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an der Universität München e.V.

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und Migrationsforschung

Comparative study about the powers and the representativeness of employee representatives in French and German companies

A study commissioned by the French Senate

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Comparative study about the powers and the representativeness of employee representatives in French and German companies[1]

Introduction

This report presents a comparative study about the powers and the representativeness of employee representatives in French and German companies. The first part (Part A) of the report gives an institutional comparison of workplace representation and collective bargaining between France and Germany. The second part (Part B) of the report presents an analysis of the effects of these institutional regulations, with a special focus on the economic effects at a macroeconomic and microeconomic perspective. The third part (Part C) of the report evaluates important reform proposals made by Jean-Denis Combrexelle, Président de la section sociale du Conseil d'État, in his report about collective negotiations, work and employment submitted to the Prime minister.

In France, different bodies of employee representation exist within a company whereas in Germany only the works council and the employee representatives in the supervisory board of larger firms represent the employees. But in Germany the works councils have more rights as they have co-determination rights over particular issues; in France their role is mainly consultative. Another difference is that in France the company manager takes the chair of the works council. In Germany, the manager is not part of the works council.

Both France and Germany have various rules on employee representation and assign to trade unions a mandate to bargain collectively over wages and conditions of employment. A major difference is that in Germany, the principle of wage autonomy means that the government does not intervene in wage negotiations. In France, the government plays a much bigger role, including commonly extending industrial agreements to cover also firms which did not take part in negotiating those. Furthermore, labour union representation is more fragmented in France, and there is no "peace obligation" to rule out strikes even once an agreement has been reached.

[1] Selina Groß provided excellent research assistance.

Part A: Institutional comparison of workplace representation and collective bargaining

1.1. Workplace representation

1.1.1. France

In France the main bodies of employee representation are the employee delegates (Délégués du personnel), the works council (Comité d'entreprise), the trade union delegates (Délégué syndical) and the employee representatives at board level (Administrateurs représentant les salariés).[1] Different thresholds come into force concerning these bodies of representation: Employee delegates can be elected in establishments with 11 or more employees; in establishments with 50 or more employees works councils are to be established and trade union delegates can be nominated by the unions. Employee representation at board level (Administrateurs représentant les salariés) comes into force in larger stock companies (Société anonyme) with 5,000 or more employees worldwide or 1,000 or more in France. Table 1 gives an overview about the rights and tasks of the different bodies of employee representation in France:

Table 1: Bodies of employee representation in France

Body of representation	Functions and competences
Employee delegates (Délégués du personnel)	Their function is to represent employees with grievances regarding the application of legal or contractual rules in meetings with the employer on a monthly basis. Employee delegates should establish better communication between workers and management. In case there are no union delegates or employee delegates serving as union delegates in companies with less than fifty employees, either the employee representatives elected to the works council, the unique employee delegation, the case mentioned in article L.2391-1 or – if none of these exist – the employee delegates can negotiate and reach collective agreements, if they are specifically mandated either by one or several unions that are representative of the sector the company belongs to or if this is not the case by one or several employee organisations that are representative at the national and interprofessional level (Art. L.2232-21). The validity of the agreements reached applying Art. L.2232-21 is subordinate to special conditions (Art. L.2232-22).

[1] Additionally, there are health and safety committees (Comité d'hygiène, de sécurité et des conditions de travail) as well as central works councils, group councils and European works councils which are not analysed here.

Body of representation	Functions and competences
Works council (Comité d'entreprise)	The works council represents the employees' interests when it comes to decisions regarding the business life. It formulates or examines, upon request of the employer, every proposition with the purpose of improving (Art. L.2323-1 à L.2323-6): • working, employment and professional training conditions of employees, • their living conditions in the company, • and the conditions under which they benefit from additional collective guarantees of social protection. Three large consultations of the works council are supposed to take place each year, during which the following topics must be dealt with (L.2323-10 à L.2323-27): • strategic orientations of the company, • economic and financial situation of the company, • social policies of the company, working and employment conditions. The works council is occasionally consulted or informed for each project concerning (L.2323-28 à L.2323-49): • the organisation and operation of the company, • working conditions, • a procedure of safeguard, recovery or judicial liquidation. An economic and social database is provided to the works council. The database includes information on various issues (Art. L.2323-8). The works council has the right to an economic early warning: As soon as the works council knows about facts that imply a worrying economic situation of the company, it can request the employer to give explanations during the next works council meeting (L.2323-50 à L.2323-54). The works council has the right to a social early warning: It can request explications from the employer if it observes a large increase (or an abusive use of) fixed-term working contracts or of temporary work in the company (L.2323-58 et L.2323-59). The works council also has social and cultural duties: It assures, controls or participates in the management of all social and cultural activities taking place within the company primarily for the benefit of employees and their families as well as interns (L.2323-83 à L.2323-85). In case there are no union delegates or employee delegates serving as union delegates in companies with less than fifty employees, either the employee representatives elected to the works council, or to the unique employee delegation, or to the instance mentioned in article L.2391-1 or – if none of these exist – the employee delegates can negotiate and reach collective agreements, if they are specifically mandated either by one or several unions that are representative of the sector the company belongs to or if this is not the case by one or several employee organisations that are representative at the national and inter-professional level (Art. L.2233-21). The validity of the agreements reached applying Art. L.2233-21 is subordinate to special conditions (Art. L.2232-22).

Body of representation	Functions and competences
Trade union delegate (Délégué syndical)	The trade union delegate has two main roles: to represent the union, both to the workers and to the employer, for example through distributing material and collecting contributions; and to defend the professional and economic interests of the workforce as a whole. They have the power to negotiate and sign collective agreements at company level.
Representative of the union (Représentant de la section syndicale)	Unions that are not recognised as representative can appoint a representative. He benefits from the same prerogatives as the trade union delegate, with the exception of being entitled to negotiate collective agreements (Art. L.2142-1-1).
Unique employee delegation (Délégation unique du personnel)	In companies with less than 300 employees, the employer can decide that the employee delegates form the employee delegation in the works council and the health, safety and working conditions committee (Art. L.2326-1).
Board-level representation (Administrateurs représentant les salariés)	The tasks are to attend meetings of the board of directors (Conseil d'administration) or supervisory board (Conseil de surveillance) in a consultative capacity. There should be one employee representative, where there are up to 12 board members, and two where there are more than 12. This applies whether the company has a single board (Conseil d'administration) or a two-tier board system (less common) in which case the employee representative or representatives become members of the supervisory board (Conseil de surveillance).

