

Collective Bargaining and Internal Flexibility: A Franco-German Comparison

Quentin Delpech
Hélène Garner
Camille Guézennec
Antoine Naboulet



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Summary

Due to its economic and employment performance over the last ten years, and particularly during the crisis, Germany is frequently presented as a model for France. It is by now well acknowledged that labour market performance has been extraordinarily good in Germany since the mid-2000s. Unemployment has steadily declined, reaching 4.7% in July 2015. In terms of labour force participation, Germany has outperformed comparable industrialized countries since 2005. In the meantime, unemployment has never been lower than 7% in France over the past thirty years and reached 10.4% in July 2015. The gap between unemployment in France and Germany has widened since the financial crisis. These divergent patterns of labour market outlooks have called significant attention to the underlying causes of the so-called German miracle.

The German model is a result of a continuous and consistent process, combining labour market reforms, economic specialization, a good training system, international openness and corporate organization and governance. Numerous research studies have pointed out the multifactorial causes of Germany's labour market performance. These are both endogenous and exogenous. The former include the efficiency of its skills training system, the strength of its small and midsize companies (*mittelstand*) and the peculiarity of its collective bargaining system. The latter include the structural labour market reforms of the 2000s, the loosening of labour law, with the widespread development of atypical forms of employment through the so-called mini-jobs, and the processes of restructuring and outsourcing the German industrial model through the expansion of the service sector.

This working paper focuses on the contribution of collective bargaining to internal flexibility and hence the German job miracle. Internal flexibility refers to three levers that firms can use to adjust their workforce without having to lay off or hire employees: working time, organizational adaptability and financial or wage flexibility (variable pay, for example). This kind of flexibility has indeed proven to be an effective means of reacting to changing economic circumstances and the increased competition resulting from globalization. Internal flexibility contributes to job retention and to the conservation and accumulation of skills, which play a central role in firms' competitiveness and employment dynamics.

In Germany and France, firms' capability to use instruments of internal flexibility is strongly dependant of the existing processes of collective bargaining.

According to research studies, the point is that the decentralization of the collective bargaining system that has been gradually taking place since the 1990's in Germany, from the national and industry level to the firm level, is a major factor that may explain both the resilience of the German labour market during the 2008 global crisis and, more broadly, its competitiveness. It is then of interest to understand how precisely internal flexibility practices

and collective bargaining trends interact in Germany and, comparatively, to analyse the French situation.

This working paper then provides comparative insights into the internal flexibility provisions between France and Germany before and during the crisis. Whereas Germany is perceived as a successful model of internal flexibility arrangements based on collective bargaining, France is regularly presented as having rigid employment rules favouring some kinds of external flexibility (short term contracts, temporary jobs, collective lay off...). Beyond this somewhat partial vision, this paper aims to place the impact of collective bargaining in the broader context of the labour market's operation and the overall economic structure of both countries. It suggests that limiting the Franco-German comparison to the idea of a German preference for internal flexibility as opposed to a French preference for external flexibility does not account for the complex links between internal and external flexibility tools in each country.

The first part of this paper draws the current panorama of internal flexibility provisions in both countries, particularly in terms of working time. The extent to which they have been used and combined with external flexibility, atypical jobs development and wage moderation, in particular during the crisis, partly explains national employment performances. It shows that even if Germany made a wider use of existing internal tools based on working-time adjustments, the capacity of adaptation of German firms during the crisis also lies on changes that occurred before the crisis, in particular labour market reforms that enhanced labour market flexibility. Compared with Germany, the use of internal flexibility was limited in France, in particular during the crisis. Nevertheless, recent developments in France (under the terms of the job security act of 2013) suggest a clear trend toward an increase of internal flexibility through a streamlined recourse to existing instruments, notably short-time working schemes. Moreover, there is a current debate in France over the opportunity to give more room to social partners on working hours and wage adjustment provisions at the company level.

The second part provides a review of the recent transformation of the German and the French collective bargaining systems to better understand the causes and consequences of internal flexibility. The paper highlights common trends toward a decentralization of collective bargaining and profound changes in labour-conflict regulations.

Keywords: Internal Flexibility; Collective Bargaining; France; Germany.

Résumé

En raison de ses performances en matière de croissance économique et d'emploi au cours des dix dernières années, en particulier pendant la crise, l'Allemagne est souvent érigée en modèle pour la France. Il est en effet bien établi que les performances du marché du travail allemand ont été particulièrement bonnes depuis le milieu des années 2000. Le chômage n'a cessé de reculer depuis cette période pour atteindre 4,7 % en juillet 2015. En termes de participation au marché du travail, l'Allemagne a fait mieux que tous les autres pays européens depuis 2005. Du côté français, le taux de chômage n'est jamais descendu en dessous de 7 % au cours des trente dernières années et a atteint 10,4 % en juillet 2015. À cet égard, l'écart entre la France et l'Allemagne s'est creusé pendant la crise financière. Ces trajectoires divergentes des marchés de l'emploi ont suscité une attention particulière portée aux mécanismes sous-jacents de ce que l'on peut appeler le « miracle allemand ».

Le modèle allemand est le résultat d'un processus continu et cohérent combinant réformes du marché du travail, spécialisation économique et ouverture internationale, système de formation collective des compétences, décentralisation de la négociation collective et co-gestion des entreprises. De nombreux travaux ont souligné les causes multifactorielles des performances du marché de l'emploi allemand, certaines étant endogènes, d'autres exogènes. Les premières recouvrent l'efficacité de son système de formation et de qualification, la force de la structure du tissu industriel allemand formé de petites et moyennes entreprises ("mittelstand") ou encore les particularités de son système de négociation collective. Les secondes renvoient aux réformes structurelles menées pendant les années 2000, la flexibilisation du droit du travail introduite à travers le développement important des formes atypiques d'emploi - les « minijobs » notamment -, ou encore le processus de restructuration profonde et d'externalisation qu'a entrepris le modèle industriel allemand, avec l'expansion du secteur des services.

Parmi tous ces facteurs explicatifs du « miracle allemand », les instruments de flexibilité interne utilisés dans les entreprises et les systèmes de négociation collective qui leur sont attachés jouent un rôle central. La flexibilité interne, qui permet aux entreprises d'ajuster leur main-d'œuvre à la production sans recourir à des recrutements ou licenciement, relève de trois registres : quantitative (liée à la gestion du temps de travail), fonctionnelle (liée à l'adaptabilité des processus de travail et des salariés) et salariale (liée aux pratiques de rémunérations). Cette forme de flexibilité s'est révélée particulièrement efficace pour permettre aux entreprises allemandes d'adapter leurs besoins en main-d'œuvre aux fluctuations conjoncturelles de la demande mais aussi au contexte d'intensification de la concurrence au niveau mondial. Les outils de flexibilité interne contribuent à la rétention de main-d'œuvre et ainsi à la conservation et à l'accumulation de capital humain, ce qui joue un rôle central dans la dynamique de l'emploi et dans les performances des entreprises.

En France comme en Allemagne, la capacité à utiliser des instruments de flexibilité interne est intimement liée à des processus de négociation collective pouvant intervenir à différents niveaux (entreprises, branche professionnelle etc...). Or selon plusieurs travaux, la décentralisation de la négociation collective qui s'est opérée progressivement depuis les années 1990, du niveau national et des branches professionnelles vers celui des entreprises, est l'un des facteurs explicatifs de la compétitivité de l'économie outre-Rhin et de la résilience du marché du travail allemand pendant la crise de 2008. Il apparaît dès lors intéressant de mieux comprendre comment l'évolution de la négociation collective et le recours à la flexibilité interne s'articulent précisément en Allemagne comme en France. Si l'Allemagne est un exemple en la matière, grâce à sa pratique de la négociation collective, la France est souvent présentée comme ayant des normes d'emploi plus rigides, favorisant plutôt le recours à la flexibilité externe.

Pour dépasser cette vision assez partielle, ce document de travail vise à replacer les pratiques respectives de négociation collective et leur impact dans le contexte plus large du fonctionnement du marché du travail et de la structure économique globale des deux pays. Il suggère ainsi qu'une approche se limitant à l'idée d'une préférence allemande pour la flexibilité interne et d'une préférence française pour la flexibilité externe, ne restitue pas les liens complexes qui s'établissent entre les deux.

Lorsqu'on dresse un panorama des dispositifs de flexibilité interne mobilisés pendant la crise dans les deux pays, en particulier autour du temps de travail, la manière dont ces outils ont été utilisés et combinés avec d'autres dispositifs de flexibilité externe, avec le développement de formes atypiques d'emploi et avec une modération salariale, permet en partie d'expliquer les performances des deux économies. Si l'Allemagne a davantage recouru aux dispositifs de flexibilité interne, en particulier ceux relatifs à l'ajustement du temps de travail, la capacité d'adaptation des entreprises allemandes pendant la crise tient aussi à des transformations qui ont eu lieu avant celle-ci, notamment les réformes structurelles du marché du travail et sa flexibilisation accrue.

Par contre, la mobilisation des outils de flexibilité interne a été plus limitée en France, notamment pendant la crise de 2008. Néanmoins, des réformes récentes telles que celles introduites par la loi relative à la sécurisation de l'emploi adoptée en juin 2013 tendent à faciliter l'utilisation des instruments de flexibilité interne existants, comme les mécanismes de chômage partiel ou les accords de maintien dans l'emploi en cas de difficultés conjoncturelles. Ces réformes s'inscrivent dans un débat plus large sur l'opportunité de donner plus de place à la négociation collective - d'entreprise ou de branche -, sur le temps de travail et les salaires.

Les transformations récentes des modèles français et allemands de négociation collective permettent également de mieux saisir les causes et les implications associées à la flexibilisation du marché du travail. On observe une tendance commune à la décentralisation de la négociation collective et ce document de travail souligne aussi les mutations intervenues dans la régulation institutionnelle des relations de travail.

La négociation sectorielle et le système de co-détermination au niveau des entreprises - du moins là où les conseils d'établissement existent - sont des déterminants structurels de la flexibilité interne des entreprises allemandes, en particulier dans le secteur exportateur. Mais le modèle de relations industrielles en Allemagne a subi des bouleversements importants depuis la réunification ; les partenaires sociaux, notamment les syndicats, ont été amenés à accepter des concessions sans précédent, particulièrement au niveau de la négociation sectorielle. Les performances de l'Allemagne en termes d'emploi, au cours de la dernière décennie, semblent lier non seulement à la décentralisation de la négociation collective mais aussi à l'affaiblissement de celle-ci, spécialement au niveau des branches. Dans de nombreux secteurs, les capacités d'adaptation de l'économie allemande ne repose pas tant sur des processus forts de la négociation collective que sur une mise à distance des employeurs à l'égard des conventions collectives.

