



Comments on the OECD recommendations on the administrative extension of collective agreements in France

Paris, 8 September 2017

On 14 September, the OECD is to release the 2017 edition of the Economic Survey on France, which is part of a biennial economic surveillance programme OECD member countries. Prior to the release in September, the OECD published a chapter of the report related to the French collective bargaining system: “*Les extensions administratives des accords de branche en France : Effets et pistes de réformes*”ⁱ. In it, the OECD calls for a reducing the scope and possibilities for automatic extension of collective agreements. The arguments put forward are as follows:

- Within the OECD, France is the only country to have quasi-automatic extension (i.e. France is not within the established OECD “norm”);
- While it may have some merits, automatic extension hurts employment, hurts competition and hurts the performance of companies (i.e. extending collective bargaining plays against the interest of French workers);
- The ILO itself recommends putting restrictions on extension.

From there, the paper dwells on various ways to eliminate automatic extension including by making decision subject to a committee of “independent” experts and, ultimately, to grant businesses with generalised opt-out possibilities.

The TUAC has the following comments to share regarding the above recommendations and the OECD paper as a whole.

France is not an exceptional case amongst OECD countries.

The OECD paper presents France as one of just a few OECD countries where extension is quasi-automatic and where conditions attached are much less strict. The OECD even claims that “many OECD countries never or only rarely make use of extension”ⁱⁱ.

These claims are contestable. For a first, France is not to be singled out. Six other OECD countries have systems that are broadly comparable to France (Austria, Belgium, Finland, France, Iceland, Luxembourg, Spain)ⁱⁱⁱ. According to the OECD paper itself, 10 OECD countries have in practice extension systems that are not conditional on any criterion (functional equivalence). If one adds Austria to the list (which in the paper is wrongly categorised as a country where extension is “rare” and “relatively restricted”), it is no less than eleven OECD countries, almost a third of the OECD membership in practice applies automatic extension – a fairly sizeable number of “exceptional cases” to say the least.

There is little or no evidence that legal extension destroys jobs

The OECD claims that “studies for other countries seem to confirm that an intensive use of extensions without an evaluation of their economic effect may have a negative impact on

employment”^{iv}. The literature review that is referenced to support this statement is rather surprising. While it is acknowledged that a study on the Netherlands proves inconclusive on the impact on employment, the OECD makes great case of another study on South Africa (where, we are told, extension is the cause for no less 10% reduction in employment) and one on Portugal to warn against the dangers of extension in France. The study in Portugal covers the 2011-2012 period, that is in the midst of the economic and financial crisis in Europe. Moreover, separate research using cross-OECD countries data^v (to which the paper does not refer to) also fails to provide robust evidence.

The ILO’s view on making extension conditional is much more balanced

The OECD paper claims that the ILO recommends that an extension should take place “only if” the initial agreement is already covering a sufficiently representative number of employers and workers^{vi}, citing to that end the proceedings of an ILO session in 1950.

The TUAC has sought further information on these proceedings in 1950. While the discussion at the 1950 ILO session expressed concern that extension by public authorities would infringe on the voluntary nature of collective bargaining, there was *also* concern about situations where it would be difficult for workers to organise and where the absence of a binding collective agreement would have significant impact on labour conditions (industries with many small companies, large number of home workers).

To balance these concerns, the ILO Committee agreed that the use of this policy tool should be discretionary. Hence, the Recommendation says that national law or regulations “may” make the extension subject to conditions. The ILO also decided (after explicit discussion) not to adopt a “majority representivity” requirement but to use instead the concept of “sufficient representivity”, a more flexible concept.

Moreover, with the rise in non-standard labour contracts, of labour migration and “posted” worker flows and the fragmentation of workplaces through outsourcing to a multitude of peripheral companies, the benefits of extension are being rediscovered. It so happens that several other OECD countries than those mentioned above have introduced certain forms of legal extension (Norway introducing extension for posted workers in some sectors), have loosened the conditions (Germany replacing the 50% majority threshold with a “public interest” test, Switzerland gradually disregarding the rule that unionisation rate must be at least 50% in a number of sectors) or have limited the exemptions from extension (in the Netherlands, exemptions that are based on enterprise agreements signed by an ‘in-house’ employer-controlled union are no longer valid).