Sources: Worker-participation.eu, Eurofund (2015), Laulom (2012).

Works councils have mainly decision-making power in social and cultural activities but only a consultative role in economic and wage matters and no co-determination rights. The employer chairs the works council. Trade union delegates represent the unions present in a company and have the power to negotiate and sign collective agreements at company level. Since 2008, unions not recognised as representative in a company can appoint a 'representative of the union' (Représentant de la section syndicale). He benefits from the same prerogatives as the employee delegate, with the exception of being entitled to negotiate collective agreements. In case there are no union delegates, the employee representatives elected to the works council or to the unique employee delegation can negotiate and reach collective agreements, if they are specifically mandated.

1.1.2. Germany

In Germany two bodies of employee representation exist, the elected works councils and the employee representation at board level[1]. Works councils can be elected in establishments with five or more employees, but in contrast to France there is no obligation to do so. Board-level representation comes into force for corporate companies (limited companies, stock companies) where employee representatives have a right of seats on the supervisory board of larger companies – one-third of the seats in companies with 500 to 2,000 employees, half the seats in companies with more than 2,000 employees. As in Germany a supervisory board is obligatory for corporate companies (limited companies, stock companies) with 500 or more employees, the employee representatives are a part of the supervisory board and not the management. Table 2 gives an overview about the rights and tasks of works councils and employee representatives on the supervisory board.

Table 2: Bodies of employee representation in Germany

Body of representation	Functions and competences
Works councils	**Consultation and participation rights:** On economic issues the works council should be informed about the economic situation, with quarterly reports in larger workplaces, and be consulted about changes in the workplace which could lead to disadvantages for the workforce, including the introduction of new techniques and procedures and in particular new technology. On employment issues, the employer is required to inform the works council of overall staffing needs. It also has a general right to be consulted on training. The works council can ask the employer to advertise all jobs internally, but cannot prevent external advertisement or external appointments. On individual personnel issues, appointments, grading and re-grading, transfers and dismissals, the employer must inform the works council before acting. The works council can also make proposals to the employer on issues such as providing equal opportunities for men and women and combating racism at work. **Co-determination rights:** The works council has positive co-determination rights over a range of social issues including: disciplinary rules; starting and finishing times and breaks; any temporary shortening or lengthening of working time – such as overtime or short time working; holiday arrangements; the principles used for the payment of wages and salaries – for example, should they be based on bonus and on time work; the setting of bonuses and targets; the time, date and method of payment; the introduction of cameras or other devices to measure work or check the behaviour of employees; the arrangements for the operation of works institutions like canteens or sports grounds; the introduction of group work.

[1] Additionally, there are health and safety committees as well as youth committees which are not analysed here.

Body of representation	Functions and competences
Board-level representation (at the supervisory board)	The employee representatives are members of the supervisory board. The supervisory board can appoint and dismiss the main management, and it reviews its performance. It gives advice, participates in setting the company's strategy, and is provided with financial and other information. The supervisory board also draws up a list of operations where its approval is required before they are undertaken. The employee representatives in the supervisory board have the same rights and duties as other supervisory board members.

Sources: Worker-participation.eu, German laws (Betriebsverfassungsgesetz).

The law provides works councils with two main types of rights: information and participation rights, where the works council must be informed and consulted about specific issues and can also make proposals to the employer; and so-called co-determination rights, where decisions cannot be taken against the wishes of the works council. The rights are strongest in the social area – organisation of working hours, holidays, methods of payment - and weakest in the area of economic issues. The employer is not a member of the works council.

1.2. Collective bargaining

1.2.1. France

Participants in collective bargaining

Participants of collective bargaining are the trade unions and the employer or the employers' associations. On the employees' side, collective agreements can only be signed by a representative trade union. The five representative unions in France are: Confédération générale du travail (CGT), Confédération française démocratique du travail (CFDT), Confédération française de l'encadrement-Confédération générale des cadres (CFE-CGC), Confédération française des travailleurs chrétiens (CFTC) and Confédération générale du travail-Force ouvrière (CGT-FO). On the employer's side, there are three main employers' associations participating in collective bargaining: Mouvement des entreprises de France (MEDEF, ex-CNPF), Confédération générale des petites et moyennes entreprises (CGPME) and Union professionnelle artisanale (UPA). As trade unions have a political orientation and represent multiple categories of professions, different trade unions can be present in one company and therefore take part in the collective agreements. But only those unions which fulfil criteria of representativeness, one of which is that they need a minimum of 10% of votes by the employees at company level (8% at industry, national and cross-professional levels). Collective agreements are currently valid only if the representative trade unions reach 30% of the votes at elections at the company/industry or national level

(Art. L.2232-12–13 Code du travail). If different collective agreements are valid for one company (a company and industry collective agreement), usually the one with the better conditions for the employees applies. This principle was weakened by reforms in 2004 and 2008 with the aim to strengthen the company collective agreements and give these agreements primary validity. As far as minimum wages, classifications, supplementary collective guarantees (Ar. L.912-1 of the Social Security Law) and the mutualisation of funds for professional training are concerned, a collective agreement cannot include provisions deviating from those of sectoral agreements or professional or interprofessional agreements. (Art. L.2252-1 and L.2253-3 Code du travail).

Content and duration of collective agreements

Collective bargaining takes place at industry level (convention de branche), at company level (accord d'entreprise) and there are also cross-professional agreements (accords interprofessionnels) possible. The scope is mostly at national level but regional collective agreements are also possible. Moreover, employees are covered by collective agreements irrespective of a union membership. There are two different forms of collective agreements, the "convention collective" which covers the (frame-work) regulations of the entire labour law and the "accord collectif" which covers only one or several specific themes. The French Labor Code determines a range of subjects as well as the frequency of collective negotiations (Art. L.2241-1 – L.2241-8; L.2242-5 – L.2242-19 Code du travail). At industry level, should be negotiated annually. Other themes such as gender equality (égalité professionnelle entre les femmes et les hommes), working conditions and management on competencies and employment (conditions de travail et gestion prévisionnelle des emplois et des compétences), disabled workers (travailleurs handicapés), occupational training and education (formation professionnelle et apprentissage) are be negotiated every three years. As for job classification (Classifications) and payroll savings programme (épargne salariale), it is every five years. At company level, wages, working time (le temps de travail), distribution of the added value (partage de la valeur ajoutée), gender equality and quality of working conditions (égalité professionnelle entre les femmes et les hommes et qualité de vie au travail) should be negotiated annually. Every three years, at company level, the management of employment policy and professional employee development (gestion des emplois et des parcours professionnels) should be negotiated. If the employers do not discuss these subjects, they run the risk to be punished by a fine (Art. L 2243-1-2 Code du travail). The collective agreements can be temporally up to five years or unlimited (but those agreements can still be denounced after a works council consultation).