De son côté, la France a connu également, depuis 1982, son propre processus de décentralisation de la négociation collective. Les possibilités légales permettant aux entreprises de développer une flexibilité interne par la négociation collective existent depuis longtemps et se sont accrues durant les années 2000. Cependant, en raison notamment de la complexité de ces dispositions légales et de la faiblesse du dialogue social en France, la négociation collective sur les outils de flexibilité interne reste en fait moins développée qu'en Allemagne.

Si la France peut s'inspirer de certaines pratiques observées en Allemagne en matière de négociation collective, c'est l'imbrication de ces dernières dans un système productif et social non transposable qui expliquent les performances de l'économie allemande. Elles ont également certaines contreparties cruciales, telles que la baisse de la couverture conventionnelle ou la dualisation croissante de l'économie en termes de régulation de l'emploi qui ne sont pas nécessairement soutenables à long terme, comme en témoigne l'introduction récente par le gouvernement allemand d'un salaire minimum national pour les travailleurs non protégés par les accords collectifs.

Mots-clés : flexibilité interne ; négociation collective ; France ; Allemagne.

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Introduction

Due to its economic and employment performances over the past ten years, and particularly during the crisis, Germany is frequently presented as a model for France. Labour market performance has been extraordinarily good in Germany since the mid-2000s. Unemployment has steadily declined, reaching 4.7% in July 2015. In terms of labour force participation, Germany has outperformed comparable industrialized countries since 2005. In the meantime unemployment has never been lower than 7% in France and reached 10.4% in July 2015. The gap between unemployment in France and Germany has widened since the financial crisis. These divergent patterns of labour market outlook have raised significant attention on the underlying causes of the so-called “German miracle”.

As described by Eichhorst (2015), the “German model” is the result of a continuous and consistent process combining labour market reforms, economic specialization, international openness and corporate organization and governance. In fact, evidence from numerous research pointed out the multifactorial causes of the German labour market performance, ranging from endogenous factors -such as the efficiency of its training system (Bosch, 2015), the strength of its structure of small and midsize companies (“mittelstand”) and the peculiarity of its collective bargaining system, as well as exogenous factors, notably the structural labour market reforms introduced in the 2000’s, the flexibilization of labour law -with the widespread development of atypical forms of employment through the so-called “mini-jobs”- and the restructuring and outsourcing of the German industrial model with the expansion of the service sector. Besides net job creations, the decline in unemployment benefited also from a decreasing working age population.

According to some research, the gradual introduction of “decentralization” in the collective bargaining system, from the national or branch level to the firm level, is amongst the major factors that could explain the increasing competitiveness of the German economy since the 1990’s (Dustmann *et al.*, 2014), and more specifically the resilience of its labour market during the 2008 crisis (Burda and Hunt, 2011). The flexibility associated with the collective bargaining process is mainly “internal”. According to Atkinson (1984) “internal” flexibility mainly refers to flexibility in working time; in organization and adaptability; and financial or wage flexibility (variable pay for example). This flexibility has proven to be an effective mean for adjusting to changing economic conditions and to an increased worldwide competition. Internal flexibility contributes to job retention, to maintain and develop skills, which play a

¹ Labour and Employment Department, France Stratégie.

central role for firms' competitiveness and employment dynamic.

Whereas Germany is perceived as a successful model of internal flexibility arrangements France is regularly presented as having rigid employment rules favouring external flexibility. It is difficult to isolate the impact of the collective bargaining system on economic performance, which is inevitably embedded in the broader context of the functioning of labour market and the overall economic structure of the German economy. The literature generally focuses on conditions that collective bargaining must fulfil to enable an internal adjustment of the workforce to economic shocks (Glassner and Galgóczi, 2009)².

This working paper aims at clarifying the role and levers of internal flexibility in Germany, compared to the French situation. How far do firms' capabilities differ to make use of internal flexibility? What are the collective bargaining processes that make it possible? What kind of labour relations lies behind this internal flexibility at the firm level?

The first part of this paper draws the current panorama of internal flexibility provisions in both countries, particularly in terms of working time. The extent to which they have been used and combined with external flexibility, atypical jobs development and wage moderation, in particular during the crisis, partly explains employment performance.

This comparison suggests that collective bargaining on internal flexibility is less developed within French firms, and that the evolution of the German industrial relation system is more favourable to employment dynamic than the French one.

The second part deals with this assertion and provides a review of the recent transformation of the German and the French collective bargaining systems to better understand the causes and consequences of internal flexibility. More specifically, the paper highlights the "organized decentralization" (Traxler, 1995) of the collective bargaining system in Germany and its real implication at firm level and for the social partners' power of regulation.

For France, we point the existing possibilities for firms to bargain on working time or to develop flexible pay systems at the firm level. If these opportunities legally exist for a long time, firms' practices seem to be limited but also quite difficult to evaluate.

² Other researches focusing on the link between collective bargaining and economic performance are dealing more with how collective bargaining can reduce conflict between labour and management, enhance cooperation or productivity, provide collective solutions to problems such as underinvestment in occupational skills, and support inter-firm cooperation. See Doellgast and Benassi (2014).

I Internal Flexibility and Adaptability of Firms

Beyond the Hartz reforms (see box A), a consensus has arisen over the past few years to underline the key factors of the *German job miracle* (Burda and Hunt, 2011, *op. cit.*). The specific nature of the crisis in Germany³, structural factors⁴ and the specific features of the German system of industrial relations⁵ have been put at the core of current explanations for the astonishingly good performance of the German economy over the last decade. German firms' ability to adapt internally to changing economic circumstances is frequently underlined, and opposed to the so-called French "preference" for external flexibility. The following sections discuss this assertion and clarify the actual impact of internal vs. external flexibility on diverging labour market performance in France and Germany.

Box A The Hartz Reforms

Implemented by the Schröder Government in four waves (Hartz I to IV) between 2003 and 2005 under the "fördern und fordern" motto ("incentivize and require"), the Hartz reforms aimed at structurally reforming the governance and conditions of employment policies in order to incentivize participation and job-search efforts, as well as to boost the demand for low-paid jobs.

The main features of these reforms included: increased means for job-search monitoring and sanctions; a reduction of benefits generosity, and greater financial incentive for "mini-jobs" and "midi-jobs" supported contracts (Kramarz *et al.*, 2012). Available evaluations highlight that the latter reforms have indeed been effective in improving matching efficiency, increasing participation, intensifying job-search efforts and increasing the speed of going back to work for the unemployed.⁶

1.1. The German "Job Miracle": The Internal Flexibility

1.1.1. Working Time Flexibility in Germany...

The so called German "**historical**" **preference for internal flexibility** is linked to its collective regulation model and the firms' cooperative strategy, excluding State intervention. Internal flexibility is managed and negotiated within firms, thanks to work organization and to quality of management and their institutional supports (practices of codetermination, works council).⁷ These institutional arrangements favour long-term relationships between firms and social partners and the rules of flexibility are delegated to the firm level which favours the economic and social efficiency in the productive sphere (Chagny, 2013). Working time adjustments play a crucial role in this flexibility, with the development of part-time

³ Which mainly affected export-oriented firms. See Möller (2010) and also Caliendo & Hogenacker (2012).

⁴ In line with findings from the OECD *2010 Employment Outlook* which point out that the preference for internal flexibility notably depends on firms' finance and the qualification of their workforce, it is underlined that German employers had greater incentives to retain labour in the prospect of a rapid upturn due to the presence of strong pre-crisis corporate finances and lack of skilled labour supply. See Fréhaut (2012).

⁵ See Dustmann *et al.*, 2014, *op. cit.* and also Cette & Boulin (2013).

⁶ For a review, see Bouvard *et al.* (2013).

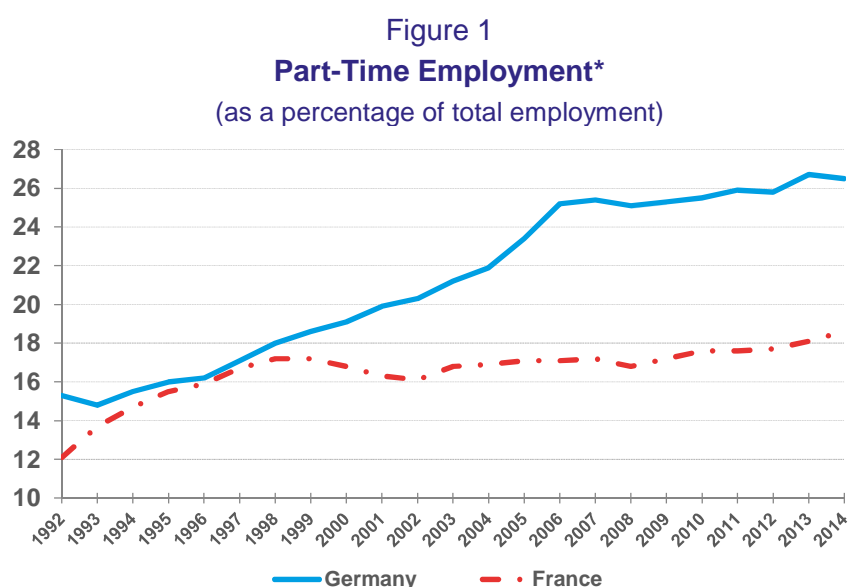
⁷ The German *Betriebsrat*.

employment and the declining number of average hours worked.

Full Time vs. Part Time Employment

In Germany, the increase in the employment rate since the 2000s is largely due to the **increase in part-time employment** (figure 1). Since the early 2000s, part-time job creation represents the totality of job creation, whereas the number of full-time jobs declined slightly (Costes *et al.*, 2015). This trend, which mainly depends on the growth of the service sector, reveals a choice of flexibly and work organisation in those sectors.

In France, the share of part-time employees in total employment also doubled between the early 1980s and the late 1990s mainly because of targeted reductions of employer contributions directly or indirectly on part-time employment. Between 1999 and 2002 this share declined following the introduction of the reduction of statutory working time of 39 hours to 35 hours and the abolition of tax breaks in favor of part-time work. Since then, the share of part-time employees has remained virtually stable.



* People in employment aged of 15 to 64.

Source: Eurostat, *Labour Force Survey*, France Stratégie calculation.

A Reduction of Working Hours

During the crisis, **the German labour market adjustment was largely achieved by reducing working hours** (table1). Comparative analyses of labour market adjustments in the crisis usually point to the particularly low speed of adjustment of employment to GDP in Germany, in the context of a preference of firms for internal rather than external flexibility strategies (Gilles and Nicolai, 2012).⁸ On a National Accounts basis, between 2008 and 2009, hours worked per head declined by 3.4% in Germany (table 1). Gilles and Nicolai (*op. cit.*) estimate that reduced hours per worker have compensated the decrease in demand by a bit more than 25% in manufacturing and by 38% in the non-agricultural competitive sector.

⁸ Also see Artus (2015).

