



HAL
open science

Green collective bargaining in France

Alexis Bugada

► **To cite this version:**

Alexis Bugada. Green collective bargaining in France. E-Journal of International and Comparative Labour Studies, 2021, 10 (1). hal-03287528

HAL Id: hal-03287528

<https://amu.hal.science/hal-03287528>

Submitted on 15 Jul 2021

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Copyright

OPEN ACCESS

ISSN 2280-4056

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 10, No. 1/2021



ADAPT
www.adapt.it
UNIVERSITY PRESS

Managing Editor

Valeria Fili (*University of Udine*)

Board of Directors

Alexis Bugada (*Aix-Marseille University*), Valeria Fili (*University of Udine*), Anthony Forsyth (*RMIT University*), József Hajdu (*University of Szeged*), Shinya Ouchi (*Kobe University*), Daiva Petrylaite (*Vilnius University*), Valeria Pulignano (*KU Leuven University*), Michele Tiraboschi (*Founding Editor - University of Modena and Reggio Emilia*), Anja Zbyszewska (*Carleton University*).

Editorial Board

Labour Law: Emanuele Dagnino (*University of Modena and Reggio Emilia*); Tammy Katsabian (*Harvard Law School*); Attila Kun (*Károli Gáspár University*); Adrian Todoli (*University of Valencia*); Caroline Vanuls (*Aix-Marseille University*). **Industrial Relations:** Valentina Franca (*University of Ljubljana*); Giuseppe Antonio Recchia (*University of Bari Aldo Moro*); Paolo Tomassetti (*Aix-Marseille University*); Joanna Unterschutz (*University of Business Administration in Gdynia*). **Labour Market Law:** Lilli Casano (*University of Modena and Reggio Emilia*); Silvia Spattini (*ADAPT Senior Research Fellow*). **Social Security Law:** Claudia Carchio (*University of Bologna*); Carmela Garofalo (*University of Udine*); Ana Teresa Ribeiro (*Catholic University of Portugal – Porto*); Alma Elena Rueda Rodriguez (*National Autonomous University Of Mexico*). **Anti-discrimination Law and Human Rights:** Erica Howard (*Middlesex University*) Anna Zilli (*University of Udine*). **Labour Issues:** Josua Grabener (*Grenoble Institute of Political Studies*); Habtamu Legas (*Ethiopian Civil Service University*); Francesco Seghezzi (*ADAPT Senior Research Fellow*).

Language Editor

Pietro Manzella (*ADAPT Senior Research Fellow*).

Book Review Editors

Peter Norlander (*Loyola University Chicago*).

Scientific Committee of Reviewers

Maurizio Del Conte (*Bocconi University*), Juan Raso Delgue (*University of the Republic*); Richard Hyman (*LSE*); Maarten Keune (*University of Amsterdam*); Felicity Lamm (*Auckland University of Technology*); Nicole Maggi-Germain (*Pantheon-Sorbonne University*); Merle Erikson (*University of Tartu*); John Opute (*London South Bank University*); Michael Quinlan (*University of New South Wales*); Jean Michel Servais (*Honorary President of ISLLSS and Former Director of International Labour Office*); Anil Verma (*University of Toronto*).

*E-Journal of
International and Comparative*

LABOUR STUDIES

Volume 10, No. 1/2021

@ 2021 ADAPT University Press

Online Publication of the ADAPT Series
Registration No. 1609, 11 November 2001, Court of Modena
www.adaptbulletin.eu

The articles and the documents published in the *E-Journal of International and Comparative LABOUR STUDIES* are not copyrighted. The only requirement to make use of them is to cite their source, which should contain the following wording: **@2021 ADAPT University Press.**

'Green' Collective Bargaining in France

Alexis Bugada and Véronique Cohen-Donsimoni *

Abstract

This article provides an overview of collective bargaining in France in relation to environmental sustainability. Rather than discussing all the green clauses laid down in collective agreements, this paper aims to identify the main trends in collective bargaining. It appears that company and sectorial bargaining, especially at transnational level, is the most active on this subject. However, there have been major developments at the interprofessional and branch level too, which raise the question of the impact of wide-ranging bargaining on narrower bargaining perimeters (the 'trickle-down' effect). The social partners are rather active in France, because the right to collective bargaining has been reformed favouring company-level negotiations and because recent legislation has placed environmental issues high on the agenda of collective labour relations.

Keywords: Environmental Social Dialogue; Collective Bargaining; Green Clauses.

1. Introduction

The environment is still given little consideration in France's collective labour agreements. Yet some progress can be reported due to the convergence between labour law and environmental law¹. This slowness

* Alexis Bugada (corresponding author, email address: alexis.bugada@univ-amu.fr) is Full Professor of Labour Law at Aix-Marseille University. Véronique Cohen-Donsimon is Associate Professor of Labour Law at Aix Marseille University (France). This paper summarises the findings of the report originated from *Agreement – a Green Mentality for Collective Bargaining*. This project was co-funded by the D.G. Employment of the European Commission (VP/2017/004/0037). This report is also published in France with the title: *Environnement and collective bargaining, Agreement, French report*, LexisNexis 2021, Planète Social éd.