Extension of collective agreements

In France, industrial agreements and cross-professional agreements can be extended by the Ministry of Labour to be applied to companies not taking part in the collective

agreements (Art. L.2261-15; 2261-22 Code du travail). Collective agreements can only be extended if they contain subjects defined in the labour law (Art. L.2261-22 Code du travail) and if they were negotiated with representatives from the trade unions and employees' associations (Commission paritaire de négociation). The government can extend collective agreements at the request of one of the bargaining parties. The extension of collective agreements is very frequently used in France (see Part B). As a result, different collective agreements can be valid for one company (company and industrial agreement).

Strikes

In France strikes can be declared from the employees themselves without the backing of a union. Moreover the right to go on strike is not connected to the bargaining on collective agreements (Henssler and Dux 2011); employees can go on strike about themes such as retirement age, which are not covered by collective bargaining. Besides collective agreements of unlimited duration can be renegotiated or even denounced. Therefore, in France no so called "peace obligation" after signing a collective agreement exists like in Germany, where strikes are not allowed during the validity of a collective agreement (see section on Germany). The employer does not have to pay the employee during the days on strike or can retain a part of the salary.

1.2.2. Germany

Participants of collective bargaining

In Germany the unions and the employers or the employers' association negotiate the collective agreements independently, the German state is not allowed to interfere in the negotiations. This so called "wage autonomy" is based on the German constitution (German Constitution, Art. 9 Abs. 3). The list of unions in Germany is very large, but there are three main union organisations and a bulk of non-organised single unions or for employee groups like pilots or train drivers (Dribbusch and Birke 2012). Unions are not originally politically motivated but differ concerning the industry or profession they represent. Only unions are allowed to conduct collective bargaining with the employer or the employer representative organisations.

If different unions are present in one company a law which came into force in 2015 states that only one collective agreement is valid for an establishment[1] or a specific group of employees (like pilots for example). In the case that the different unions are not able to agree on the same collective agreement or the same conditions, the collective agreement representing the larger fraction of employees has to come into

[1] One company can have several establishments; establishment in this sense refers to an organisational unit and not economic/juridical unit.

force. Historically this was also the case since 1957 under the regulation “One establishment, one collective agreement”. But the interpretation of that law had been changed by the federal labour court in 2010, allowing different collective agreements for one establishment. With the new law from 2015 it should be now ensured that there is only one valid collective agreement within one establishment. Smaller unions representing only a special fraction of employees like for example the German “Vereinigung Cockpit” which represents pilots, are currently filing an action at the Federal Constitutional Court against the new law.

Content and duration of collective agreements

Collective bargaining in Germany is most common at industry level between trade unions and employers' organisations. Like in France, employees are covered by collective agreements irrespective of a union membership. Separate agreements between trade unions and specific companies are less common and if, only for larger companies (for example Volkswagen, Lufthansa). Most other collective agreements at company level are replicates of the industrial agreement. Moreover, industrial agreements are normally negotiated at regional rather than at national level. This leads to variations between regions, especially concerning the wage levels and weekly working time where there are differences between Eastern and Western Germany or the different federal states. Typically in any industry there will be an agreement dealing with pay and a framework agreement which deals with issues such as working time, appointment and dismissal, premium payments for night and shift work, holidays and sick pay. The legal provisions for collective agreements are laid down in the collective agreements law (Tarifvertragsgesetz), but the German state does not give details on the content of the collective agreements. This is up to the partners in the collective bargaining process. The collective agreements in Germany govern the following work-related issues and set minimum standards: Wage levels, weekly working time, organisation of working hours, number of days of annual vacation, vacation and Christmas bonus, periods of notice, overtime hours and regulations concerning employment protection and sick pay. Only the minimum wage of 8.50 Euros / hour, the minimum annual leave of 4 weeks, the working conditions of short-term / part-time workers and the maximum working time of 10 hours per day are ruled by federal law. Agreements are signed throughout the year and those covering pay normally last for around one or sometimes two years. Agreements covering other issues have a longer duration – five years or longer, while some go on until one side wishes to change them and gives the required period of notice (worker-participation.eu). In contrast to France, the intervals to renegotiate collective bargaining issues are not set by law in Germany but by the bargaining partners themselves.

Extension of collective agreements

The extension of collective agreements by the state to companies which are not participating in the collective agreements is possible by law, but can only be conducted by the Ministry of Labour "if there is a general interest by the public" and if 50% of the employees are already covered by the negotiating employers and if the employers' representatives agree. In practice, this state intervention is quite rare and the number of extended collective agreements by the state was declining in the past (Bispinck 2012, Schulten 2012; see Part B).

Strikes

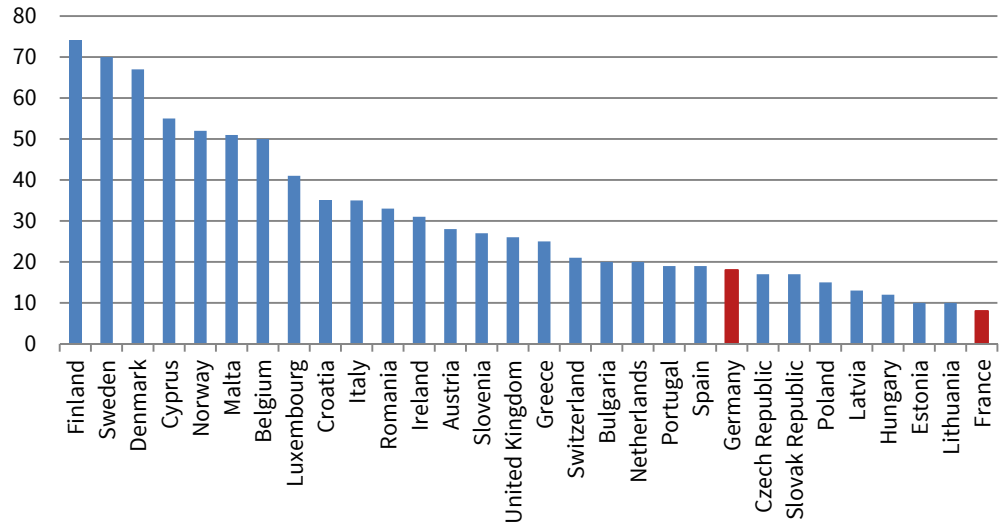
Strikes can only be conducted by the unions and only over topics which are a part of collective agreements. Moreover, if a collective agreement has been signed, there is the duty not to go on strike on themes which are components of the collective agreements (the so called "peace obligation" of collective agreements). Concerning state decisions, like the retirement age for example, it is not possible to go on a strike. When going on strike, employees will get no salary by the employer, but union members will get strike pay by the unions.