One consequence of this adjustment is that the apparent labor productivity has fallen more sharply in Germany than in other countries of the euro area during the recession, by 7,1 percentage points from 1st quarter of 2008 to 1st quarter of 2009.

Table 1
Evolution of the total number of hours worked and contributions adjustments in employment and hours per worker during the crisis (%)

	Evolution of hours worked	Contribution of adjustment in employment	Contribution of adjustment in hours per worker
European Union	-9,2	78,5	19,5
France	-1,7	85	15
Germany	-3,4	-0,6	100,6

Source: OECD (2011), quoted by Gautié J., Journées de l'Économie, novembre 2013.

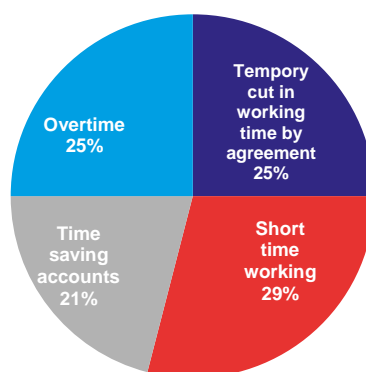
Several instruments of internal flexibility allowed for the adjustment of working hours. It is estimated that, on a full-time equivalent basis and other things being equal, the recourse to short-time working schemes lowered the unemployment rate by more than one point (Ziemann, 2010).

Short-time working (STW) schemes are one of the instruments used among many others. Firms relied on the full range of tools available to reduce working time: STW arrangements, which include cutting paid overtime, activation of opening clauses to reduce the weekly working time (with effect on monthly salaries), and the rules set by branch collective agreements, such as use of overtime stored in time savings accounts, and the increased use of part-time work (Chagny, 2013, *op. cit.*).

In Germany, there is a custom to activate all the levers of working time internal flexibility, such as working time accounts (see box B) and reduction of working hours, before having recourse to STW. In fact, firms that have used time saving accounts during the crisis are also those who made the most use of STW arrangements, illustrating that they are not mutually exclusive (Zapf, 2015).

According to data collected by the German Institute for Employment Research (IAB), between 2008 and 2009, STW arrangements explain 29% of the reduction of hours worked, working time accounts for 21%, temporary reductions of weekly working hours for 25% and reduction of overtime for 25 % (figure 2).

Figure 2
Components of Working Time Reduction in Germany, 2008-2009
 (as a proportion of the average cut in working time)



Source: Fréhaut (2012), from IAB.

These data must, however, be considered with caution since there are no data available regarding how companies without works councils (*Betriebsrat*) apply these mechanisms. In 2008, according to data from the IAB Institute, only 45% of private sector employees in the Western *Länder* and 37% in the new *Länder* (former East Germany) were working in companies with work councils. For them no data are available. The share of employees working in companies with council work only decline for 20 years which increases the scope of possibilities regarding the arrangements for internal flexibility (Chagny, 2013).

Box B

Working Time Accounts

Working Time Accounts (WTA) have been used extensively in Germany as an instrument of internal flexibility (Zapf, 2011). Thanks to the high level of assets accumulated on existing accounts prior to the crisis, they have allowed for a quick adjustment of the working time and have been less costly for firms than overtime or partial unemployment. In 2009, about one third of all German firms used WTA. Initially, WTAs were introduced as a cost reduction measure for firms to avoid overtime payment but they allow firms to reduce working hours in bad times – with additional costs (Balleer *et al.*, 2015).

Such accounts also exist in France⁹ but are less developed than in Germany: in 2010, 51% of German employees had access to a WTA vs 12% in France.¹⁰ Moreover, the conditions under which WTAs can be used to adjust working time are more stringent in France where their use remains largely at the initiative of employees. They cannot be used to adjust working time on a multi-annual basis without the agreement of the employees, and, unlike the German example, to accumulate days due to the employer in the form of « debt ».¹¹ This was confirmed by a recent jurisprudence (Court of Appeal of Douai, 2011) pronouncing itself

⁹ They have been introduced by the law No 94-640 (25 July, 1994) aimed at enhancing the participation of employees in the company.

¹⁰ According to Fréhaut, *op. cit.*

¹¹ It is noteworthy, however, that the accumulation of debts on time saving accounts is far less developed than the accumulation of assets in Germany – See Zapf (2011), *ibid.*

against such company-level agreement by the car manufacturer Renault.

In 2013, Michelin signed a company-level agreement on a collective WTA (limited to five days that can be carried over to the following year) when activity dropped, that may also be rejected. Signed with two trade unions, applying for three production facilities located in France (3 out of over 16), for a three-year period (2013-2015), this agreement will not be renewed because of reluctance among employees (and trade unions) to lose control on their working hours.

Thus, a combination of different factors explains the resilience of employment in Germany. Among them, temporary working time and wage moderation collectively agreed (see below) in exchange for employment guarantees have played a significant role. The specific features of the German system of industrial relations, which offers margins of internal flexibility thus finds itself at the core of current explanations for the German economic and, more specifically, labour market performances.

1.1.2. ... Combined with the Development of Atypical Jobs and External Flexibility

It is important to stress that while German firms favoured strategies of internal flexibility for the core of the workforce (cf. *supra*), for workers in atypical employment, employers did use to external flexibility. This pattern of labour market segmentation has played a role in the smooth adjustment of the German labour market in the crisis (Eichhorst and Tobsch, 2013).

As a matter-of-fact, **the increase in employment over the last decades is mainly due to the development of atypical jobs**, especially temporary work and part-time work. Hence standard employment as a share of total employment declined (Keller and Seifert, 2013).¹² While inactivity decreased as a share of the total workforce between 2002 and 2012 according to Eichhorst and Tobsch, the share of full-time permanent contracts in the total workforce also decreased from 45% in 1992 to about 40% over the same period.

Among atypical forms of employment, subsidised contracts (mini jobs, midi-jobs, ein-euro-jobs) have significantly increased. The so-called mini-jobs- increased from 4% to 7% of the total workforce between 2002 and 2012. Temporary-work decreased between 2008 and 2009 and picked up with the recovery in 2010.

The development of atypical employment and low pay jobs has not been evenly distributed. It has followed a pattern of segmentation, being more pronounced in the private service sector and for specific categories of the labour force (women, migrants, low skilled). The use of agency and fixed term contracts has progressed most among employees working in taylorist systems, and least among those in the learning organizations. Even within the high-skill sectors there has also been a modest increase in the use of agency labour, especially for routine administrative and low-skilled jobs (Marsden, 2015).

Besides, considering that atypical employment bears a higher risk of precariousness¹³, the overall poverty rate increased, to a peak of 16.1% (12.8 million people) in 2014¹⁴ and 8.6%

¹² See Keller and Seifert (2013); Bouvard *et al.* (2013), *op. cit.*; Eichhorst and Tobsch, *op. cit.*

¹³ Measured in terms of wage, employment stability, employability, coverage by social security schemes; see Keller and Seifert, *op. cit.*; see also the OECD Economic Survey of Germany 2014.

¹⁴ Eurostat: poverty rates when the poverty line is drawn at 60 per cent of national median income after social transfers.

for people in employment in 2013. It is noteworthy that poverty increased both for people in employment as well as for those outside the labour market. As a matter of fact, the share of low wage earners¹⁵ has grown up in Germany from 17.6% in 2002 to 18.3% in 2012, while over the same period it decreased in the OECD countries as a whole (from 17.2% to 16.3%). Such trends appear all the more important to take into account in so far as, on the whole, atypical employment does not appear to serve as stepping stone to standards employment.

In this context, the issue of labour market dualization has raised a growing demand for state regulation. According to Bispinck and Schulten (2014), *“the recent introduction of a minimum wage in Germany (effective as of the 1st of January 2015) partly reflects the fact that there is currently a broad view in Germany that the trend of growing inequality and precariousness had gone too far”*. Eichhorst and Tobsch (*op. cit.*) also argue that, as the pattern of segmentation expands and the realm of collective bargaining will probably continue to shrink, government action is crucial for the increasingly large margin of the labour market.

1.2. “French Preference” for External Flexibility?

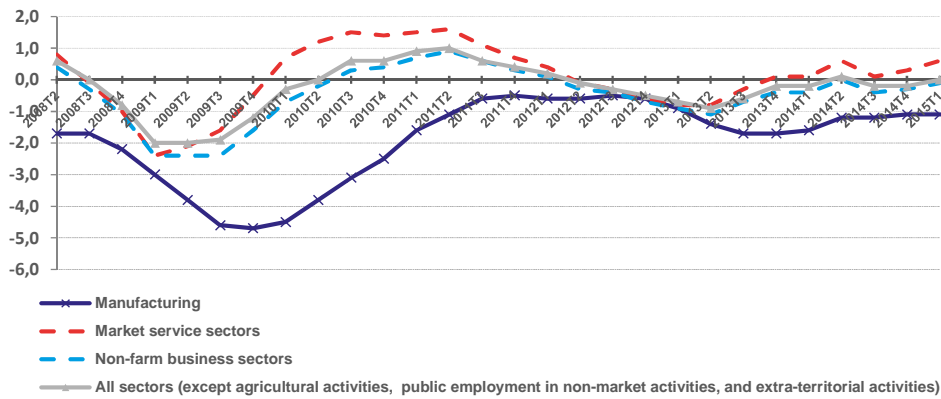
Although France has shown a “preference” for external flexibility during the crisis (cf. supra), internal flexibility arrangements exist legally. But, compared with Germany, there are fewer available instruments and they appear more complex and less appealing (Fréhaut, 2012).

1.2.1. Significant Job Losses during the Crisis

In France, the labour market adjustment was mainly supported by external flexibility (see table 1) whereas job destruction in Germany was limited. Between 2008 and 2015, the French economy has lost nearly 600,000 jobs in the business sector (excluding agriculture); the industry contributed to two third of these losses (figure 3).¹⁶ Over the same period, Germany has created more than 130,000 jobs in the industry.

¹⁵ The share of workers earning less than two-thirds of median earnings.
Insee data, long-term employment series <http://www.insee.fr/fr/themes/info-rapide.asp?id=18>

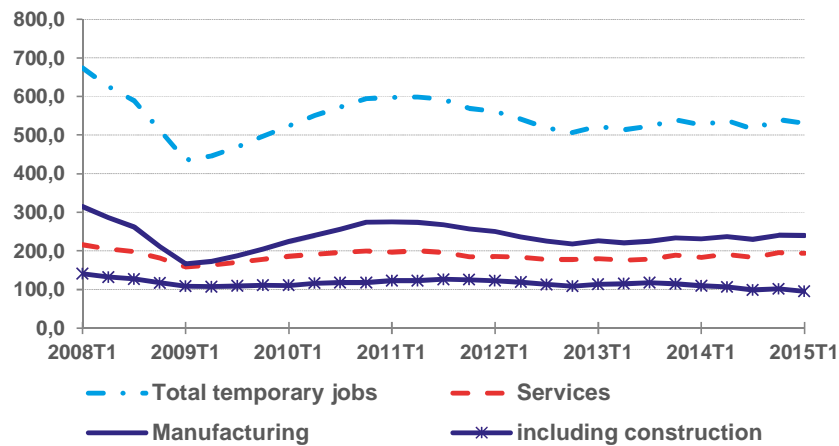
Figure 3
Job Losses in France, 2008-2015
 (annual change in employment, %)



Source: Insee, Main long-term series: Labour-Employment, NAF rev 2.