¹ General bibliography : M Despax, *Environnement et droit du travail*, Juris-Classeur Environnement Traité, Fasc. 982, 1994 ; A. Bugada, *L'influence du droit de l'environnement sur le droit du travail*, Semaine Sociale Lamy 17 oct. 2005, supplément au n° 1232 ; A.

may appear surprising for a country which appointed a Ministry of Ecological Transition and Solidarity and, more importantly, issued an Environmental Charter later on incorporated into the French Constitution in 2005. This Charter sets out key principles and can underpin policies at the intersection of social ecology and labour law. This document states that the preservation of the environment is one of the fundamental interests of the French nation, but also that everyone has the right to live in a balanced environment that respects their health and that ‘everyone’ must participate in environment protection. Finally, education and training policies must be implemented to achieve these objectives. If we cross-reference this information with the development of trade union action and collective bargaining rights in France over the last five years, more significant prospects for change can be seen. Moreover, certain large confederations also display a more environmentally responsible posture, whether they are progressive or reformist organisations, or even those with Christian leanings². Two major confederations³ have even modified their statute: environmental protection is included in the wake of the defence of social rights. Others have even issued a general policy declaration with activists and organisations in charge of protecting the environment and tackling exclusion, drawing on the popularity of a former environment minister, i.e. Nicolas Hulot⁴.

Therefore, if we adopt an empirical approach, it is not surprising that those engaged in social dialogue have already been inventive when

Mazeaud, *Environnement et travail*, in *Mélanges offerts à M. Prieur, Pour un droit commun de l'environnement*, Dalloz 2007, p. 297 ; M.-P. Blein-Franchomme et I. Desbarats, *Environnement et droit du travail*, Juris-Classeur Environnement, Traité, Fascicule 2330, 2008 ; F. Héas, *La protection de l'environnement en droit du travail*, RDT 2009, p. 565 ; M.-P. Blin-Franchomme et I. Desbarats. et alii, *Droit du travail et droit de l'environnement, Regards croisés sur le développement durable*, Lamy collection, Axe Droit, 2010 ; C. Vanuls, *Travail et environnement – Regards sur une dynamique préventive et normative à la lumière de l'interdépendance des risques professionnels et environnementaux*, PUAM 2012 ; A. Casado, *Le droit social à vocation environnementale*, Dalloz 2019, p. 2425 ; I. Vacarie, *Travail et Développement durable*, RDT 2020, p. 601 ; F. Héas, *Le droit du travail est-il ouvert à la question environnementale*, Rev. Jur. Env. 2020, HS/20, n° spécial. ; C. Vanuls et A. Bugada, *La question de l'implication environnementale de la collectivité de travail*, in *L'apport du droit privé à la protection de l'environnement*, Mare et Martin éd., coll. Droit, science et environnement, 2021.

² J.-Y. Naudet, *La CFTC, le syndicalisme confessionnel et la Doctrine sociale de l'Eglise*, in *la Doctrine sociale de l'Eglise*, Tome 4, PUAM 2020, p. 219.

³ Modified statutes of the CFDT (2014) and CGT (2016).

⁴ *L'urgence d'un pacte social et écologique : pour donner à chacun le pouvoir de vivre (2019)* : www.pubicseinar.fr/article/politique/berger-et-hulot-proposent-leur-pacte-social-et-ecologique-138693.

concluding collective agreements. It is not time for the full implementation of 'green' agreements, though some 'green' clauses are already in force, irrespective of the level of negotiation. Many topics are covered: the improvement of information and consultation of the institutions representing personnel; collective performance indicators in terms of wage policy (profit-sharing); the promotion of eco-responsible behaviour; training promotion in order to fill green jobs; environmental protection (bad weather, pollution or heatwave); virtuous mobility, including teleworking (which is about to implement the duty of non-mobility). Group- or company-level collective agreements at the international level sometimes prove to be innovative, going beyond traditional occupational health and safety. Some of them even make reference to COP 21, WHO or ILO recommendations or SDOs (sustainable development objectives) promoted by the UN. In other words, some forward-thinking signatories draw on major international statements.

It is therefore interesting to present these developments, by adopting an approach that takes into account the reforms of collective bargaining in France and its conventional structure. The main idea is that company-level bargaining is privileged, allowing for initiatives and innovation. There is certainly a risk that those involved in company-level bargaining might have their social rights limited. Company-level agreements can be less favourable than branch-level ones when it comes to many subjects, as the legislator has reversed the hierarchy of conventional standards. Yet this might also be an opportunity to deal with current environmental issues, rethinking social and environmental democracy in the company. However, normative amendments must be accompanied by a profound cultural change. As predicted by Despax, who was among the first scholars to deal with this subject: "the environment could be negotiated in the same way as it is done wages, time, and working conditions"⁵. That was in 1993 and a lot of progress has been made since then. In order to assess these developments, it is sensible to make reference to a few fundamentals.