Part B: Effects of the institutional regulations

1.3. Employers' and employees' organisation density and collective bargaining coverage

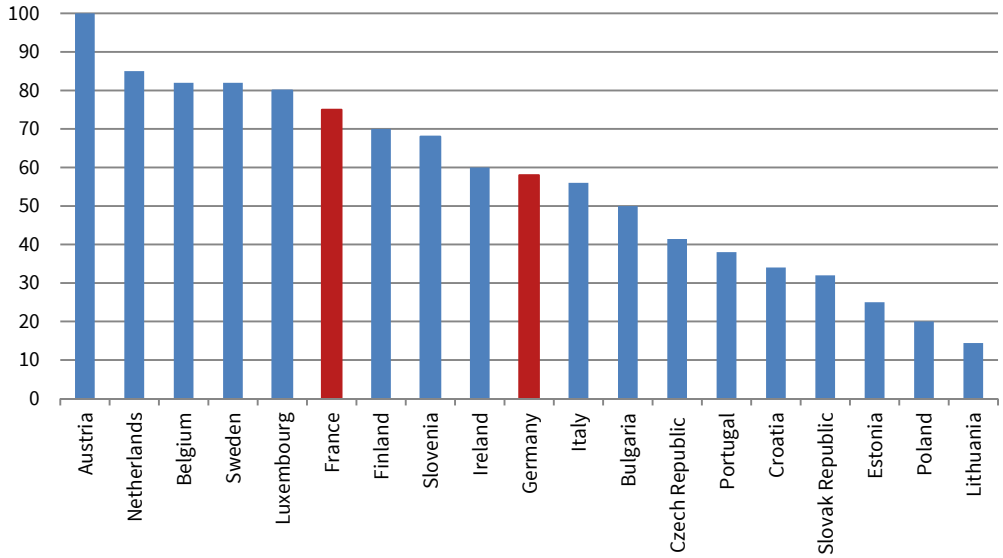
In France only 8% of all employees are organised in unions and in Germany 18%. Compared to other countries in Europe, both France and Germany have a rather low unionisation of employees (Figure 1). The degree of the employers' organisation density, calculated as the percentage of employees in firms organised in employers' organisations, is 75% in France and 58% in Germany (Figure 2). Usually, in countries where collective agreements are extended by the state more frequently, the employers' organisation density tends to be higher (Schulten 2012, Traxler 2004). And, in most countries, the employers' organisation rate corresponds more or less with the collective bargaining coverage rate. In France, collective bargaining coverage is 98% due to the practice of extending collective agreements by the state, which is a higher rate than the employers' organisation density. Due to these extensions most of the workforce is covered by industry wide agreements. However, according to Breda (2010) some of these are weak or even outdated which still leaves room for unions to bargain on the firm level. In Germany collective bargaining coverage is 57% which corresponds with the employers' organisation density. In a European comparison, the French collective bargaining coverage is the highest coverage rate among all countries (Figure 3) and is stable among time, whereas in Europe collective bargaining coverage has been in the decline over the recent years, falling from 68% in 2002, to slightly over 65% in 2007, and further to 61% in 2012 (European Commission 2014).

Figure 1: Proportion of employees in unions



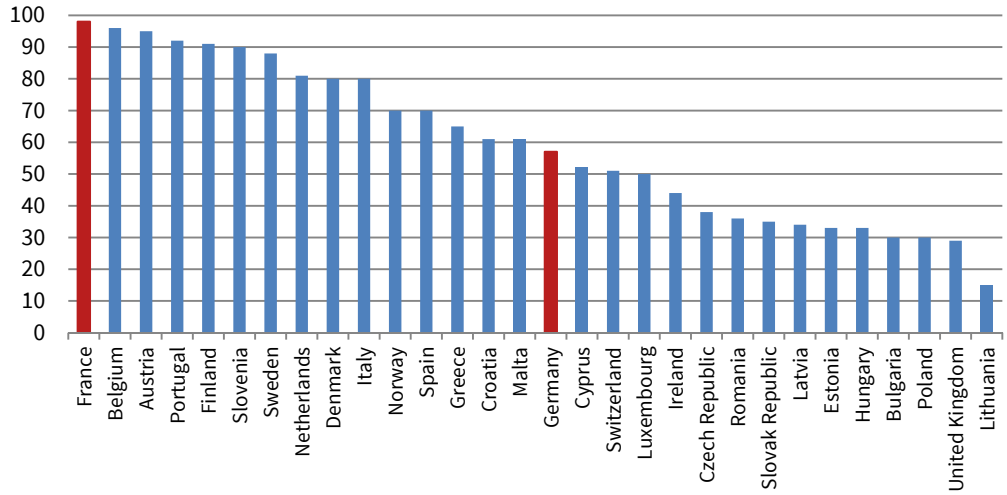
Source: Worker-participation.eu.

Figure 2: Employers' organisation density



Note: Data is from the years 2011/2012.
Source: ICTWSS Data base.

Figure 3: Collective bargaining coverage



Source: Worker-participation.eu.

Moreover, in Germany, collective bargaining coverage differs between Eastern and Western Germany, and depends on the industry and the firm size. Figure 4 shows the coverage of collective agreements by firm size. The figure shows that for smaller firms (10-49 employees), the coverage rate is only 23%, whereas for firms with 1,000 or more employees the coverage rate is 88%. Collective agreements coverage is constantly rising with the firm size.