The sharpest decline in employment occurred between 2008 and 2009 with 480,000 job losses. This decrease results from a decline in flows across all types of employment (long term contracts but also short-term contracts and temporary contracts) and a sharp rise in exits from the labour market (layoffs, end of interim missions and of fixed-term contracts). More specifically, temporary employment has played the role of economic shock absorber, especially in the industry sector (figure 4).

Figure 4
Temporary Jobs in France, 2008-2015
 (in thousands)



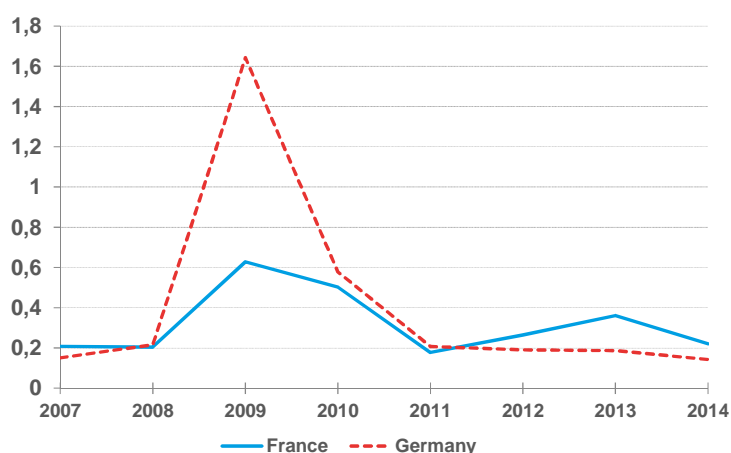
Source: Insee, Main long-period series: Labour-Employment, NAF rev 2.

1.2.2. Internal Flexibility Tools Are Less Frequently Used

If job losses reached a high level in France, they nonetheless remained limited compared with the decline in GDP. The decline in hours worked per employee has notably contributed to limit the adjustment of employment during the economic downturn in 2008 and 2009.

Compared with the role of internal flexibility in Germany, the use of short time working (STW, see box C) and working time arrangements for permanent employees was limited in France (figure 5).¹⁷

Figure 5
Short-Time Workers*
 (as a share in total employment, %)



* Economic short-time workers include workers who are working less than usual due to business slack, plant stoppage, or technical reasons (definitions are not harmonised, which hampers cross-country comparisons). Estimates are derived from national Labour Force Surveys. Source: France Stratégie (2014), Based on OECD data, from Labour Force Statistics.

In France, firms are not required to use all the existing internal flexibility instruments before implementing external flexibility. Partial unemployment does not reduce redundancies but seems rather to come upstream (Calavrezo *et al.*, 2009) : employers frequently use the STW arrangements after implementing a social plan (*Plan de sauvegarde de l'emploi*).¹⁸ And statistically is observed that companies that have used the partial unemployment have often experienced declining enrolment over the period (Calavrezo, Zilloniz, 2016).

Other explanations underline that the existing instruments of internal flexibility are too rigid and complex in France. For example, the STW, which is often presented as the main instrument of the German labour market's resilience, is not considered as a flexible instrument in France because of the complexity of its implementation (see box C).

¹⁷ See Cochard *et al.* (2010).

¹⁸ Walz *et al.* (2012).

Box C

Short-Time Work in France during the Recent Recession

If short-time working time (STW) is often presented as one of the main tool of the German internal flexibility in the wake of the crisis, its limited use in France after 2008 reflects the lack of flexibility of this instrument in the face of economic difficulties. The legal framework of STW also changed 10 times between 2009 and 2013. Social partners and the French administration try to encourage a greater use of STW but its implementation requires the respect of a lengthy process that can be seen by employers as a lack of flexibility. Indeed, the recourse to STW arrangement must take place following consultation of the works council or, failing this, of employees' representatives. The State also plays a significant role: recourse to STW arrangement requires a authorization from the local public authorities (the territorial unit (UT) of corporate Regional Directorate, competition, consumption, labour and employment (Direccte)). This requirement was cancelled in March 2012, before being reintroduced in November 2012 so as to avoid legal uncertainty for the firms.

In order to extend/to facilitate STW, the State and social partners created a new scheme of STW in 2009: ***l'Activité partielle de longue durée (APLD)***. But, to qualify for this aid, the State and the trade organization at national level, or directly the companies at national, regional or departmental level, have to conclude APLD agreements.

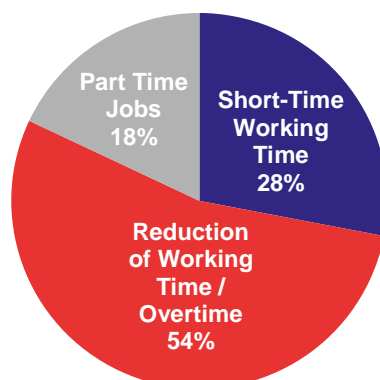
The job security act passed on 14 June 2013 (*loi de sécurisation de l'emploi*) merges the "classic" STW and APLD in order to simplify the requirement and to extend the use of SWT scheme (with the annual limit of 1,000 hours per employee and a compensation of 70% of the gross hourly wage). For this scheme, no agreement is required, the works council ("comité d'entreprise" or alternatively employees' representatives) must only have been consulted prior to the implementation of STW. But the additional salary to be paid by companies depends on the company size. In Germany, the system is less complex and costly for employers. Yet, it is noteworthy that this comparison does not take into account the residual costs and additional payments provided for in the collective agreements.¹⁹

As a result, France had a small decrease in hours worked during the crisis (the reduction in average weekly hours per worker in the private sector was limited to -1.1% in 2009 compared with -3.3% in Germany). This is the result of ambivalent French employment policies during this period: on the one hand there were incentives to resort to overtime (TEPA law of 20 August 2008) and in the other hand, encouragements to use STW arrangements (Erhel and Levionnois, 2013).

After 2008, STW arrangements contributed to the decrease of hours worked up to 28% (figure 6). Two other factors contributed to this decrease: the increase of part time employment and a decline in the average weekly hours of full-time employees partly due to the reduction in overtime (Ananian *et al.*, 2012).

¹⁹ According to Fréhaut (2012, *op. cit.*): "the *Institut für Arbeitsmarkt- und Berufsforschung* (IAB) has estimated the residual costs (*Remanenzkosten*) borne by German employers at between 24% and 35%. Concerning additional payments under collective agreements in Germany, in the metalworking and chemical industries, for example, an agreement has been signed capping the benefit at 90% of the previous net wage bringing the level of German benefits up to the level of France's extended short-term working scheme".

Figure 6
Contribution of the Internal Flexibility Tools in the Working Time Reduction in France, 2008-2009



Source: from Ananian S., Debauche É. and Prost C. (2012).

All in all, the **tradition of negotiated flexible working time** appears less important in France than it is in Germany as the French flexibility instruments have a more limited impact and are fewer and less effective.

1.2.3. Recent Reforms to Increase Internal Flexibility

The **job security act (2013) aimed at increasing internal flexibility by making it easier to use existing instruments**, especially short-time working schemes, and by providing social partners with more room for manoeuvre regarding working hours and wages adjustments at firm level. The law notably introduced the possibility for social partners to negotiate “**jobs retaining agreements**” (*accords de maintien dans l’emploi*) at firm level, allowing for adjustments of working hours and wages in the event of a cyclical downturn.

Yet, and unlike to Germany, in France such agreements can only be implemented in the event of a cyclical downturn and not in order to “preserve the competitiveness” of the company. The maximum duration of such an agreement is two years. In case several employees refuse the agreement, redundancies can be made outside of the rules governing collective redundancies on economic ground (notably the conclusion of a “*Plan de sauvegarde de l’emploi*” even if ten employees or more are laid off). It is too soon to provide a conclusive evaluation of the law. However, results thus far suggest that its impact has remained limited. Only ten “Jobs retaining agreements” had been implemented in April 2015²⁰. Moreover, in each case, a significant number of employees preferred to be laid off rather than accept a change in their individual labour contract induced by the job retaining agreement.

These agreements compete with the former *competitiveness agreements* (*accords dits de compétitivité*) which are less restrictive (agreeing unions must only represent 30% of the workforce compared to 50% for jobs retaining agreements) and non-derogating. Another instrument of internal flexibility promoted by this law consists of **mobility**

²⁰ See : « Bilan de la loi de sécurisation de l’emploi du 14 juin 2013, 3 avril 2015 ». www.emploi.gouv.fr/actualites/bilan-loi-securisation-l%E2%80%99emploi-au-3-avril-2015.

agreements (*accord de mobilité interne*). The law provides that employers and trade unions have the ability to negotiate collective labour agreements covering occupational or geographical mobility of their employees. The employer must obtain the consent of the employees affected by this mobility. Employees who refuse a measure of mobility established in a collective agreement can be dismissed according to individual redundancy procedure for economic reasons. In April 2015, there were no mobility agreement implemented; this illustrates the difficulty of negotiating on key provisions of the employment contract (cf. *infra*).

At last, this job security act (2013) aimed at securing the redundancies by requiring employers to negotiate the social plan. In April 2015, 80% of social plans procedures have been opened through negotiations, and 61% of these procedures concluded with a majority agreement. The rate of contested procedures of collective layoff fell down to 5% in 2015 when collective agreements were signed, against 25% previously.

These developments should lead to more qualitative employment adjustment based on negotiation with social partners (for training, jobs and skills management planning –*Gestion prévisionnelle des emplois et des compétences*, etc.). In an unstable economic environment where flexibility is a vital condition, social dialogue should enable firms to adapt and not only to adjust to crisis.

1.3. From Internal Flexibility to Wage Moderation

Compensation practice and wage bargaining are two main dimensions of internal flexibility. They influence wage and labour cost dynamics, which in turn may affect labour market performance. Comparing Germany and France, from this point of view, is a necessary step to understand how far internal flexibility practice may explain the difference in terms of competitiveness and employment.

Over the last decades and in the wake of the economic crisis, wage moderation in the German economy also significantly contributed to the increase in competitiveness and to the development of employment. Real wages have decreased since 2000, especially at the lower end of the wage distribution and in the service sector.

