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# Sector-level bargaining and possibilities for deviations at company level: France

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**Research project:** The functioning of sector-level wage bargaining systems and wage-setting mechanisms in adverse labour market conditions

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## Collective bargaining and minimum wage

### Collective wage bargaining

The right to collective bargaining is set out in the 1972 Labour Code (Code du travail). In the last decades, collective bargaining has expanded, partly as a result of government initiatives. The importance of sectoral bargaining increased with the adoption of the 1982 Auroux laws, which obliged the bargaining parties already bound by a sectoral agreement to negotiate pay annually and to discuss the sector's job classification system and its economic development every five years. The Auroux laws also stimulated company-level bargaining by making annual negotiations on pay and working time obligatory in companies with union representation. In addition, legislation reforming the system of collective bargaining was passed in 2004 (the Fillon law) and 2008. These reforms involved some procedural changes regarding the conclusion of collective agreements and the relationship between the various levels of bargaining, which will be further discussed below.

Collective bargaining takes place at national, sectoral and company level in France. Coverage of collective agreements is high in spite of a very low trade union membership (around 8%). The main reason for the high coverage is the extension of sectoral agreements. All employees are covered by a sectoral agreement as soon as it is recognised as legally valid and/or extended by the government to a particular sector. This includes those whose employers are not members of signatory organisations. An extension is decided by the Minister of Labour after consultation with the National Commission on Collective Bargaining. This leads to a coverage rate of 97% in the private sector and 99% in industry. Only the service sector has slightly lower coverage rates, with business services at 94% and personal services at 89% (Rehfeldt, 2009).

Wage bargaining has always taken place mainly at the sectoral level. However, the company level has been gaining in importance in negotiations on additional wage elements. For the majority of the workforce, basic pay and fixed bonuses still constitute the main part of earnings, especially for non-professional and non-managerial staff. However, French labour law allows forms of variable pay as long as the minima fixed by the legislator or the collective agreements applicable are respected. According to Article L. 442-1 of the Labour Code, companies with 50 employees or more have an obligation to develop employee financial participation schemes that must be negotiated with the workers' representatives. Other collective forms of profit-related pay may be adopted on a voluntary basis, but these are additional payments that cannot go below the minimum wages fixed by law (see the 'Minimum wage' section below) and/or collective agreements. The same rule applies to variable pay forms introduced by the individual employment contract (Vigneau and Sobczak, 2005). Variable payment systems generally became more widespread in the 2000s and they are likely to increase due to laws recently passed on the workers' right to financial participation in the undertaking, notably Act No. 2008-1258 of 3 December 2008 in favour of the revenues of work and Act No. 2008-111 of 8 February 2008 on the purchasing power of the employee (Allouache, 2009). In France, companies currently tend to favour mixed pay systems, combining individual and collective elements, and apply different pay systems for professional and managerial staff (Jolivet and Robin, 2009).

The minimum wages fixed by sector-level collective agreement must be respected in individual contracts of employment. However, if the collective agreement reaches its term without being replaced by a new one, the wage will be considered as an individually acquired benefit which is integrated into the employment contract. In companies where there is at least one union represented, collective bargaining on wages must take place every year. According to the 'principle of favourability to the employee', company agreements must respect the minimum wages set out by the sectoral agreement, but they are allowed to modify the wage structure as long as they respect the global wage increases fixed by the sectoral agreement. In this case, unions can oppose the agreement as long as they represent the majority of the workforce (that is, when they have obtained more than half of the votes at the last works council elections).

### Entitlement to bargain and represent workers

Traditionally, only a trade union officially recognised as representative could conclude collective agreements (Borenfreund, 2004 and 2005). However, in 2004 and 2008, changes in the Labour Code modified this principle and removed the automatic entitlement of the five most representative trade unions at national level to negotiate collective agreements.<sup>1</sup> The 2004 Fillon law introduced a new ‘majority principle’ for collective agreements, aiming to create a ‘majority dynamic’ through a ‘cultural evolution’ of the actors involved in the bargaining process (Ray, 2004). Previously, it was sufficient for an agreement to have been signed by at least one trade union with representative status. According to the 2004 Act, the ‘majority principle’ applies differently, depending on the level of negotiations (Rehfeldt, 2004).