“Independent” expert committees play a different role than the one suggested by the OECD.

In building the case for “independent experts” to have the upper hand over the decision process, including evaluating in detail the economic and social effects before an agreement is extended^{vii}, the OECD claims that such committee is common practice in seven countries. The reality is somewhat different. In Germany, Finland and Norway, social partners themselves or their representatives make up or have a role to play in such committees. In Finland and Norway, the role of that committee is to check the representative status of the signing parties and, in the case of Norway, whether foreign workers are employed at lower wage conditions in that particular sector. In Austria, mandatory membership of the Economic Chamber is a functional equivalent of legal extension anyway.

In addition, the OECD paper overlooks a number of aspects related to administrative extension.

The institutional complementarity and the economic benefits of extension.

By aligning the negotiating strategies on what the economy most urgently needs, coordination of collective bargaining improves job performance, labour market resilience as well as an economy's income distribution. However, for wage coordination to be effective and for ensuring trade unions have the right incentives to engage in such coordination, a high and stable coverage rate is indispensable. In this way, extension is part of wage formation systems that work to improve an economy's health. If reforms of extension result in a collapse in collective bargaining coverage rates, the capacity of the bargaining actors to coordinate wage formation will be considerably weakened.

Coordinated wage bargaining becomes even more important in a monetary union in order to get wages in line with price stability. In that context it is perhaps no hazard that France, together with Belgium, is one of the few euro area member states where trend unit wage costs have been closely following the ECB's 2% price stability target for more than a decade. Moreover, the ECB will only succeed to bring low inflation sustainably back to its 2% target provided wage bargaining in France and the euro area stops feeding the dynamics of too low inflation. Reforms that weaken the extension, coverage and coordination of collective agreements will do the opposite.

Extension also benefits small and medium sized enterprises.

The OECD repeats the argument that extended agreements cannot fully reflect the diversity of companies and may be inappropriate for SME's and young companies in particular. In doing so, the OECD overlooks the strategy of outsourcing and subcontracting chains that large companies use to organise 'cut-throat' competition between a vast number of peripheral companies, mainly SME's. By ensuring a level playing field on wage and working conditions, extension shields SMEs and young companies from abusive competitive pressure by large companies.

In the case of France (and other European countries), extension helps to shield businesses from wage competition that comes from the posting of workers from low wage European economies. As it is easier for large companies to channel workers from abroad into their supply chain, SME's have an interest in a robust system of extension of collective agreements.

ⁱ <http://www.oecd.org/fr/france/extensions-administratives-des-accords-de-branche-en-France.pdf>

ⁱⁱ « Beaucoup de pays de l'OCDE n'utilisent jamais ou rarement les extensions administratives », p5.

ⁱⁱⁱ Hayter, S and Visser J. The application and extension of collective agreements: Enhancing the inclusiveness of labour protection, International Labour Review, forthcoming.

^{iv} « Les études disponibles pour d'autres pays semblent confirmer qu'un usage intensif des extensions sans évaluation de leur effet économique peut avoir un effet négatif sur l'emploi » p 8

^v http://www.oecd-ilibrary.org/economics/the-macroeconomic-impact-of-policies-on-labour-market-outcomes-in-oecd-countries_5jrqc6t8ktjf-en?crawler=true & <https://spire.sciencespo.fr/hdl:/2441/6jq9v15fsi9sqbrqynnqn21dcs/resources/2014-murtin-de-serres-hijzen-unemployment-and-the-coverage-v-auteur.pdf>

^{vi} « L'Organisation Internationale du Travail (OIT) recommande qu'une extension administrative ne devrait se faire que si : a) la convention vise déjà un nombre d'employeurs et de travailleurs intéressés suffisamment représentatif ; b) la demande d'extension est faite par une ou plusieurs organisations de travailleurs ou

d'employeurs signataires de la convention collective ; et c) les employeurs et travailleurs auxquels la convention collective serait rendue applicable sont invités à présenter au préalable leurs observations » p5.

^{vii} « il pourrait être utile de mettre en place un comité indépendant chargé de consulter les parties concernées et de conduire l'évaluation des effets économiques et sociaux des extensions administratives » p9