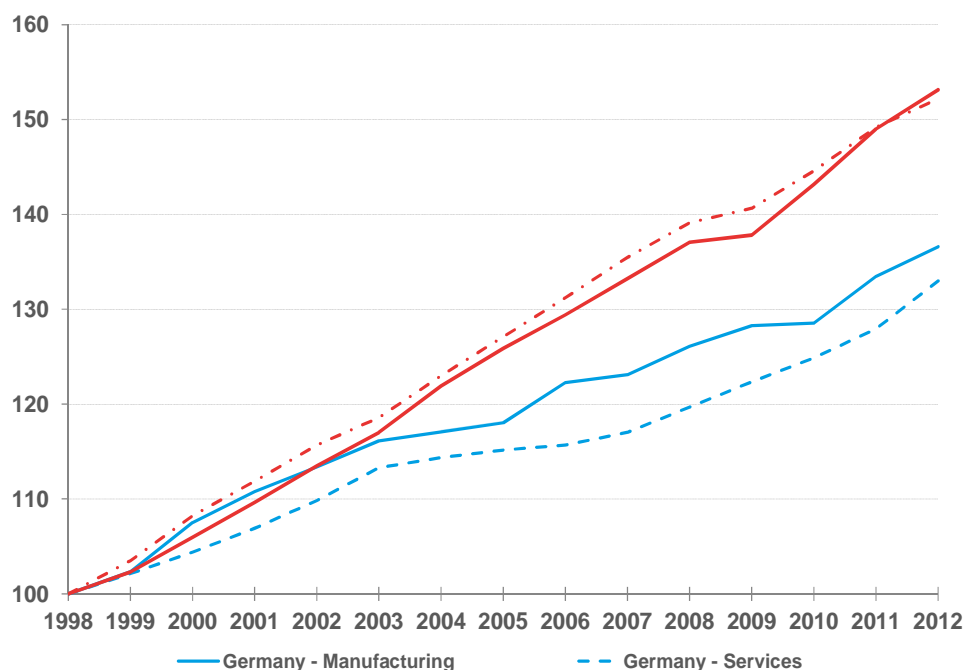
1.3.1. The Exceptional Wage and Labour Cost Moderation in Germany

Trends in nominal labour cost²¹ are quite different in Germany and France from 1996 to 2008 (figure 7), before the crisis. In manufacturing, the growth in nominal labour cost index is smaller in Germany than in France since the beginning of the 2000's. Since the crisis, the index has grown at the same pace in both countries.

In the service sector, the gap between the growth of the French nominal labour cost index and the German one is much larger, due to stronger wage moderation in the German service sector.

²¹ Labour costs are defined as core expenditure borne by employers for the purpose of employing staff for a given unit of time. They include employee compensation, with wages and salaries in cash and in kind, employers' social security contributions and employment taxes regarded as labour costs minus any subsidies received (Eurostat definition). As the classification of activities has changed in 2008 we provide two figures, one up to 2008, and the other one from 2008.

Figure 7
Nominal Labour Cost Index



Source : Eurostat-NACE R2.

Yet, the nominal labour cost index does not take into account inflation or productivity gains. Divergences should now be examined in real terms and compared with productivity trends.

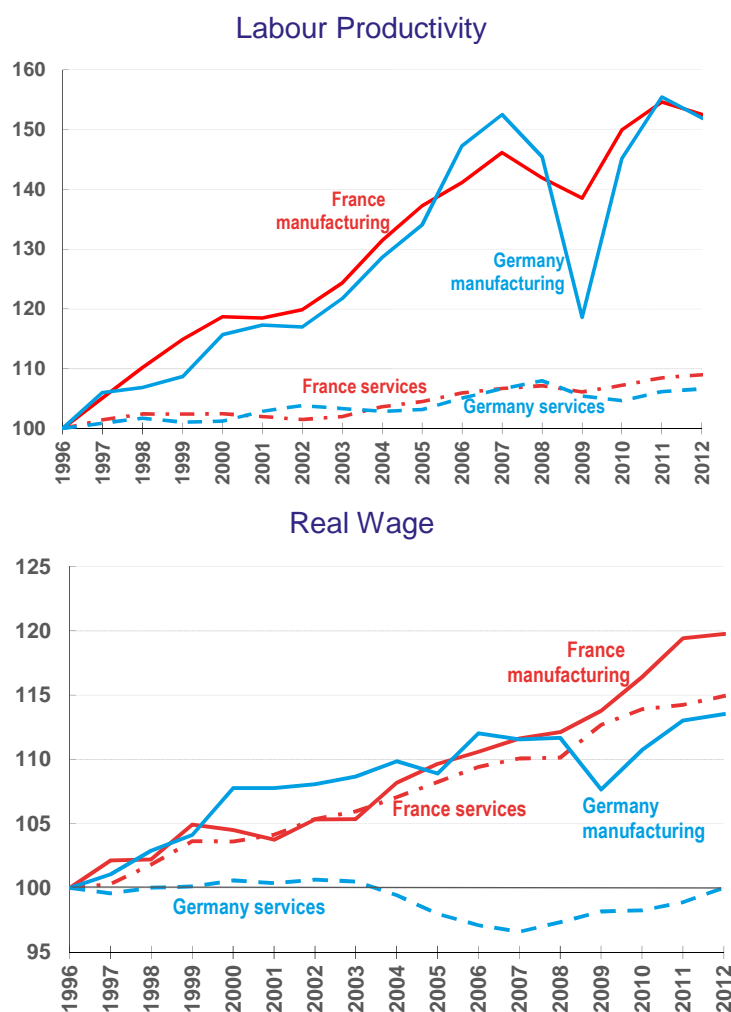
According to Chagny and Husson (2015) productivity shows quite similar developments in Germany and in France over the period 1996-2008: productivity rose by more than 45% in the manufacturing sector in both countries, and by less than 10% in the service sector (figure 8). During the crisis, German industrial productivity adjusted more sharply because of the specific practices of internal flexibility that allowed job retention (as described in section 1.1.1.).

Whereas productivity developments by sector are not so different, gaps appear significant when considering real wage dynamics, particularly in the service sector. Between 1996 and 2008, real wages rose by 10% in the manufacturing sector, for both countries; but in the French service sector they rose by 12%, whereas they dropped by 3% in Germany.

Considering French and German mean wage dynamics, the most prominent difference is in the service sector, where the wage moderation has been extremely strong.

Results quite similar are observed by differentiating tradable and non-tradable sectors (Ragot and Le Moigne, 2015); indeed, this splitting is partly similar to the industry / service partition. To go further in details in order to explain this difference requires looking at the distributions of gross wages, by percentile.

Figure 8
Productivity and Real Wage (1996 = 100)

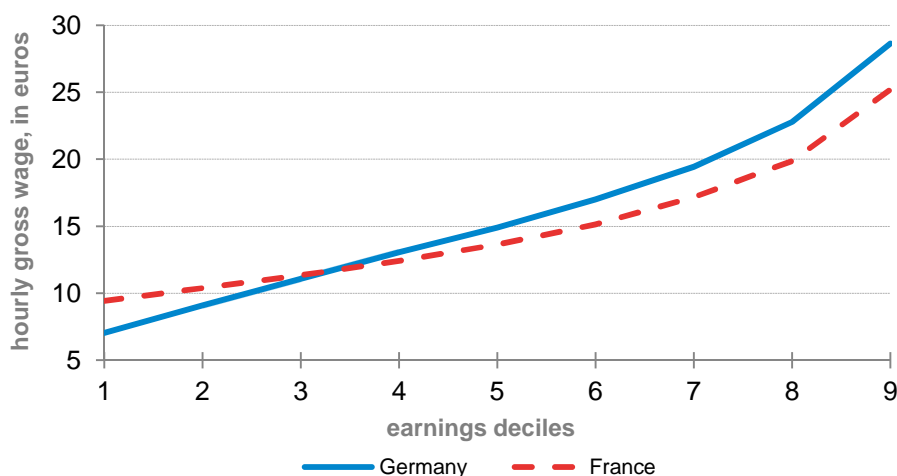


Source: Chagny and Husson (2015), index from AMECO database.

1.3.2. Differences in Wage Distribution

Chagny and Lainé (2015) compare wage distributions in Germany and France in 2010, for different sectors. Whereas German gross median wages –and higher decile wages - exceed the French ones, wages are lower in Germany at the bottom of the distribution (figure 9). This is true in all sectors but particularly in business services. Wage differentials between sectors are larger in Germany than in France; but the sectors that provide the higher wages are different in each country.

Figure 9
Hourly Gross Wage Distribution in France and Germany, 2010



Comments: The first decile, that is the threshold separating the 10 % of the employees with lower hourly gross wages from the rest of the employees, amounts to 7,05 euros in Germany and 9,44 euros in France.

Source: Chagny and Lainé (2015). Based on data from Eurostat, covering the firms with ten employees or more in the private sector.

Dustmann *et al.* (2014) describe the real wage distribution for different sectors in West Germany over the period 1996 – 2008. The same kind of exercise (Lainé, 2015) conducted for France reveals significant differences in real wage trends:

- in Germany, real wage dispersion increased during the 2000's; the 15th percentile of wages sharply decreased, whereas the 85th increased; as a result, the median also decreased after 2004, because the former effect is stronger than the latter;
- in France, due to the statutory minimum wage growth, the 15th percentile of the wage distribution still increased during the 2000's, as well as the median wage (but more slightly).

The differences between France and Germany are more significant for the non-exporting sectors: in the consumer service sectors, the 15th percentile decreased sharply in Germany whereas the statutory minimum wage increased in France and pushed up low wages.

In the manufacturing sector, median and high wages (85th percentile) rose in both countries: this may be interpreted as the effect of similar structural changes in the employment structure and skills of this sector; on the contrary, divergence for the lowest wages can be the result of different wage-setting systems and then different internal wage flexibility.

These differences in wage dynamics reflect institutional characteristics of the labour market. The growth of the French statutory minimum wage explains the rise of the lowest point of the distribution during the 2000's, particularly in the services sectors where low wage jobs are more frequent. In Germany, where there was no statutory minimum wage developed up to 2015, minijobs and midijobs have increased and are characterised by very low hourly wage rates. Differences in sectoral wage dynamics during the 2000's strongly depend on these wage policies. Beyond them, national characteristics and evolutions of the collective bargaining systems are also major determinant of the firms' capability to adapt internally the working force and wages.

The second part of this paper sheds light on this issue. In Germany, what's the relationship between the transformation of its collective bargaining system and its performances in terms

of internal flexibility or wage moderation? What characteristics of the German system differ with the French system where collective bargaining is also strongly institutionalized? This section addresses the issue of how flexibility tools are used in the broader context of the functioning of collective bargaining systems in both countries.

II Collective Bargaining: At the Root of Internal Flexibility?