Figure 4: Collective agreements coverage by firm size in Germany

Source: Amlinger and Bispinck (2015).

The difference in the collective bargaining coverage rates between France and Germany is a result of the practise of extending the collective agreements by the state making them binding on all employees in that industry. In France collective agreements are automatically or almost automatically extended by the state. In Germany, the use of extending collective agreements is limited and quite rare (for a European comparison please see Table 3).

Table 3: The use of extending collective agreements in Europe

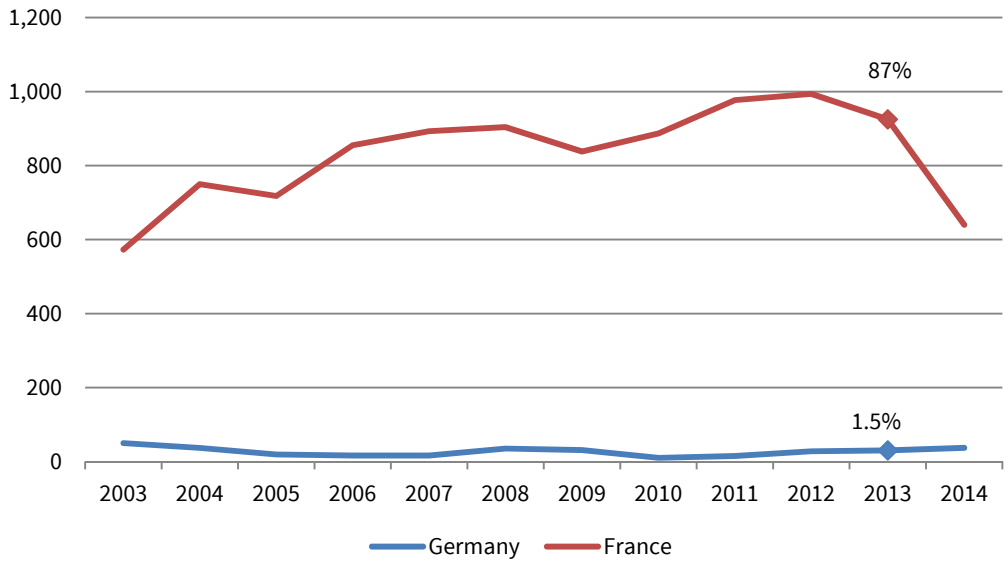
Very widespread or functional equivalents[1]	Austria, Belgium, Finland, **France**, Italy, Luxembourg, Netherlands, Spain
Uncommon or rare	Bulgaria, Czech Republic, Estonia, **Germany**, Hungary, Ireland, Latvia, Lithuania, Norway, Poland, Portugal[2] Romania, Slovakia, Slovenia, Switzerland
No extension mechanisms	Cyprus, Denmark, Greece[2], Malta, Sweden, United Kingdom

Notes:
(1) Functional equivalents are mechanisms corresponding to a very widespread use of extending collective agreements. These apply for Austria and Italy.
(2) Until 2012, the use of extending collective agreements was very widespread in Greece and in Portugal.

Sources: Schulten (2012), Eurofund (2015).

Out of the 1,960 industrial collective agreements signed in 2013 in Germany (Bundesministerium für Arbeit und Soziales 2016), only 30 were extend by the state which sums up to only 1.5% of all newly adopted industrial agreements (Schulten and Bispinck 2013). In France, out of the 1,055 collective agreements (Interprofessionnels et de branche) signed in 2013, 925 were extended by the state (Ministère du Travail 2014) which represents 87% of the total number (Figure 5).

Figure 5: Extended collective agreements 2003 - 2014 and percentage of total agreements in 2013 in France and Germany



Sources: Bundesministerium für Arbeit und Soziales (2016), Ministère du Travail (2014).

1.4. Economic effects

1.4.1. Microeconomic perspective

If wages are increased through collective bargaining, firms face higher labour costs which might impose pressure on firm performance. On the other hand, collective bargaining reduces costs for wage negotiations. Some literature even argues that unions facilitate information flows between workers and firms and that higher bargained wages might increase worker effort and productivity (Freeman and Medoff 1984; Freeman and Lazear 1995). However, these arguments require information asymmetries or the existence of multiple labour market equilibria in order to justify the role of labour unions in that context.

There is no clear-cut empirical evidence on how collective bargaining affects firm performance. Several studies investigated the potential effects of collective bargaining agreements on firm productivity, equity value or employment growth in different countries without providing conclusive evidence on the issue. Using German establishment level data Brändle and Goerke (2015) analyse the effects of unions on employment growth in firms and find a negative relationship. Firms covered by an industry wide bargaining agreement or by a firm level contract are associated with around 0.8 percentage points lower growth rates compared with those not covered by an industry or firm level contract. The findings apply to firms outside the public sector,

in the Eastern as well as Western parts of Germany. The dynamic effects of entering an industry or firm level contract are negligible (technically, this can be estimated using a fixed effects specification). The authors conclude that their results are mainly driven by selection of firms into types of wage contracts based on unobservable characteristics.

As selection into unionisation is likely to be endogenous many studies lack convincing evidence which can actually be interpreted as being a causal link between collective wage setting and firm level outcomes. An exception is a study by DiNardo and Lee (2004) using close election outcomes on whether a firm should be covered by a union wide wage agreement in the US. This approach allows constructing a treatment and control group in order to establish a causal link between unionisation and outcomes on the firm level. The study does not find any evidence for a significant impact of trade unions on firm productivity.

1.4.2. Macroeconomic perspective

If firms self-select into collective agreements within a single country or if agreements are extended automatically to a whole industry, measuring the effects of collective bargaining on economic outcomes on single firms is difficult. Still particularities of different collective bargaining regimes affect firms' possibilities to adjust wages and might have important impacts on firm behaviour and economic outcomes. In general, labour market theory argues that collective wage bargaining increases unemployment rates: From the insider-outsider model (Dunlop, 1944), it follows that unions demand an increase in wages above the equilibrium wage level. Because of unions' high bargaining power (in the extreme case a monopoly for labour supply) firms accept these wages above the market clearing level – at the cost of higher unemployment rates (Lindbeck and Snower 1984; Oswald 1985). On the other hand, so-called efficient bargaining theory (McDonald and Solow, 1981) assumes that unions bargain simultaneously over wages as well as employment (and possibly further dimensions like working hours and working conditions). Here the size of a union plays an important role. The larger a union the more it will internalise social costs of higher unemployment in the bargaining process (Calmfors and Driffil 1988). According to Calmfors and Driffill, historically low unemployment rates in countries like Sweden, Norway and Denmark are related to a high degree of centralisation in wage setting. Countries with strong labour unions but low level of centralisation, on the other hand, are likely to suffer from higher unemployment rates. From the perspective of employers, collective bargaining can have additionally a cartel function on product markets as Haucap et al. (2001) argue. Through collective agreements some firms might be able to raise costs for less productive rivals forcing them to exit the market.

