

# agreement!

*A Green Mentality for Collective Bargaining*

## Summary of the French report

**1** - Until now, there has been no significant academic work in France that inventories or proposes a reading grid on the subject (collective bargaining and sustainable environment), even from a broader perspective of social dialogue. It should be pointed out that in France we use the expression "social dialogue" to refer to all information/consultation and collective bargaining processes. However, our system is called "mixed" because information and consultation are the responsibility of the elected employee representation (works council which has become a social and economic committee). Collective bargaining, on the other hand, is the monopoly of the representative unions, except where the law provides for exceptions where there is no union presence in the company (e.g. small organisations).

**2** - The primary objective of this report (carried out by the team)<sup>1</sup> was to target the relevant collective agreements or collective agreements that referred, in one way or another, to environmental concerns. More than **300 documents** or "agreements" were covered. Most of them have the legal nature of collective agreements signed by trade unions (collective agreements). Others take the form of atypical agreements, collective contracts with the state or charters (unilateral documents, practical guides, declarations). We have emphasised collective agreements or agreements. These 300 documents are at various levels (company, group, branch, sectoral and inter-professional agreements). A database devoted to these ecological clauses has been created and deposited in two parts in the Aix-Marseille University open access.

<https://hal-amu.archives-ouvertes.fr/hal-02940086>

<https://hal-amu.archives-ouvertes.fr/hal-02940089>

**3** –. The documentary mass is significant but perhaps misleading. It represents only a residual part of the number of collective agreements in force in the country. So be careful of the "magnifying effect" of this study. The contractual dynamism on the subject must be put into perspective. Moreover, it is more concerned with the level of the company or group of companies that has taken up the subject of CSR. The industry has not yet really grasped its

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<sup>1</sup> This report was produced by a team of teacher-researchers from the Centre de Droit Social of Aix-Marseille University (Labor Law Laboratory). The team was composed of : Alexis Bugada (dir), Véronique Cohen-Donsimoni, Audrey Martinez, Vanessa Monteillet, Caroline Vanuls. - The French version of the French report is currently being published by the Presses Universitaire d'Aix-Marseille (PUAM 2020).

coordinating role on the subject. What is worth noting is that environmental collective bargaining does not only concern companies at risk, which approach the issue from the "health, safety and environment" angle. Innovative, more societal themes are also addressed (e.g. eco-responsible behaviour).

**4** - As for the working method, it has been duplicated. There was an "empirical" approach backed by an "analytical" approach. The **empirical approach** consisted in researching everything that could be of interest to the subject, from the broad perspective of social dialogue (I). The **analytical approach** (II) consisted in searching the databases for all agreements at all levels that had an "occurrence" with environmental issues. The contributions are as follows.

#### I - The **empirical approach** revealed the following findings.

The scarcity of academic literature on the subject was underlined. However, the research revealed the existence of a trade union and association movement that is still waiting for concrete reception in the practice of collective bargaining. The "trickle down" takes time, but it is beginning to produce practical effects. For example, the "trickle down" takes time, but it is beginning to produce practical effects:

- Two major national trade union centres (confederations) have changed their statutes to defend not only professional interests but also social transformation with specific reference to environmental protection.
- Some unions have issued a policy statement with leading activists and organisations responsible for defending the environment or combating exclusion. This statement is called the "pact of the power to live". It was promoted in the midst of the yellow jackets crisis. It was launched in the media by a former Minister of the Environment (Nicolas Hulot) and Laurent Berger (Secretary General of the CFDT). This pact of the power to live contains environmental prescriptions linked to social issues.
- There are also, and especially in France, institutional "incubators" which help to promote good practices: Economic, Social and Environmental Councils (joint constitutional deliberative body), France Stratégie (former Planning Commission), etc. Many reports have been adopted: energy transition for small businesses, climate justice, employment in the ecological transition, etc. However, these reports have only a weak societal impact and have little impact on collective bargaining.
- There is also a policy of contractualisation between ministries and large sectors (federations) or large food companies to reduce the carbon footprint, water or energy consumption, the use of plastics, food waste, etc. This contractual policy is insufficiently included in collective agreements, although it could usefully be relayed.