The available literature suggests that the specific features of the German system of industrial relations and its transformations over the past two decades can account for the greater role of internal flexibility in the German labour market. Hence, it is then interesting to identify these features and their evolution. On the contrary, France is supposed to have a more rigid and formal system of collective bargaining, that may explain the French 'preference' for external flexibility. This section aims at describing what really lies behind the German widespread use of internal flexibility arrangements. Symmetrically, it explores the margins of flexibility that French firms can negotiate and their limits.

2.1. Labour Market Performance and the Erosion of Coordinated Bargaining Systems in Germany

Collective bargaining usually takes place in Germany at industry level between individual trade unions and employers' organizations, for setting pay and working conditions. For a long time, firm level collective agreements have been rare, and they still cover a minority of employees working primarily in large firms. As a matter of fact, works councils are not legally authorized to negotiate collective agreements; they can, however, reach agreements with individual employers on issues not covered by collective agreements as well as on how the terms of the collective agreement will be applied in practice.

Opening clauses in branch level agreements can notably allow for firm level derogatory agreements. Work councils also play a significant role in designing and regulating working time accounts at the establishment level. Hence, the margins of flexibility are in fact linked to the erosion of the traditional collective bargaining system (Chagny, 2013, *op. cit.*).

2.1.1. A Continuous Decline in the Share of Workers Covered by Union Agreements

Since the 1990's, a process of erosion of the German collective wage-bargaining system has been taking place.²² This erosion has translated into a weakening of its effects through the decrease in collective bargaining coverage (figure 10), the fragmentation and decentralization of collective bargaining, and, more generally, a weakening of trade union power.

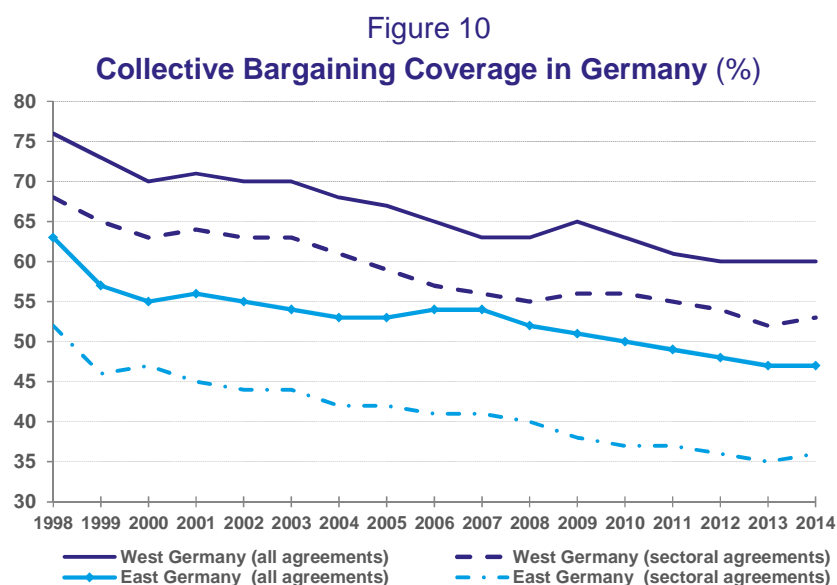
According to Bispinck and Schulten (2014, *op. cit.*), "*the erosion of collective bargaining coverage is more obvious if we focus on the core of sectoral bargaining*". The fall by ten points of global coverage is entirely due to the decline of sectoral agreements coverage, which has not been offset by an equal rise in firm level agreements coverage.

According to IAB data²³, the share of employees covered by collective bargaining sector agreements in Germany has steadily declined since the mid-1990's. In 2014, only 60% of employees from Western *Länder* and 47% from new *Länder* (former East Germany) fell

²² See Addison *et al.* (2010) and Haipeter (2013).

²³ The data source is the IAB Establishment Panel, which is a representative employer survey covering some 16,000 businesses from all branches of the economy and of all sizes. Data on collective bargaining coverage covers establishments with more than 20 employees (private and public sector) and data on works council coverage covers private-sector establishments with more than five employees.

under a collective bargaining agreement. In 1998, the collective bargaining coverage was much higher with 76% of employees from Western *Länder* and 63% from new *Länder* (former East Germany) covered by these agreements (figure 10).



Source: IAB-Betriebspanel 2014.

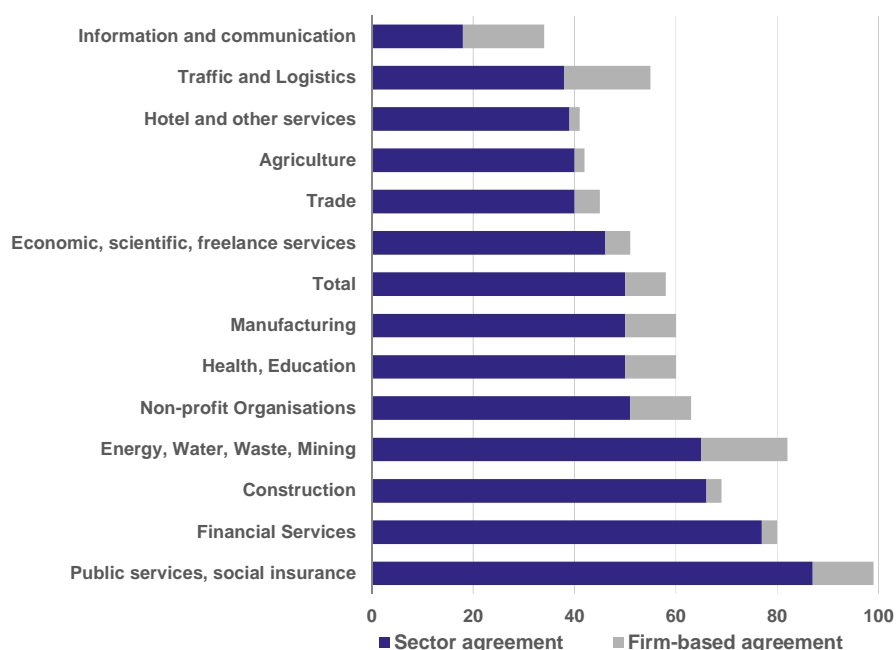
The “core zone of the German industrial relations system”, defined as establishments covered by both a collective agreement and a works council is also collapsing (Ellguth *et al.*, 2014). In 2014, only 34% of employees were covered by a collective agreement and worked in a company with a works council. From 2009 to 2013, the proportion of employees having works council representation decreased from 45 % to 43 % in western *Länder*, and from 38 % to 35 % in eastern *Länder*. In 2013, the core zone was formed out of some 28% of private-sector establishments located in Western Germany and only 15% of those in Eastern Germany; in 2009, they were 30% and 18%, respectively (Ellguth *et al.*, *op. cit.*). According to the data, some 35% of establishments in Western Germany and 46% in Eastern Germany have neither a collective agreement nor a works council.

A closer look at collective bargaining coverage at sectoral level provides further and mixed insight into this erosion process and of the Western vs Eastern divide.

First, the erosion mainly affects specific sectors, in particular the service sectors (e.g. IT services, hotels and restaurants, etc.) and agriculture, where only a minority of the workforce is covered by a collective agreement (figure 11). In the energy sector, the construction and the banking and insurance sector, the coverage is much higher.²⁴ In other words, the sectoral differentiation of the German collective bargaining system has been growing.

²⁴ Bispinck and Schulten (2014), *op. cit.*

Figure 11
Collective Bargaining Coverage by Sectors in 2014: West Germany
 (as a % of employees)



Source: IAB-Betriebspanel 2014.

Then, East German workers are much less covered by collective agreements than West German ones. In 2014, all economic sectors combined, if 40% of employees from Western *Länder* were not covered by any type of collective bargaining agreement, they were 53% in the new *Länder* of the former East Germany.

2.1.2. A Collective Bargaining System More Fragmented and More Decentralized

The decentralization of collective bargaining is another structural trend affecting the German collective bargaining scheme. This has allowed for more and more firm-specific regulation and hence greater internal flexibility. Since the early 1990's, the number of association-level agreements that have allowed establishments to derogate from multi-employer agreements, has increased significantly: if 3,000 enterprises had signed company agreements at the beginning of the 1990's, they were more than 10,000 in 2014 (Lallement and Giraud, 2014). According to Bispinck and Schulten (2011), by the mid-2000s almost all major industry-wide agreements included opening clauses allowing for far reaching [opportunities for] deviations (introduced] at company level.

According to the WSI,²⁵ Works Council Survey, in 2010, 58% of all establishments –with at least 20 employees and with a works Council– made use of an opening clause. More generally, the process of decentralization was also one of differentiation: more and more issues have been delegated to firm-based bargaining, and the conditions in which a company agreement can go below collectively agreed standards have been relaxed and widened.

On the one hand, it has been gradually easier for companies to derogate to association-

²⁵ Wirtschafts- und Sozialwissenschaftliche Institut (WSI).

level agreements, not only when they were facing severe economic difficulties. An increasing number of opening clauses have been concluded to improve competitiveness, to safeguard jobs or to facilitate investments. For instance, the well-known 'Pforzheim Accord', signed in 2004 in the metal industry, provides for a time-limited deviation from agreed standards in order "to achieve a sustained improvement in the development of employment" (Bispinck *et al.*, 2013). In addition, there has been a massive increase in company-level pacts for employment and competitiveness negotiated with works councils.

On the other hand, the content of opening clauses contained in association-level has been diversified with numerous working time and pay-related derogations. In general, working time was the issue the most used in opening clauses (variable working time provisions, extension and reduction of working time schemes, etc.), before wage-related clauses (reduction of starter rate, reduction or suspension of annual bonuses, reduction of basic pay, etc.).

The decentralization of collective bargaining contributed to the growing segmentation of employment, among other structural factors and labour market reforms; but it was also facilitated by works councils: important changes have been agreed in order to help the employer improve cost competitiveness, and protect the skills of his core workers. As a matter-of-fact, firms which are not covered by collective agreements especially in the less unionized service sector, show larger pay dispersion and greater low pay incidence. According to Dustmann *et al.* (2014), between 1995 and 2004, de-unionization can account for 28% of the rise in inequality at the lower end of the wage distribution.