- At the intersectoral level, an agreement is valid in the absence of opposition by a majority of trade union organisations with representative status. Any such opposition must be expressed in writing within 15 days of the relevant section of the Ministry of Labour being notified of the agreement.
- At the sector level, two variations of the majority support principle are suggested and the social partners must choose one of them in a sector-level agreement. Under the first model, validity is subject to the absence of opposition by a majority of unions with representative status, expressed in writing within 15 days of the relevant section of the Ministry of Labour being notified of the agreement. Under the second model, the agreement must be signed by one or more unions representing the majority of the employees in the relevant sector. This majority is calculated according to the results of either a specific employee consultation exercise or of the most recent works council or workforce delegate elections. If there is no sector-level agreement that sets out the concept of ‘majority’, the first of the two options (absence of opposition) will be applied.
- At the company level, according to the 2004 reform, two different variations of the majority principle were available and the social partners had to choose between them and enshrine this in a sector-level agreement. In the first model, in order to be valid, a company-level agreement had to be signed by one or more unions that received at least 50% of the votes cast in the first round of the most recent works council or workforce delegate elections. If no union held this majority, the agreement had to be approved by a majority of employees in a vote. In the second variant, an agreement was valid if not opposed by non-signatory unions that received at least 50% of the votes cast in the first round of the most recent works council or workforce delegate elections. This opposition had to be expressed in writing within eight days of the relevant section of the Ministry of Labour being notified of the agreement. In the absence of a sector-level agreement determining the model to apply, the second option needed to be used.

In 2008, the majority rule regarding the adoption of company agreements established by the Fillon law was amended. Since then, the validity of company agreements is conditional upon having been signed by one or more unions receiving at least 30% of the votes cast at the first round of the works council or workforce delegate elections, regardless of the number of voters, and if not opposed by one or more unions that received the majority of votes cast in the same elections, regardless of the number of voters.

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<sup>1</sup> A decree from 1966 granted representativeness (at government level) to five union confederations: the French Democratic Confederation of Labour (CFDT), the French Christian Workers’ Confederation (CFTC), the French Confederation of Professional and Managerial Staff–General Confederation of Professional and Managerial Staff (CFE-CGC), the General Confederation of Labour (CGT) and the General Confederation of Labour – *Force Ouvrière* (CGT-FO).

Traditionally, France is characterised by highly adversarial industrial relations and by a trade union movement that is rather strong at the national level but has very little presence on the shop floor (Caroli and Gautié, 2008; Vincent, 1998). In 2008, in an attempt to solve that problem, the two sides of industry in France concluded an agreement on the reform of industrial relations, dealing with the representativeness of trade unions and the development of social dialogue. According to this agreement, at company level, unions will achieve recognition when they have gained at least 10% of votes in works council or workforce delegate elections. This agreement might improve the involvement of trade unions at workplace level because it lays down several rules governing the appointment of a union shop steward, the functions of local trade unions in small and larger companies (with over 50 employees) and the procedures for negotiations over terms and conditions in companies without a shop steward. This reform of several aspects of collective bargaining is codified and further developed in Act No. 2008-789. This Act sets the rules for determining the most representative trade unions at company, branch and interprofessional level. The representativeness of unions is fixed in an objective way, taking into account the number of votes obtained in the elections for employees representatives at the company level, which allows for periodic review of their representativeness (every four years). At company level, the threshold for representation is set at 10% of the votes cast in the first round of the workplace elections (works councils or workforce delegates) and 8% of the votes at branch and interprofessional levels.