II - The **analytical approach** made it possible to work concretely on nearly 300 documents ("agreements" in the broad sense). References to environmental protection are often declamatory, without normative scope, but some contain precise provisions with a proven legal content. Two main lessons can be drawn from this observation.

**1st lesson:** group agreements (global or transnational agreements) and company agreements are the most inventive on the subject. It is true that international groups have been the most proactive in anticipating responsibilities in the different countries in which they operate, based on international CSR tools.

**2nd lesson:** company agreements are sometimes innovative (depending on the sector of activity), and go beyond the classic field of occupational health. Some agreements make reference to COP 21, WHO or ILO requirements, Global Compact (UN) actions, ISO or Afnor standards on the environment, etc. For example, there are agreements on :

- The improvement of information/consultation of workers' representatives (e.g. environment commission);
- Collective performance indicators in terms of wage policy (profit-sharing); and
- The promotion of eco-responsible behaviour ;
- The promotion of training to transform jobs;
- Protection of workers against bad weather, pollution, heat waves (e.g. building and public works).
- Agreement on virtuous mobility policies (cycling, car-pooling, etc.) ;
- Teleworking in the event of pollution peaks (environmental teleworking).

**5 - Outlook.** This dynamic of social dialogue could be reinforced by two recent laws that came into force in 2019, which will need to be inventoried. The first concerns the reform of company law (PACTE 2019 law) and the law on mobility (LOM 2019 law).

The first law states that the management of the company **must take into account social and environmental issues**. The question arises as to whether the information/consultation of workers on the impact of the company's activity on the environment and society will not be amplified. For the time being, labour law restricts non-financial information to large companies (according to size or turnover) and to companies listed on the stock exchange. Could we imagine tomorrow that the employer would also communicate on the societal and environmental impact of the company's activity? What impact will this change then have on trade union relations? etc.

The second law (LOM Act), provided that in the compulsory Quality of Working Life (QWL) bargaining block, the employer also negotiates on the issue of virtuous mobility (at least once every four years). Thus, green mobilities, or subjects relating to the reduction of the negative effects of mobility (work trips but also work from home to work), are now part of the social partners' agenda in order to contribute to air quality but also to cope with adaptation to climate change.

**6 - Proposals.** On the basis of these observations, 5 proposals can be suggested.

**Proposals No. 1:** The scientific community (including universities) must better relay the work and reports of joint institutions on the environmental subject, particularly the reports of the EESC or those of France Stratégie. This requires a multidisciplinary and open approach that should be better promoted by scientific publishers (humanities and social sciences). An EESC

report should be considered as worthy of interest as a social jurisdiction decision in order to receive useful academic analyses.

**Proposal No. 2:** Following on from the previous point, social dialogue actors should be better trained in collective bargaining, but also in social, economic and environmental issues. This could thus lead them to reflect on how to include the subject in collective bargaining. However, this point also requires a transformation of trade union conceptions, which sometimes have a restricted view, for historical reasons, of their subjects of negotiation (defence of strictly understood professional interests).

**Proposal No. 3:** Ensure that branch negotiations give a new impetus and that they offer a negotiating framework for the benefit of companies, or even adaptable negotiation kits (for small companies), without calling into question the primacy of the company agreement over the branch agreement. This would help economic and social transition.

**Proposals No. 4:** The question arises as to whether, then at the inter-professional level, negotiations should not involve third parties known for their commitment to the defence of the environment in order to pool unifying and common objectives to inspire branch negotiations (trickle-down effect) or even the legislator to better target the subjects of social innovation (e.g. transformation of sectors and trades).

**Proposal No. 5:** In legislative terms, ensure that the corporate QWL bargaining bloc is expanded. It could thus be transformed into QWL-E (Quality of life at work in its environment), so that this subject is systematically addressed in a pedagogical and virtuous way, without the obligation to conclude an agreement. This negotiation must remain pragmatic in order to take into account the economic and organisational sustainability of conventional systems.

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