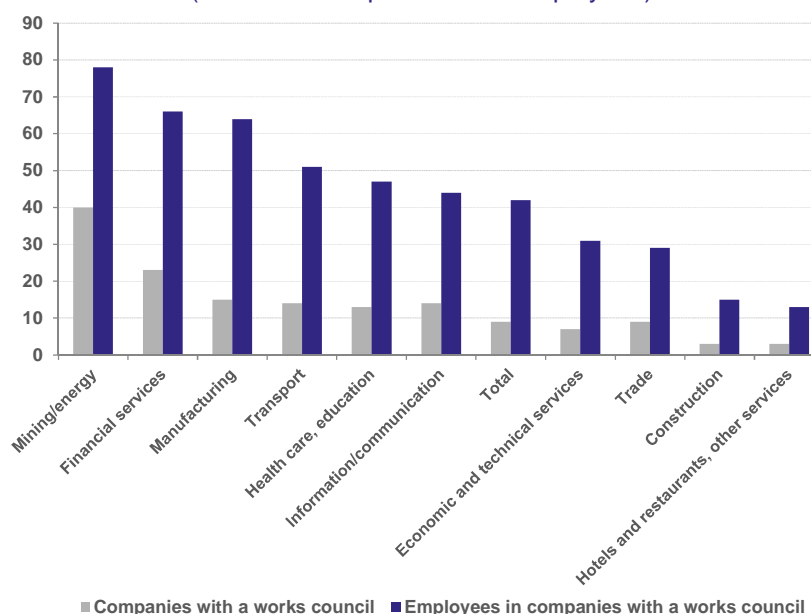
2.1.3. Loss of Regulatory Power for Labour Unions and Uneven Negotiation Power at the Company Level

In Germany, trade union membership used to be stronger among manual workers in the industry sector and in the public services, and weaker among workers of the private services sector. With the decline in employment in manufacturing, union membership (i.e. excluding retirees and unemployed) dropped continuously from 36 % in 1991 to less than 18% in 2013. This decline is also due to a deterioration of the public image of unions.²⁶

The strong decline of unions' structural and organizational power has also led to a significant weakening of their institutional power, reinforced by the decentralization process. In addition, the proportion of companies with works councils differs greatly across sectors (see figure 12).

²⁶ See Bispinck and Schulten (2014), *op. cit.*

Figure 12
Works Councils Coverage, by branch in 2012, Germany
 (as a % of companies* and employees)



* Companies in the private sector with at least 5 employees, not including agriculture or non-profits.

Source: IAB Betriebspanel 2012.

This new balance of power in favour of employers vs. workers and trade unions is also illustrated by the extent of concessions made by workers' representatives at the firm-level and by the effective fulfilment of negotiated commitments by companies. On the one hand, according to a 2003 WSI survey, among the companies that have concluded firm-level agreements, 82% contained safeguarding employment guarantees, 53% guarantees to maintain investments or to secure production, but 13% did not contain any guarantees²⁷. As Bispinck and Schulten suggest, "quite often work councilors in Germany have felt "blackmailed" by their companies to accept concessions and, as they could no longer refer to binding standards at sectoral level, have lost an important instrument of resistance".²⁸

The changing balance of power at the firm level also impacts the effectiveness of the commitments' implementation. Available data and studies show that bargaining coverage and the quality of industrial relations impact the respect of agreements at firm level in terms of the actual safeguarding of jobs and /or investments (Chagny, 2013, *op. cit.*). According to a WSI survey, during the crisis, the quality of industrial relations had more influence on the respect of agreements than the economic conjuncture (Bodegan *et al.*, 2011). Another WSI study shows that for 35% of firms not covered by a collective agreement, jobs safeguarding agreements did not include commitments in terms of safeguarding jobs (vs. in 11% of cases in firms covered by a collective agreement).²⁹ Besides, in 28% of cases the company did not

²⁷ DG Trésor, « Les outils de flexibilité interne, alternatives aux licenciements ? », French Treasury Workshop, 2012.

²⁸ Bispinck and Schulten (2014), *op. cit.*, p. 5.

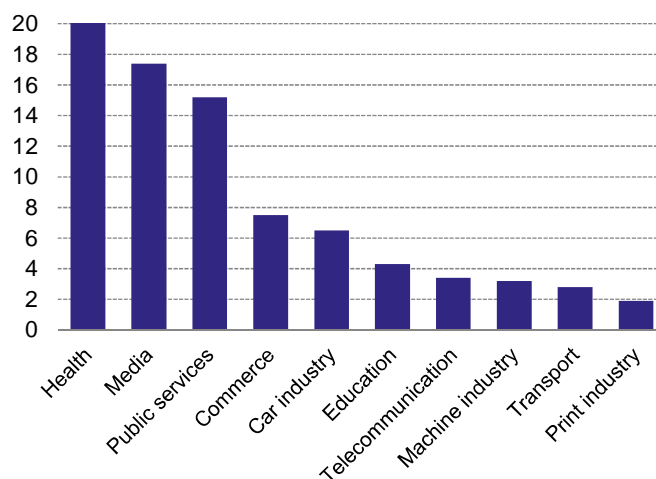
²⁹ Massa-Wirth and Seifert (2004).

comply with the negotiated concessions.³⁰

2.1.4. New Pattern of Labour Conflicts

Although strikes have become more frequent in the past ten years, they remain less frequent in Germany, in comparison with other countries. The major and recent change identified regarding labour conflicts is the shift in strike action from industry to services (figure 13)³¹.

Figure 13
Days not Worked Due to Strikes, Germany, 2005-2012
(%, by sector)



Source: Lallement and Giraud, *op. cit.* (2014).

Although the majority of striking workers still belongs to the metal industry they no longer represent the highest numbers of days on strike. Between 2005 and 2013, both public and private services accounted for 75 to 90 per cent of all days on strike in Germany.

Inequalities in terms of coverage by collective agreement, decentralization of collective bargaining and unions' loss of power had direct effects on the firms' margin of flexibility and on wage dynamics at a macroeconomic level. These changes in the German system of industrial relations contributed to the "compromise" on wage moderation but also to growing inequalities between and within sectors, depending notably on their coverage by collective agreements. As observed in Dustmann *et al.* (2014) over the period 1995-2008, "[...] wage inequality rose strongly in the covered sector both at the bottom and the top of the wage distribution, while in the uncovered sector it remained basically constant at the bottom of the wage distribution and only increased at the top of the wage distribution" (2014, p. 179).

2.2. Collective Bargaining in France: Between Flexibility and Institutionalization

As underlined above, collective bargaining as a lever of flexibility is a much more debated issue in France although it has been promoted at the firm level by French authorities since

³⁰ DG Trésor (2012), Workshop.

³¹ Dribbusch and Birke (2012).

1982, particularly to regulate working time. The decentralization of collective bargaining started earlier in France than in Germany.

2.2.1. A Steady Process of Decentralization

Industrial relations in France are often caricatured and excessively summarized in two figures: union membership, that is lower than in any other western country (5% in the private sector), and the share of employees covered by a collective agreement that is one of the highest (more than 90%). Many economists consider that this inconsistent situation may explain the ineffectiveness of collective bargaining in France, compared to Germany.

If the decrease of union membership is a continuous trend in France, the coverage by collective agreement has been stable or even widening over the past decades, while in Germany it has decreased, alongside with union membership.

The main difference is that working conditions in France rely more significantly on the law whereas in Germany, branch-level collective agreements are the core of labour regulation. In France, *the Labour Code* determines quite precisely the overall standards, which are just/only completed by sectoral agreement.

However, the share of employees covered by collective agreements in France is high and stable for two main reasons: first, the widespread extension procedure of sectoral agreements; second, the fact that collective agreements are open-ended, so that most employees are formally covered even if some agreements have not been updated for a long time. Extension procedures also exist in Germany but they are much less frequently used: in 2009, only 1.5% of all agreements had been extended (Bispinck and Schulten, 2011).

A growing part of the *Labour Code* addresses the conditions under which firms can derogate to the law, particularly by collective agreements. The so-called “hierarchy of norms” -the lower-level agreements could not deviate for the worse from higher-level agreements or from the law– now has many exceptions.

Regarding derogations from sectoral collective agreements, since the 2004 act reforming social dialogue, a lower-level agreement may deviate for the worse from the provisions of a higher-level agreement, unless such a derogation is expressly forbidden in the later. Four major issues are in any case exempted from any derogation at company level:

- minimum wages;
- job classifications;
- supplementary social protection measures;
- multi-company and cross-sector vocational training funds.

Because of the lack of data, it is difficult to assess how far current derogations are effectively used. During the years following the 2004 reform, it seems that most branch-level organizations closed the door to derogations (Meriaux *et al.*, 2008). This has not probably been the case more recently, but it is still very difficult to know exactly to what extent firms can really deviate from industry-level collective agreements.

Since collective agreements usually cover many areas and seek a global “win-win” equilibrium, it is sometimes difficult to assess whether they can be considered as derogatory for the worse, from the employee’s point of view. For employers, this may be a source of uncertainty and an impediment to collective bargaining.

In this context, the next sections assess the extent to which the specific features of the French collective bargaining system allow for internal flexibility in terms of working time and

wages.

2.2.2. Collective Bargaining Applied to Working Time: a Typical Example of the French Dilemma?

Working time is a typical example of the ambiguous situation that prevails in France regarding the scope of flexible arrangements and how employers effectively use them. Many reforms of the legal framework have been implemented in order to facilitate collective bargaining on working time.

Since 1982, the negotiation of working time arrangements at firm-level has been promoted to offset the rigidity induced by wage setting and working conditions rules determined at the national level. Flexible working time arrangements are accepted, provided they are based on a collective agreement signed at the firm or branch level.

An intensive period of collective bargaining took place between 1998 and 2002 when firms had to negotiate the consequences of the 35 hours reform. Wage moderation and many flexible working time schemes have been introduced as a counterpart of the 35 hours work week.³² Many possibilities of working time modulation over a monthly or annual period were introduced, if based on a collective agreement. Overtime compensation rules can also be negotiated.

The most important and recent step in this continuous decentralization process of working time regulation is the 2008 “Act Reforming Social Dialogue”. Firm-level is clearly identified as the prevailing level of regulation regarding working time, above any higher level agreements. The Act made it easier to negotiate in small and medium size firms where trade unions are not represented: it is possible to negotiate agreements with the works councils or even staff representatives, under restrictive conditions.

Hence, working time has become one of the most frequent issues addressed by firm-level collective bargaining: this is partly due to a yearly legal duty to bargain for firms where delegates of representative trade unions exist.

Since 2008, each year about 9000 firm level agreements signed by unions and registered by the Ministry of Labour concern working time arrangement (and sometimes simultaneously other topics).³³ They were about 7500 between 2005 and 2007. This number represents about 20% of all firm level agreements signed by unions and registered each year. It may look quite insignificant compared to the total number of enterprises in France. But working time agreements are in fact mainly negotiated in medium and large firms, where union representatives exist, and thus they cover a more significant number of workers³⁴. However, even if working time is the main area of potential derogatory agreements, we lack a systematic analysis of these agreements and we largely ignore what kind of deal they contain. It is also quite difficult to know how much firms tried to negotiate with works councils

³² The thirty-five-hour work week is not a ceiling but a threshold implying overtime payment. Firms (and branch level organizations) can negotiate to define different forms or rate of overtime compensation (in wage or rest) and overtime quota. The labour law just defines two elements: the rates that apply to the employees not covered by a sectoral or firm level agreement; the minimum standards that collective agreements can't over-rule.

³³ See « Bilan annuel de la négociation collective », released by the French ministry of Labour.