### Minimum wage

In France, the statutory national minimum wage (*salaire minimum interprofessionnel de croissance*, SMIC) is the legal minimum an employee can be paid. The SMIC plays a key role in wage setting in France, both because it directly affects nearly 3.4 million workers and because, as will be further discussed below, it influences the developments within wage scales (DARES, 2009). In January 2010, the SMIC gross hourly rate was set at €8.86, the equivalent of €1,343.77 gross a month (€1,056.24 net), assuming a normal 35-hour week. The full adult rate of the SMIC applies from the age of 18 years. Employees under the age of 17 receive 80% of the full rate and those aged 17 receive 90%. However, employees under 18 years old are entitled to the full rate after working six months in a particular sector of activity. Young people on apprenticeship contracts receive a proportion of the SMIC (calculated on the basis of their age and the stage their course has reached), as do those workers on ‘professionalisation’ contracts. The sectors with the most minimum wage earners are personal and business services, the food industry and the retail sector. On 1 July 2009, the SMIC affected 23% of part-time employees (who receive the SMIC on a pro rata basis according to their weekly working hours), compared with 8% of full-time employees, and 26.5% of employees in companies with fewer than 10 employees, compared with 6.7% of those in firms with 10 or more employees (DARES – Ministry of Employment, 2010).

In many industries or branches, the lowest wage rates of the job classification schemes set out by collective agreements are below the SMIC. No less than 80% of the 150 main sectoral agreements provided for at least one pay rate below the SMIC, a percentage that fell to 60% in 2009. Since they are below the SMIC, these rates do not apply. Workers at the lowest levels of the job classification are often paid at the SMIC level and end up earning more than the wages agreed in collective agreements. The SMIC is in this way an essential element for the protection of a significant proportion of employees and one key explanation for the low incidence of low-paid work in France in comparison with other European Union countries (Caroli and Gautié, 2008). However, the undesirable consequence of the fact that a high number of collective agreements still fix the lowest wage scales below the legal standard is that workers may move up the first levels of the pay scales with their effective wage remaining constant at the SMIC level.<sup>2</sup> Furthermore, another point of concern is that several additional salary payments, as variable pay bonuses and the thirteenth or fourteenth monthly payments, are calculated in relation to the wage scales set out by the collective agreements, even if they are below SMIC levels.

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<sup>2</sup> There have been a few agreements reached at intersectoral level by the social partners to overcome this type of problem: the agreement on the employees’ professional career of 25 June 2004 states in Article 6 that any employee who is promoted to a higher position should enjoy a real increase in his or her wages despite the fact that he or she already received a higher remuneration than that collectively agreed.

The SMIC is fixed by an annual government decree, with additional increases possible during the year. The SMIC plays a central role in France and covers all categories of adult employees and all sectors (with some minor differences in calculation methods in the hospitals, catering and day-care sectors and for employees with benefits in kind). The SMIC is indexed not only to inflation but also to the growth of overall productivity and wages. The annual increase is subject to the advice of a committee of experts and consultation of the National Collective Bargaining Commission, CNNC (where the social partners are represented).<sup>3</sup>

### Regulation of derogations

Traditionally, under French law there has been no general mechanism providing for derogations on collectively agreed wages. This partially changed with the 2004 Fillon law, which explicitly aimed to reinforce company-level bargaining. It did so in a variety of ways, including by facilitating company-level deviations from sectoral agreements. It changed the previous ‘hierarchy’ of collectively agreed norms, allowing for ample possibilities of company-level derogations.

First, the 2004 legislation changed the hierarchy of norms governing employment. Previously, in application of the principle of favourability to the employee, a collective agreement at undertaking level could only improve the employees’ rights laid down in a sector-level agreement, and the latter agreement could only improve the rights laid down in an intersectoral agreement. However, after the 2004 reform, a sector-level agreement may deviate from the provisions of an intersectoral agreement unless such derogation is expressly forbidden. A company-level or group-level agreement may, in turn, deviate from all or part of a sector-level agreement, again unless such derogation is expressly forbidden at the higher level. Nonetheless, the favourability principle remains in force in respect of four themes that are exempted from any derogation at company level:

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

Thus, as regards minimum wages and wage categories, the company-level agreements may differ from agreements signed at branch level only in favour of the employees. This seriously limits the possibilities for wage derogations to the detriment of the employee where the minimum and basic wages are concerned.

However, the exceptions set out in the Labour Code do not concern additional wage elements commonly agreed at sectoral level, such as performance-related pay, shift work, night work, allowances for marriage or childbirth or seniority payments. Therefore, in case the sectoral collective agreement does not expressly forbid deviations, through a company-level agreement, actors at that level can depart from these sectoral provisions. Also, the term ‘minimum wages’ is not well defined and it is not clear if it is referring only to the strict minimum wage established at a higher level or also to the effective minimum wage, which also covers certain additional wage elements like bonuses (Souriac, 2004).

