benefits but also to flexibilise and adapt modifiable standards to the company, even if it means being less favourable for employees.

3. The relative autonomy of the social partners

In French labour law, the social partners, namely the representative organisations of employers and employees, enjoy a degree of autonomy. Indeed, they have the power to negotiate and conclude collective agreements.

This autonomy allows the social partners to address the specific needs of different professional sectors and businesses, while respecting the limits set by law and the fundamental principles of labour law, such as employee protection and non-discrimination.

Similarly, this autonomy, along with the powers of the social partners, including trade unions and employee representatives in businesses, is protected within the preamble of the 1946 constitution.

Despite this freedom to negotiate, the State still intervenes. The partners have the freedom to negotiate on certain issues, but this negotiation is subject to restrictions. Furthermore, the social partners can be consulted by the government on proposed reforms to labour law, thus giving significant weight to social actors in the development of public policies related to employment and labour.

4. The place of the workers: between attractiveness of being a union member and the place of free riders accepted

In France, the collective bargaining system plays a significant role in shaping the relationship between workers and their employers.

Through collective bargaining, workers are represented by trade unions or other representative bodies, allowing them to negotiate terms and conditions of employment collectively rather than individually.

This system gives French workers a voice in decisions affecting their working conditions, wages, benefits, and other aspects of their employment.

- The attractiveness of being a union member can be influenced by several factors within the collective bargaining system.

Firstly, union membership often provides workers with greater bargaining power and collective representation, enabling them to negotiate better working conditions and benefits.

Additionally, being a union member may offer access to legal assistance, advocacy, and support in case of disputes with employers.

- However, it should be kept in mind that unionized employees may be subject to discriminatory measures from employers.

Furthermore, despite what is stated above, unionization rates are relatively low in France. This can be explained in particular by the fact that to benefit from the

advantages resulting from collective bargaining, there is no requirement to be affiliated with any specific union.

Part 5 : How does the French system of collective agreements work in practice

Predominant level	Sectoral
Degree of centralisation/decentralisation	Centralised
Co-ordination	Low
Trade union density in the private sector	5-10%
Employer's organisation density	70-80%
Collective bargaining coverage rate	90% or more
Quality of labour relations	Medium

(from OECD)

1. The 3 levels of collective bargaining

Collective agreements generally cover a large portion of the workforce as they apply to an entire sector or profession. The three levels of collective bargaining are as follows:

- National level, through negotiations at the interprofessional level of trade unions.

- The level of a specific sector of activity, known as a professional branch.

- The level of the company or company establishments.

2. The paradox of French unionism

The paradox lies in the fact that, although unions are generally well-established in French companies, they have very few members compared to other OECD countries.

- According to the international organization, the unionization rate among the French workforce was 7.9% in 2016.
- In France, membership in a union is not a prerequisite for access to certain social rights. The unionization rate has never exceeded 25% in France.

Historically, in France, there is revolutionary unionism and no service like in other European countries. Employee engagement should not be interested but stems from membership in the union's political project.

There is therefore not really a free rider syndrome. Union membership also appears risky: according to a 2019 Defender of Rights survey, one in three workers considers union membership to be often or very often a reason for discrimination. However, in France, there is assistance from union activists to their colleagues, which explains the generally positive image that employees have without necessarily joining.

Despite all this, in recent years, each confederal congress has been the subject of resolutions on several subjects: how to attract more members in the private sector (5% of employees are members of a union, compared to 15% in the public sector) and, above all, what are the expectations of young people and women to encourage them to join the union.

3. Legitimacy

"Not very representative" does not mean "illegitimate." The institutionalization of unions in their relationship with the state, in the exercise of social dialogue (collective bargaining), and in the joint management of social protection organizations are all forms of representativeness.

There are 600,000 company representatives who participate in social regulation on a daily basis (employee representatives who hold certain mandates, one or more as employee delegates, elected to the works council, elected to the health, safety and working conditions committee).

Finally, the coverage rate of collective bargaining - unions represent the interests of the entire profession, not just their members - is one of the highest in the world, at 98%. In other words, in addition to the protection provided by Labour law, 98% of employees benefit from the advantages of their collective agreement.

4. Difference between unionized and non-unionized workers

The only difference between unionized and non-unionized workers is regarding information on the application of collective agreements.

Unionized workers are generally better informed of their rights and often have easier access to their application, while non-unionized workers may have less knowledge of the provisions of the collective agreement and may need to seek legal advice to enforce their rights.

The system of collective agreements can influence unionization rates by offering tangible benefits to workers such as improved working conditions and higher wages.

However, in a context of declining unionization rates, collective agreements continue to have an impact as a benchmark for working conditions and can also be a tool for unions to strengthen their representativeness.

There can be competition between unions to represent workers within the same sector, as well as competition between unions and other worker organizations, such as works councils or professional associations.

5. The representative unions

- The representative worker unions at the national and interprofessional level are :

Worker unions	Statistical representativeness
CFDT	26.77 %
CGT	22.96 %
FO	15.24 %
CFE-CGC	11.92 %
CFTC	9.5 %

Employer unions, initially built on a defensive logic to protect the interests of employers, now play a more offensive role. They have engaged in fights for reducing Labour costs and reforming Labour law.