³⁴ These figures measure a flow of new agreements (some of them only revising older one): a complete view would imply to have a “stock” approach, measuring the number of firms and employees covered by a valid agreement.

in the absence of trade unions.

Results from the survey REPONSE (Zilloniz, 2014) also show that French firms are able to negotiate on working time when they face economic difficulties (see box D). As in Germany, this is particularly true for large firms which have stable industrial relations, more than for medium and small firms.

Then, even if working time flexibility seems to be less developed in France than Germany, available data shows that French firms have some degree of internal flexibility through collective bargaining in France, especially since 2008. Many legal provisions to make working time more flexible do exist, but not all firms are actually capable of doing so.

Indeed, one main difference between France and Germany regarding collective bargaining is the lack of actors for collective bargaining at the firm level. In France, collective bargaining practices at the firm level still mainly depend on the existence of union representatives. But, only 47% of the establishments with 20 employees or more (Pignoni and Raynaud, 2013) have union delegates (within their own employees or at the enterprise / group level).

The complexity of the labour law, the limited scope of unions and the lack of employee representatives in many small and medium size enterprises must also be taken into account. The system of derogatory agreement is possibly too complex and unsecure for small employers who do not have specific legal staff.

Box D

Some results from the French survey “REPONSE”

The survey REPONSE has been conducted four times since 1992 by the Dares (statistical service of the ministry of labour), and the last edition covers the period 2008-2010. This survey is conducted in establishments with 11 or more employees in 2010 (more than 20 employees in the previous editions); combining three questionnaires (employer, employee representative and workers) this survey deals with social relations, employee representation, wage and working time policy and collective bargaining at the plant level.

The last results show that, over the period 2008-2010, there has been at least one “collective discussion” or “collective bargaining” about working time in one third of the plants with 20 or more employees (but only in one fourth of the plants between 11 and 50 employees).

About 40% of them involved the collective flexibility of working time (annualization for example), and one fourth of them individual flexibility (time accounts for example).

Caeteris paribus, such discussions or negotiations took place more frequently in firms that incurred a decline in their business.

Nevertheless, the previous figures are partial, notably because they aggregate indistinctively real collective bargaining and “collective discussion”. The latter can be information process or informal discussion, but they do not consist in reaching a formal agreement.

2.2.3. Wage Bargaining and Compensation Practices

The strong wage moderation during the 2000's in Germany has many explanations: the shock of the reunification, the need to increase business margins, or the high level of unemployment is the main factors that led German people to accept such a moderation. The collective bargaining system and its evolution is intimately linked to wage moderation: social partners at the industry level took into account the need for a moderate wage growth; but simultaneously the pressure of decentralization gave employers more possibilities to depart from branch level rules. During the 2000's, minijobs also contributed to wage moderation.

In France, wage rigidity is supposedly stronger and is one of the main usual suspects for the poor performance of the labour market. Indeed, the wage dynamic since 2008 is particularly striking: whereas unemployment raised, productivity stagnated and inflation slowed, wages have continued to grow although at a more moderate pace (Insee, 2015). This is particularly true in 2009 and 2010. The real growth rate of monthly wages decreased since 2011 and was lower than in Germany. Such a dynamic is quite complex to analyse. One plausible explanation may lie in the specific features of the French collective bargaining system, which fails to take into account in the short run the economic cycle and thus limits the use of wage flexibility at firm level.

Indeed, the multi-level system of wage setting in France may partly explain this phenomenon: 1/ statutory minimum wage, 2/ branch-level collective bargaining, 3/ group level compensation policy and firm level bargaining practices interact in a complex way. In terms of internal wage flexibility, French firms may have limited margins due to the first two components.

According to the REPOSE survey in 2010 annual collective bargaining on wages only concerned 44% of the plants with 11 employees or more (but they employed 2/3 of the workers in the private sector).³⁵ About 11 000 firm level wage agreements have been signed every year by unions since 2008, and registered by the ministry of Labour.

If wage agreements are implemented, the firms in question tend to show higher levels of wages, higher increases in wages and generally more generous wage policies than companies that apply branch level agreement (Luciani, 2014). This is unsurprising since collective bargaining at the plant level is linked to the existence of trade unions and aims at defining better wage standards than those determined by the law for branch level agreements, and minimum wages are outside the scope of derogatory agreements.

Nominal wage cuts are exceptional in France as well as in Germany. In France, the employee's agreement is necessary to reduce his nominal wage because it is an essential element of the labour contract.

Real wage cuts depend on inflation and its impact in wage setting mechanisms. Inflation is frequently taken into account as the very minimum level of nominal wage growth to be negotiated, at the industry level or the firm level. Nevertheless, except for the statutory minimum wage which is automatically adjusted for inflation, there isn't any automatic indexation for the salary scale.

³⁵ See Naouas and Romans (2014): this is a quite extensive notion of wage bargaining because employers may also refer to informal discussion with some group of employees.

Discussing wage bargaining in terms of (downward) flexibility also implies to have an in-depth look at the structure of work compensation (Sanchez, 2014). Compensation practices may differ significantly across firms: increase in base salary, individual wages and bonus, performance related bonus (collective or individual), profit sharing, saving plans, employee share ownership, stock options, and other components like social insurance paid by the employer, remuneration in kind. These components may be reversible (bonus, profit sharing...) or not (nominal base salary); some of them can be based on collective bargaining (general wage increases) whereas other payment schemes legally depend on an existing collective agreement (collective performance base bonus).

Considering these elements, firms have some margins of internal flexibility in terms of compensation. Table 2 shows how compensation practices have changed since 1998 within plants with 20 employees or more.

Table 2
Compensation Practices in France
(% of establishment)

	Executive Staff*			Non-Executive Staff*		
	1998	2004	2010	1998	2004	2010
Non reversible compensation practice	70.9	83.5	77.2	87.4	95.1	90.7
General wage increases	46.7	53.1	52.0	67.5	75.5	73.3
Individual wage increases	54.9	68.2	58.4	69.5	76.0	66.1
Reversible compensation practice	58.7	74.2	69.4	65.0	74.0	70.0
Collective performance related bonus	33.3	51.9	49.8	34.9	50.2	50.8
Individual performance related bonus	49.6	63.5	58.8	52.4	55.2	51.4
No pay rise	20.1	10.6	13.5	7.0	3.1	6.1

* In the plants where this category of workers exists.

Lecture: in 2010, 52.0% of the establishments paid general wage increases for their executive staff members, and 73.3% paid general increases for non-executive staff employees.

Scope: plants of 20 or more employees, non-farm business sector.

Source: Dares, REPOSE, surveys 1998-1999, 2004-2005 and 2010-2011.

Most of the firms combine individualized and flexible compensations with collective and non-reversible components (for example, see Chaput and Wolff, 2008). Individual and flexible (reversible) compensation practices expanded between 1998 and 2004, but firms reduced them significantly during the crisis.

Another study, based on the European wage structure survey, shows that in France the share of variable pay (as a percent of the gross compensation) decreased on average, from 15,9% in 2008 to 14,8% in 2012, especially in the manufacturing industry and in the banking sector (Sanchez, 2014, *op. cit.*).

Wage moderation and even overall nominal compensation decreases are possible for those firms in which variable pay systems, notably profit sharing schemes, have been set up by a collective agreement. These schemes may notably be a source of internal flexibility where they tend to substitute for irreversible wage increases (Delahaie and Duhautois 2013).

French firms may not appear less flexible than German ones in this respect. According to the

European company survey,³⁶ profit sharing schemes -and more generally variable pay systems based on collective performance- are more frequent in France than in Germany. In France, more than 55% of the employees in the non-farm business sector are in 2012 covered by some kind of profit sharing or saving funds schemes (Pauron, 2014), seven millions of whom received a profit sharing bonus or a saving fund allowance from their employer.

In France, collective bargaining on compensation practices has therefore an ambiguous impact in terms of internal flexibility. On the one hand, collective agreements are necessary to create some flexible schemes (profit sharing for example) that contribute to moderate the wage bill in period of crisis. On the other hand, collective bargaining on wages, which is also a way to adjust the wage bill dynamic each year, tends to be focused on irreversible increases of base salary. Nevertheless the influence of the yearly duty to bargain with unions at the firm level tends to be reduced by the continuous individualization of wage setting and the lack of union representative in many small or medium size enterprises.

³⁶ See Eurofound website <http://www.eurofound.europa.eu/surveys/data-visualisation/3rd-european-company-survey-ecs>

Conclusion

This working paper describes and compares the so-called internal flexibility provisions in France and Germany. It assesses to which extent they have been used during the last 20 years and particularly since the onset of the financial crisis in 2007. It also discusses how far they relate to other flexibility tools and to the broader labour market flexibilisation policies such as the development of atypical forms of employment.

First, the paper outlines that reducing the French-German comparison to a German preference for internal flexibility opposed to a French preference for external flexibility, does not account for the complex links between internal and external flexibility tools in each country.

Germany did make a wider use of existing internal flexibility tools such as working time adjustments. But the adaptation of its firms was also made possible by changes that occurred before the crisis, in particular the continuous loosening of the sector level regulation since the 1990's and the Hartz reforms (2002-2005) that enhanced the flexibilisation of the labour market

Compared with Germany, France made a limited use of internal flexibility, especially after 2007. Nevertheless, the job security act passed in 2013 aims at allowing a more intensive use of internal flexibility, notably short-time working schemes. The debate over the opportunity to give more room to social partners to negotiate on working hours and wages adjustments' provisions at the firm level is also still going on.

The paper outlines that if those provisions are embedded in a broader context of collective regulation in each country, there is also a common trend towards the decentralization of collective bargaining and profound changes in the institutional labour conflict regulations.

The branch level collective bargaining -allowing opening and opt-out clause- and the specific system of codetermination at firm level when works councils exist, are structural determinants of the German firms' internal flexibility, especially in the exporting sectors.

In France, legal opportunities for internal flexibility within collective bargaining agreements have existed for a while and are expanding; but they are quite complex, sometimes misunderstood by social partners at the firm level, and their use is restricted by the poor quality of labour relations.

Since the "reunification", Germany experienced an upheaval of its industrial relations system; social partners, and notably unions, had to accept unprecedented concessions, especially at the branch level. Over the past decade, employment performance is not only associated with the decentralization of collective bargaining, but also with the weakening of the role of collective bargaining in general, and at the sectoral level in particular. In many sectors, the hyper-flexibilisation of the economy is not based on a strong collective bargaining process but, on the contrary, is due to the employers' withdrawal from collective agreements.

All in all, many good German practices in terms of collective bargaining may be an example for France. Nevertheless the benefits of such practices in terms of employment performance are due to their complementarity with other institutional characteristics. Some of them are not necessarily replicable or even sustainable: the increasing dualism of the German collective bargaining system, as it implies that a significant part of the workers were not covered by collective agreement, led the German government to set a legal minimum wage.

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