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<sup>3</sup> In December 2008, legislation was adopted in order to modernise the way in which the SMIC is set. The new law provides for the creation of an expert group to advise the government each year on the appropriate increase in the SMIC, based on an analysis of the overall economic situation. In May 2009, the government issued a decree establishing the independent expert advisory group on the national minimum wage, composed of five independent members, appointed for a four-year term. The government will also submit its own analysis of the state of the national economy to the CNNC. If the conclusions of its report differ from those of the expert group, the government must give justifications for these differences.

To further facilitate the conclusion of collective agreements at company level and in particular in small and medium-sized enterprises (SMEs) with no union stewards or workforce delegates, the Fillon law allowed the social partners to reach sector-level agreements setting out specific methods for bargaining in these cases. Such an agreement may allow workforce delegates or elected representatives at the works council to negotiate and sign a company-level agreement.<sup>4</sup> To be valid, however, this must be endorsed by the national joint collective agreement committee for the sector. In addition, if a company has no employee representatives, an agreement can be signed by a company employee ‘mandated’ by a trade union. These mandated employees have concluded agreements mainly on working time and employment. The mandated employee cannot be related to the company management nor have decision-making powers similar to those of the company management and should consult with the employees of the company. Furthermore, in these cases, the agreement must be ratified by a majority of the company’s employees by referendum. Still, by broadening the scope for the conclusion of company collective agreements, it also broadens the scope for company-level deviations from sectoral agreements.

As explained above, during the yearly wage bargaining, a company agreement may modify the wage system as long as the agreement respects the global wage increases fixed by the sectoral collective agreement (Article L. 132-24 of the Labour Code). In this case, unions can oppose that agreement as long as they represent the majority of the workforce (that is, when they had more than half of the votes at the last works council elections – Article L. 132-26 of the Labour Code).

Finally, the 2004 legislation allows for collective agreements to be signed at levels that did not exist previously: namely, among groups of companies and at enterprise level (Dufour, 2008). Again this does, in principle, increase the scope for lower-level deviations from sectoral standards.

### Use of derogations in practice and impact on collective bargaining system

Several sector-level collective agreements, signed after the adoption of the Fillon law, include a clause prohibiting undertaking agreements to derogate for the worse from the working conditions (including wages) agreed at sectoral level.<sup>5</sup> According to official data from 2007, 15% of the sectoral agreements included an imperative clause prohibiting derogation by a company-level agreement (Combrexelle, 2008). The majority of these clauses prohibit only derogations to the detriment of the workers (Kerbourc’h, 2008). Therefore, in principle, a company agreement might derogate in favour of the worker.<sup>6</sup>

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<sup>4</sup> The term ‘elected representatives’ is used because according to French labour law the works council is chaired by the employer. Thus, the works council, as such, cannot be entitled to reach agreements.

<sup>5</sup> For instance: Convention collective nationale des ouvriers, employés, techniciens, et agents de maîtrise de l’exploitation d’équipements thermiques et de génie climatique, avenant du 16 juin 2005 sur des salaires minima (Article 4) and Convention collective nationale des ouvriers, employés, techniciens, et agents de maîtrise de l’exploitation d’équipements thermiques et de génie climatique accord du 8 juillet 2005 sur les primes e indemnités (Article 2).

<sup>6</sup> This is in line with the Labour Code, which stipulates that a company agreement may establish more favourable working conditions than the collective agreements above company level. Indeed, deviations by a company agreement improving the working conditions of workers (including pay) are legally acceptable in a legal order such as that defined in France, clearly oriented by the general law principle of the protection of the worker.