Moreover, they have increased their importance as a resource in their role of political lobbying, influencing political decisions regarding Labour legislation. Members of employer unions are generally men, older, highly educated, and often come from the senior civil service. This can be explained by more utilitarian logics, where companies seek benefits such as legal advice, human resources services, administrative services, and business networking opportunities.

- The representative employer unions at the national and interprofessional level are

Employers unions	Statistical representativeness
MEDEF	66.33 %
CPME	28.64 %
U2P	5.03 %

Part 6 : The influence of EU law on the French system

1. The Directive on minimum wages

The directive on minimum wages may be revolutionary in some countries, but it doesn't change much for France, where there is a large body of collective bargaining in the form of industry-level agreements.

2. The Directive on posted workers

The Posted Workers Directive has influenced the French system of collective bargaining and explored in greater detail the implications for self-employed workers.

- **Modification of General Application Declaration** : The mechanism of general application declarations plays a crucial role in extending the provisions of collective Labour agreements to a broader range of employers and employees beyond those directly involved in the negotiation process. The Posted Workers Directive has prompted a thorough review of these declarations to ensure alignment with the directive's requirements. This process involves assessing the compatibility of existing collective agreements with the minimum standards mandated by the directive, such as equal treatment in terms of working conditions and remuneration. In cases where discrepancies are identified, adjustments are made to bring the agreements into compliance while preserving the integrity of the bargaining process. This may involve renegotiating certain clauses or introducing supplementary provisions specifically tailored to address the needs of posted workers.

- **Inclusion of Specific Rules on Remuneration**: Remuneration is a central aspect of the Posted Workers Directive, which mandates that posted workers receive at least the same level of pay and benefits as local workers performing similar tasks. Consequently, collective Labour agreements in France have been

subject to revisions aimed at clarifying and reinforcing the principles of equal pay for equal work. This entails not only ensuring that posted workers are remunerated in accordance with local standards but also addressing potential disparities in fringe benefits, allowances, and other supplementary payments. Collective bargaining thus serves as a vital mechanism for establishing fair and transparent compensation practices that uphold the principles of non-discrimination and social cohesion.

- **Impact on Access to Information**: Effective communication and dissemination of information are essential for promoting awareness and compliance with collective Labour agreements, particularly among posted workers who may be less familiar with the local legal framework. In response to the Posted Workers Directive, French authorities have intensified efforts to enhance accessibility and transparency regarding the content and application of collective agreements. This includes developing user-friendly resources, such as online portals and informational guides, that provide comprehensive guidance on rights, obligations, and dispute resolution mechanisms. Furthermore, colLabourative initiatives involving employers, trade unions, and government agencies aim to foster dialogue and cooperation, thereby facilitating mutual understanding and cooperation in implementing the directive's provisions.

- **Moving on to the applicability of collective Labour agreements to self-employed workers:** In France, the scope of collective agreements traditionally extends to employed workers rather than self-employed individuals, reflecting the distinct nature of the employer-employee relationship. However, there are instances where self-employed workers operating within certain industries or professions may be indirectly affected by collective bargaining outcomes. This may occur through mechanisms such as industry-wide standards or contractual arrangements that incorporate provisions derived from collective agreements.

For example, certain professions or sectors characterized by a high degree of interdependence between employers and self-employed workers, such as the construction industry or creative arts sector, may adopt collective bargaining agreements that establish minimum rates of compensation or working conditions applicable to all stakeholders. While self-employed individuals typically retain a greater degree of autonomy in setting their terms of engagement, collective agreements can

serve as reference points or benchmarks for negotiating contractual terms with clients or contracting entities.

Moreover, collective agreements may include provisions aimed at promoting fair competition and preventing the undercutting of wages or working conditions by self-employed workers operating within the same industry. By establishing common standards and best practices, collective bargaining contributes to fostering a level playing field and promoting mutual respect among all participants in the Labour market.

In conclusion, the influence of EU directives such as the Posted Workers Directive on the French system of collective bargaining underscores the intricate interplay between national regulations, supranational legal frameworks, and evolving socio-economic dynamics. By fostering dialogue, colLabouration, and adaptation among stakeholders, collective bargaining serves as a dynamic instrument for advancing the principles of social justice, solidarity, and inclusivity in the modern Labour landscape.

Bibliography

- OECD website : https://www.oecd.org/
- Labour code : https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/
- Constitutional bloc : https://www.legifrance.gouv.fr/contenu/menu/droit-national-en-vigueur/constitution
- AUZERO, BAUGARD, DOCKES, Droit du travail, Dalloz coll. Précis, 2024/2025
- Jean-Philippe LIEUTIER, Droit du travail 2023, Les mémentos Dalloz, 2023
- Franck HEAS, Droit du travail, Collection Paradigme, Bruylant, Edition 2024
- Liaisons sociales Quotidien - Le dossier pratique, N° 59/2023, 27 mars 2023