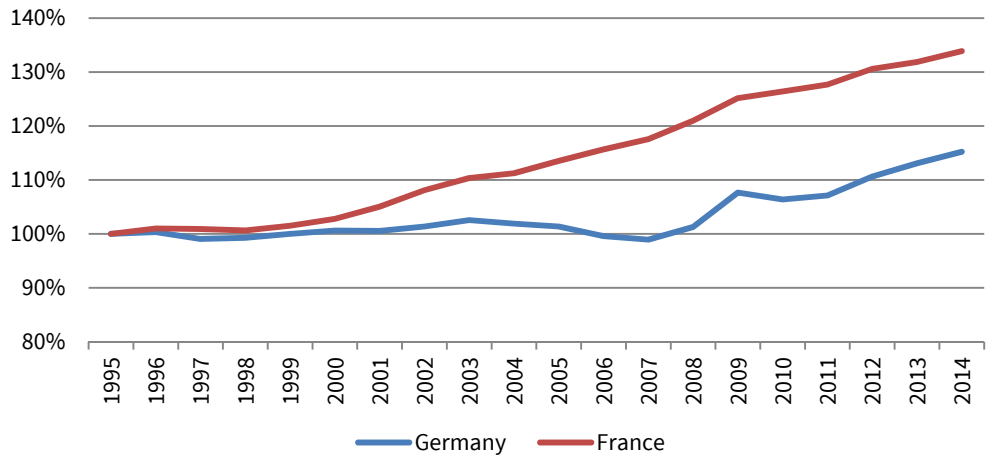
Collectively negotiated wage contracts might be extended to entire industries by legal means. The effects of these extensions are twofold: First, it increases the cartel effect because more firms are covered by an agreement. All employers in an industry automatically face wage floors which were negotiated in the interest of the employer association members only (Haucap et al. 2001). Second, less centralised bargaining institutions might not take into account macroeconomic effects to a sufficient extent. The extension of agreements might then affect unemployment more negatively because the effects were not internalised in the negotiations by a selected group of labour market partners. A study by Martins (2014) exploits variation in regulations for the extension of bargained agreements in Portugal. Results indicate that employment rates have fallen by 2% after four months following an extension of the collective agreement to the whole industry. Firm closures increased significantly following an extension. At the same time, real wages increased by 2-4% during the same period. However, regarding industrial wage bills the unemployment impact outweighs the effect of income gains. A report by the OECD recommended Portugal to abolish the administrative extension of collective agreements through which "dominant firms impose wage and working conditions on others, […], reducing competition and entry, thereby hurting competitiveness" (OECD 2012). The Portuguese government committed to this request in the context of its 2011-2014 financial adjustment programme.

As described in part A and B 1.3, administrative extension of collective agreements is very common in France while it is rarely used in Germany. In a recent study Dustmann et al. (2014) attribute the observed wage dynamics in Germany to an increase in flexibility of the German labour market institutions. Compared with France the German system of wage bargaining is not governed by the political process but by the autonomy of labour market partners i.e. employer associations, trade unions and works councils. This allows for contracts which take into account individual or regional particularities in the wage setting process. The independence of labour market institutions is an important part of German labour market policy: For example, works councils consist of employee representatives on the firm level but are institutionally independent from trade unions.

During the 1990s, labour market partners in Germany agreed to an increase in decentralisation with respect to setting wages, working hours and other aspects of working conditions from the industry or region wide level to the level of a single firm. These changes were implemented even though, in general, the system of industry-level wage bargaining remained in place. So-called opening or hardship clauses allowed firms to opt out from bargained contracts on the union level, provided that employee representatives agreed (Hassel 1999). According to Dustmann et al. (2014) these developments led to higher wage flexibility, especially at the lower end of the wage distribution. Export oriented industries profited from this development which

contributed to Germany's competitiveness on international markets today. Additionally, the so-called Hartz reforms as part of the Agenda-2010-programme were implemented by the German government from year 2003 onwards. Along with social benefit reforms this included additional measures to foster labour market flexibility and incentivise employment, e.g. in so-called mini-jobs (Fabre 2012).

Figure 6: The development of unit labour costs in Germany and France



Note: Nominal unit labour costs in France and Germany 1995-2014, 1995: 100%.

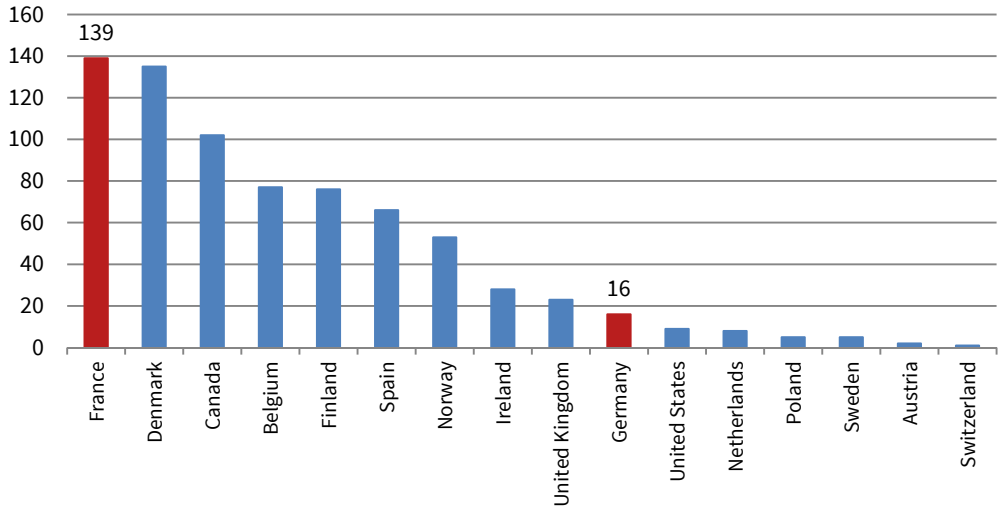
Source: Eurostat (2016). The unit labour cost is defined as the ratio of total labour costs to total labour productivity.