There is no systematic information available on the incidence of company-level agreements that deviate in terms of wage regulations from sectoral agreements. However, it seems that their occurrence is limited. An evaluation of the impact of the reform published by the Ministry of Labour, Social Relations and Solidarity in 2008 shows that no notable changes have emerged concerning the levels at which bargaining takes place (Dufour, 2008). Even though this reform had the potential to dramatically change the traditional system of collective bargaining, there are no clear signs that sectoral collective bargaining is under pressure (Martín Puebla, 2006). No noticeable increase can be observed in the use of company agreements since the adoption of the Fillon law, according to the report. There has been a growth of the new forms of agreements, that is, those at the level of groups of companies and at enterprise level, but they do not seem to have led to substantial changes in the bargaining system (Dufour, 2008). The report shows that industrial relations actors continue to follow traditional bargaining practices and little has changed in the collective bargaining sphere – a finding that has been confirmed by all of the employer organisations and trade unions involved in collective bargaining (Dufour, 2008).

Due to the legal constraints on the modification of the agreed minimum wages and wage classifications, it is more common at company level to depart from the sectoral-level agreement in terms of working time. Indeed, through company-level reductions of working time, substantial reductions in overall wage costs can be obtained without changing wage levels (Vigneau and Sobczak, 2005; Martín Puebla, 2003). Larger companies in particular have achieved wage moderation through the reduction of working time (Brizard/DARES, 2006). Such working time reductions were facilitated by the law introducing the 35-hour working week (Act Aubry II of 19 January 2000).

### View of the social partners

The Fillon law and other recent reforms underline that, in France, the government attempts to play a key role in framing and promoting collective bargaining, especially in promoting company-level bargaining and its importance compared with sectoral bargaining. However, the limited impact of the law shows the crucial role of the social partners in this respect.

The Fillon reform aroused strong criticism from the trade union side. Even when the Act resembled a ‘common position’ on collective bargaining reform agreed on 16 July 2001 by employer organisations and four trade union confederations (CFDT, CFE-CGC, CFTC and CGT-FO), it was rejected by the main trade unions. The trade unions’ opposition to the new legislation was mainly focused on its challenge to the previously existing system of a hierarchy of collectively agreed norms. They criticised that in the first draft of the bill by the Ministry of Labour, the right for lower-level agreements to depart from higher ones was confined to a few issues, whereas in the bill finally adopted, such derogations had become the general rule, with only a few exceptions. On the contrary, the Movement of French Enterprises (MEDEF) supported this legislation.

Several trade unions, and notably CGT-FO, have expressed their concern about the risk of ‘social dumping’ that derogations may produce. They are afraid that they undermine the importance of sectoral agreements in standardising working conditions in general and of wages in particular (CGT-FO, 2004). They are therefore in favour either of:

- setting up a system where the additional remuneration payments that can now be the subject of derogations are included in the concept of ‘minimum salary’; or
- prohibiting, in the sectoral collective agreement, a company agreement from altering payments agreed in the sectoral agreement.

The opposition of the unions has led to a situation where, in practice, there is hardly any deviation by company-level agreements on wages and if it does occur it is mainly to improve the level of additional bonuses and payments, such as that for seniority, compared to the ones fixed at sectoral level.<sup>7</sup> Thus, even for additional bonuses and payments, wage opt-out company agreements deviating for the worse from the sectoral level are rare in France. In contrast, company agreements on the flexible use of working time (contemplating overtime, annualisation of hours, flexible working schedules) and variable pay systems are widespread.

The employers like using financial participation schemes for their workers because they do not pay social security contributions on these payments. The unions do not oppose the use of flexible wage systems but they are in favour of limiting the financial participation of the employees in the company's benefits to a maximum threshold of 15%–20% of the wages because this type of system implies a transfer of economic risks to employees.

## Bibliography

Allouache, A., 'La composition et la charge de la rémunération', *Droit Social*, No. 11, November 2009, pp. 1025–1036.

Borenfreund, G., 'La négociation collective dans les entreprises dépourvues de délégués syndicaux', *Droit Social*, No. 6, 2004, pp. 606–619.

Borenfreund, G., 'Les syndicats et l'exigence majoritaire dans la loi Fillon de 4 mai 2004', in *La négociation collective à l'heure des revisions*, Paris, Dalloz, 2005.

Brizard, A. (DARES), 'Le salaire et ses évolutions dans le secteur marchand non agricole', *Premières Informations*, No. 41.1, October 2006.

Caroli, E. and Gautié, J. (eds.), *Low-wage work in France*, New York, Russell Sage Foundation, 2008.