Figure 6 illustrates that the development of nominal unit labour costs between 1995 and 2014 differs substantially between Germany and France. While nominal unit labour costs increased by 15% from 1995 until 2014 in Germany the corresponding increase was 33% for France during the same period.

In order to pressurise employers in the collective bargaining process, employees can make use of strikes. Taking these measures in labour disputes imposes high costs on the economy as a whole, in particular in industries like transportation (Creigh 2007). The frequency of strikes varies considerably across countries and is affected by institutional regulations, too. In Germany, unions are not allowed to go on strike during the contract period after a collective agreement has been signed. Moreover, strikes can only be initiated by unions and only over collective agreements. In France strikes are independent from unionisation and from the collective bargaining process and can be declared at any time.

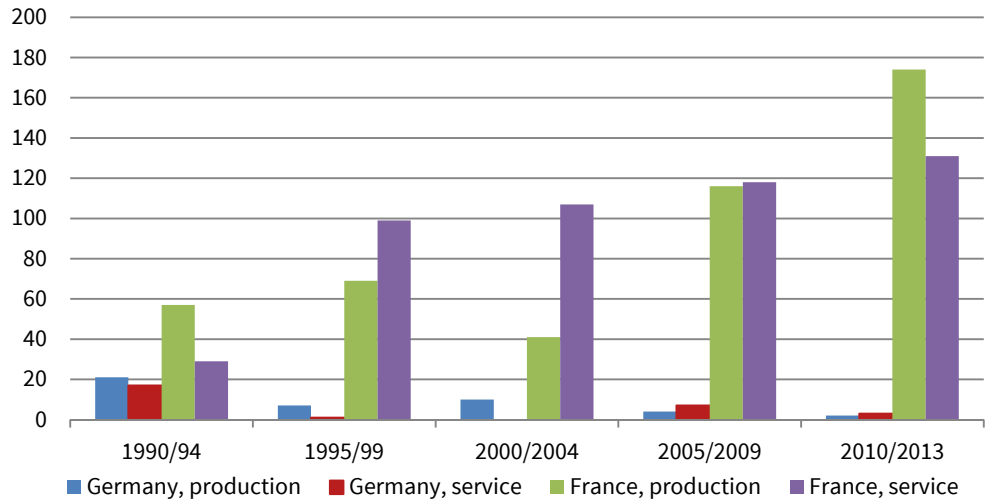
Strike days differ substantially between Germany and France. Figure 7A illustrates how many working days have been lost annually in Europe due to strikes per 1,000 employees between 2005 and 2013. Compared with other European countries France had the highest number with 139 annually lost working days lost per 1,000 employees.

Figure 7: Number of annually working days lost due to strikes per 1,000 employees
A: 2005 – 2013, international comparison.



Source: WSI (2015).

B: 1990 – 2013, by industry for France and Germany.



Source: Lesch (2015).

Figure 7B additionally shows how the annual average number of lost working days due to strikes in France and Germany changed from 1990 until 2013 separately for production and service industries. In France the number of lost working days in production industries increased from 57 in 1990/94 to 174 in 2010/13. In the service industry the number increased from 29 to 131 in the same time period. For Germany, on the other hand, the annual number of lost working days in the production industries decreased from 21 to 2 and in the service industry from 17 to 3 for the same time period.

Part C: Evaluation of reform proposals

The last part of this study evaluates important reform proposals made by Jean-Denis Combrexelle, Président de la section sociale du Conseil d'État, in his report about collective negotiations, work and employment submitted to the Prime minister.

- Clarification and enlargement of the scope of collective negotiations in the areas of working conditions, working time, employment and wages, including the possibilities of determining the threshold from which hours are considered as overtime by a firm agreement and of negotiating the recruitment conditions and the regulations concerning transitions of employees within the company.

Reform proposal no. 30: Extension of collective negotiations in prioritised fields, which are working conditions, working time, employment and wages (agreements about these fields are called ACTES).

The government plays a much stronger role in the French labour market than in, say, Germany. The suggestion to enlarge the scope of collective bargaining is welcome and can be expected to improve the competitiveness of French firms and to encourage them to expand, and thereby hire new workers. As suggested, the legal framework should ensure the socially desired minimum standards, leaving labour market partners scope to negotiate freely subject to respecting those. It is reasonable to allow labour unions and employees, or firms and employee representatives, to negotiate about the threshold above which a premium would be paid for additional working hours. Such flexibility need not depress wages in the longer term: if firms are able to adjust working hours more flexibly, this increases revenues, which in turn allows firms to pay higher wages. A difference would be that the wage increase would be paid for all working hours, rather than the extra hours above the current 35-hour-limit. As a result, it would be easier for firms to increase production also in response to temporarily higher demand. Very expensive overtime pay might render it optimal for the firm not to expand production if the value of the marginal product of labour is not enough to cover the wage costs and social contribution associated with overtime, even if it were higher than the wage costs and social contribution associated with normal working time.

Regarding recruitment conditions, M. Combrexelle proposes to allow new forms of working contracts in collective negotiations under a framework predefined by the law. Currently, a major challenge is that the labour markets are divided into insiders with permanent contracts, who are typically older, and outsiders with insecure temporary contracts, who are typically younger. It is to be expected that new forms of working contracts would also come with weaker job protection than current permanent contracts. This, in turn, would boost job creation and promote economic growth. An

important challenge is to alleviate the strong division of job markets into secure permanent contracts with insiders who are already employed, and new workers being offered only less secure contracts. An interesting international comparison here would be Denmark, which combines flexibility in hiring and firing with relatively generous but strictly time-limited unemployment insurance. This so-called flexicurity model is associated with a relatively low unemployment rate.

- The priority which is given to firm agreements, the supplementary regulations of industrial agreements and the law which only apply if no firm agreement has been reached.

Reform proposal no. 35: Subject to the public order defined in the labour law and industrial agreements, a priority is given to collective firm agreements in the fields that are prioritised in the ACTES agreements. A record of this measure – with the aim of maintaining it – will be given every four years on the occasion of every new cycle of the representativeness of employers and unions.