CGT-FO, *La Guide Force Ouvrière sur la réforme de la négociation collective*, September 2004.

Combexelle, J-D., 'Loi du 4 mai 2004: quel bilan? Quelles perspectives?', *Droit Social*, No. 1, 2008, pp. 20–23.

Conseil Supérieur de l'Emploi, des Revenus et de la Cohésion Sociale (CSERC), *Le SMIC (salaire minimum interprofessionnel de croissance)*, Paris, La Documentation Française, 1999.

DARES, 'France: Minimum wage expert group set up', *European Employment Review*, Issue 425, 18 June 2009.

DARES data, see: IRS, 'France: Minimum wage increased by 0.5%', *European Employment Review*, 18 February 2010.

Delaporte, F., 'Les négociations salariales restent dans la trappe à SMIC', CFDT, 23 October 2007.

Delaporte, F., 'Pouvoir d'achat, place aux négociations salariales', CFDT, 19 February 2008.

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<sup>7</sup> Emmanuel Mermet, CFDT, interviewed for this report on 15 June 2010.

Despax, M., 'Négociations, conventions et accords collectifs', *Droit Social*, Vol. 7, No. 291, 1989.

Dufour, C., European Industrial Relations Observatory (EIRO), 'Impact of collective bargaining law assessed', Dublin, European Foundation for the Improvement of Living and Working Conditions (Eurofound), 29 May 2008, available online at: <http://www.eurofound.europa.eu/eiro/2008/04/articles/fr0804069i.htm>.

Jolivet, A. and Robin, B., EIRO, 'France: Wage flexibility and collective bargaining', Dublin, Eurofound, 28 April 2009, available online at <http://www.eurofound.europa.eu/eiro/studies/tn0803019s/fr0803019q.htm>.

Kerbourc'h, J-Y., 'Les clauses d'interdiction de déroger par accord d'entreprise à une convention plus large', *Droit Social*, No. 7/8, 2008, pp. 834–844.

Martín Puebla, E., 'La reducción del tiempo de trabajo en Francia. Modificación del contrato y despido en la Ley de reducción negociada del tiempo de trabajo', *Relaciones Laborales*, 2003, No. 179, pp. 19–34.

Martín Puebla, E., 'La reforma de la negociación colectiva en Francia', *Revista Española de Derecho del Trabajo*, No. 30, 2006, pp. 305–330.

Ray, J-E., 'Les curieux accords dits «majoritaires» de la loi du 4 mai 2004', *Droit Social*, No. 6, June 2004, pp. 590–600.

Rehfeldt, U., EIRO, 'Social partners agree common position on collective bargaining reform', Dublin, Eurofound, 7 August 2001, available online at <http://www.eurofound.europa.eu/eiro/2001/08/feature/fr0108163f.htm>.

Rehfeldt, U., EIRO, 'Collective bargaining reform law passed', Dublin, Eurofound, 1 May 2004, available online at <http://www.eurofound.europa.eu/eiro/2004/04/feature/fr0404105f.htm>.

Rehfeldt, U., EIRO, 'France: Multinational companies and collective bargaining', Dublin, Eurofound, 2 July 2009, available online at <http://www.eurofound.europa.eu/eiro/studies/tn0904049s/fr0904049q.htm>.

Rodière, P., 'Accord d'entreprise et convention de branche ou interprofessionnelle: négociation indépendante subordonnée, et articulée', *Droit Social*, No. 11, 1982, pp. 711–716.

Souriac, M-A., 'L'articulation des niveaux de négociation', *Droit Social*, No. 6, 2004, pp. 579–589.

Vigneau, C. and Sobczak, A., 'France: The helping hand of the state', in Blanke, T. and Rose, E. (eds.), *Collective bargaining and wages in comparative perspective: Germany, France, the Netherlands, Sweden and the United Kingdom*, in Blanpain, R. (ed.), *Bulletin of Comparative Labour Relations*, No. 56, 2005, pp. 31–48.

Vincent, C., EIRO, 'Debate over mandating employees to conclude collective agreements', Dublin, Eurofound, 28 July 1998, available online at <http://www.eurofound.europa.eu/eiro/1998/07/feature/fr9807123f.htm>.