An important argument in favour of collective bargaining between labour unions and employer organisations is that this reduces negotiation costs, compared with bargaining carried out separately in each firm. It also strengthens employees' bargaining position. However, there is a good case to add flexibility by allowing firm agreements. It is likely that especially profitable firms would continue to follow the agreements between labour unions and employer organisations, while firms facing major difficulties, and employees working in such firms, could take advantage of an option to agree on lower wages, longer working hours or other measures to save jobs. A drawback is that the possibility of bargaining at the firm level may increase the negotiation costs, if negotiation at the firm level becomes widespread. However, the possibility of opting out from an agreement between labour unions and employers' organisations also puts a pressure on these to reach collective agreements that would not result in a widespread exit by less competitive firms and their employees.

Reform proposal no. 9: Legal limitations of the duration of firm agreements and industrial agreements.

Moving from indeterminate duration of firm agreements to well-defined contract periods would reduce uncertainty for both firms and workers. The economic benefits from allowing firm-level agreements could be increased by making the agreement legally binding for the mutually agreed period, so that there could be no strikes to reopen issues that have been agreed before the period of agreement is over. The number of strike days is exceptionally large in France and part of the explanation for this is that even if an agreement is reached, there is no guarantee that there would be no new strikes during the agreed contract period. In Germany, instead, there is so called peace obligation, meaning that workers are not allowed to go on strike during

the contract period. Furthermore, strikes can only be conducted by the unions and only over topics which are a part of collective agreements. It should be noted that employers might be willing to pay a higher wage, in exchange for increased predictability from there being no strikes during the contract period. Annual negotiations are costly, and while there should be no legal requirement to force firms and employers to sign longer contracts, signing longer contracts is to be viewed positively. In Germany, agreements on pay typically last one or two years.

Reform proposal no. 18: Maintaining of extensions of industrial agreements by the Labour Minister.

The proposal to maintain extensions of industrial agreements by the Labour Minister would be counterproductive and would eliminate part of the gains from other proposals. It would allow those firms controlling industrial agreements to effectively form a cartel to restrict competition from other firms in the industry. Eliminating the extensions of industrial agreements by the Labour Minister would boost competition and encourage job creation. It could also be expected to provide for more balanced regional development as firms in economically weaker regions could agree with workers on lower wages, to boost employment. In Germany, wages in eastern part of the country are often lower than in the western part of the country, which compensates part of the lower productivity in eastern part of the country.

- The generalisation of the principle of majority agreement in a company.

Reform proposal no. 43: Generalisation of the principle of majority agreements in a company from 2017 on.

“Accord majoritaire d'entreprise” refers to an agreement between unions/employee representatives representing more than 50% of the workforce in the firm and the employers. Currently, employers and employee representatives are allowed to negotiate binding collective agreements even if the employee representatives would represent less than 50% of the workforce, with the exception of central issues like mass redundancy or jobs-safeguarding measures, where this kind of majority is required to give legal force to the deal. Combrexelle proposes to let firm agreements regulate more matters, but at the same time, to compel firms to sign more "accords majoritaires". So there would be more power at the firm level for both employee representatives and employers to depart from industrial agreements, but at the same time, more stringent conditions to give legal force to the firm-level deals. As discussed in the report, a risk here is that if employee representatives do not meet such a requirement, no legally binding agreements could be reached. Given this concern, it is reasonable to have a transition period before imposing such a requirement, and there is also a good case to allow the decision about which matters could be decided by majority agreements to be made at the "branche"/economic industry level (this

means that it is up to the participants of collective bargaining to decide on these questions), as opposed to deciding this by legislation. However, this is no guarantee that decisions could be reached at the firm level. It could be that the majority of firms in an industry would like to delegate certain decisions to the firm level, but that in a large minority of firms the conditions to make a decision would not be made, resulting in a dead-lock. The same problem would be present if the decisions on when majority agreements can be used were decided by legislation.

The government has recently presented a bill concerning the implementation of the "accord majoritaire". Addressing the mentioned problem the bill proposes allowing employee representatives or unions representing at least 30% of the employees to demand a majority vote on a specific agreement. Allowing binding firm-level referenda on firm-level agreements would give employees a final say on negotiated agreements in case the employee representatives would represent less than 50% of the workforce. One option that could also be considered would be to allow employees to choose which union represents them with a majority vote, in case of an industry in which more than one union is active.

- The elaboration of standardised firm agreements for very small companies, of which the validation would be assured by a referendum of employees at the suggestion of the firm boss.

Reform proposal no. 38: Provision of standardised firm agreements by the industries in their role as service providers to very small companies.

According to M. Combrexelle, industries should provide standardised firm agreements to very small companies. In principle, this should save on the negotiation costs. A risk is that if very small companies would have access to a more favourable contracting environment, defined by some threshold in terms of the number of employees or some other criterion, this would discourage firms from growing beyond such a threshold. So, while there is a good case to be made in favour of offering standardised agreements, it is important to make it so that it does not create an additional hurdle to hiring. While there is a case for providing standardised model agreements, there is a strong case to keep the advantages given to small firms small, to avoid creating a threshold discouraging growth above it. Furthermore, it is not clear why the standardised model agreements could not be made available also to the larger firms, with the difference that in these larger firms, the firm boss could not make a suggestion alone, but the standardised model agreement would form a starting point for negotiations between the employer and employees, in case they would not want to implement the agreement agreed at the industry level between the labour union and the employers' organisations.

Conclusion

The reform proposals which appear most promising among those evaluated in this section are 30, 35 and 9. It is not possible to rank the relative desirability of these three. It would be desirable to combine these with a peace obligation, namely that once an agreement has been reached for a certain period, workers are not allowed to go on strike during that period regarding topics that can be part of a collective agreement. Proposal 18 should not be implemented. Instead, the extension of industrial agreements should be abolished. The effects to be expected from proposal 43 are mixed. On the one hand, it would be beneficial to have a negotiation environment in which employees' representatives would be in a position to negotiate majority agreements. On the other hand, there is no guarantee that requiring majority agreements would automatically allow firms to reach such a situation, even with a transition period. One option that could be considered would be to allow employees to choose which union represents them with a majority vote, in case of an industry in which more than one union are active. The overall effects of Proposal 38 depend a lot on its implementation. It is important to implement it so that it does not create an additional threshold discouraging growth above it.

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