French social dialogue (collective bargaining) is characterised by three main levels of collective bargaining: the inter-professional level, the branch level and the company level, which does not exclude other levels (e.g. inter-branch agreements, inter-company agreements and group

⁵ M. Despax, *Droit du travail et droit de l'environnement*, colloque SFDE 1993, Litec 1994, conclusion générale, p. 52.

agreements). There is no longer any hierarchy between these levels. The primacy of company-level negotiations, with some exceptions, encourage other fields to implement subsidiarity. But above all, traditionally, collective bargaining is considered to be the preserve of representative trade unions. The weakening of the trade union audience and the will to promote social dialogue in all firms, including small-size ones, has led the legislator to lay down mechanisms for negotiating with other actors, i.e. workers and their representatives.

It is difficult to identify the reasons that have led to broadening the field of ‘industrial’ negotiations, which are strictly focused on traditional subjects, to include sustainable development. Social awareness – including trade union awareness – is one of these reasons. Among others, we can also mention the competition for the development of ‘soft laws’ (CSR), which in terms of density and diversity has benefitted from the porosity of more traditional standards, influencing collective bargaining. Major corporations have also perceived the interest in coordinating the action of their members in order to protect their brand image in markets that are sensitive to these ethical issues. However, the entry points of worker health and working conditions were seen as uncompartimentalized. The work environment is linked to external circumstances and vice versa⁶. The prevention of work-related accidents has long been given priority, it being so the increase in safety obligations – following a rise in asbestos-related diseases – has affected behaviours and practices in important respects.

2. The Inter-professional Level

The inter-professional level involves trade unions and certified employers’ organisations in manufacturing, construction, trade and services. Inter-professional agreements may be concluded at national, regional or local level, though the first is preferred. Their main purpose is to promote inter-professional solidarity mechanisms, to set the guidelines for branch-level negotiations on essential issues and to prepare legislative reforms. As for national, inter-professional agreements (NIA), the expression ‘legislative negotiation’ is used, as the content of these agreements is often ratified by a subsequent law. Moreover, the legislator has also confirmed the importance of this level of negotiation, by enshrining in the Labour Code⁷ the government’s commitment – in the event of a reform project

⁶ C. Vanuls, *Travail et environnement*, abovementioned.

⁷ Labor Code, article L. 1.

concerning labour relations and vocational training – to arrange prior consultation with representative organisations at the national, inter-branch level in order to enter into negotiations. Even though inter-professional negotiations have been declining in recent years (9 agreements concluded in 2018 as compared to 18 agreements in 2017)⁸, these negotiations are still hold a major role. However, few NIAs relate to sustainable development.

Five agreements may be referred to in this regard: 1) the 1975 framework agreement on the improvement of working conditions⁹, which states that improvement measures must take account of the physical working environment (temperature, lighting, ventilation, noise, dust, vibration, etc.) both for those operating inside the factory and, where appropriate, for those living in the surrounding area 2) the 2013 *Quality of Life at Work* (QLW) NIA¹⁰, which offers a ‘systemic’ social approach to the improvement of working conditions and business performance 3) The NIA on the *Safeguarding of Employment* (2013)¹¹, which contains an appendix on the information to be transmitted to employee representatives from a single database. It is stated that economic and social information should also include elements to assess the environmental consequences of the company’s activity 4) The NIA on *occupational health* recalls an important aspect in the field of occupational risk prevention¹², i.e. external risks must also be taken into account (health and environmental risks). Anticipatory or corrective actions must be implemented by giving priority to primary prevention and by considering the instructions issued by public authorities in the event of a crisis 5) The NIA on telework (2020) was concluded amid the pandemic crisis¹³. The text distinguishes between exceptional telework (during a crisis) and traditional telework (permanent way of working). The agreement considers the local and environmental impacts of telework, recommending that a practical investigation be carried out. It follows that

⁸ La négociation collective en 2018, Bilan et rapport, Ministère du travail, 2019, 191.

⁹ Framework Agreement of 17 March 1975 amended by the agreement of 16 October 1984 on the improvement of working conditions.

¹⁰ NIA of June 19 2013 towards a policy for improving the quality of life at work and professional equality.

¹¹ NIA of January 11 2013, for a new economic and social model promoting the competitiveness of firms and safeguarding the employment and the career paths of employees.

¹² NIA of 9 dec. 2020, for reinforced prevention and a renewed offer in terms of occupational health and working conditions.

¹³ NIA of 24 Nov. 2020, for a successful implementation of telework.

this work arrangement can have positive effects on the environment (travel reduction), while doubts can be cast about the use of digital tools which are likely to increase energy consumption. The social partners therefore call for a balance to be sought between the challenges of ecological transition and digital transformation.

In recent years, some important reforms have changed the role of industry- and enterprise-level bargaining (see below). For this reason, the social partners operating at inter-professional level seek to review social dialogue in order to consider current constraints and deal with subjects of general interest. French employers responded to the union’s proposals at the end of 2018, putting forward an agenda¹⁴ on major topics, including «the consequences of digital and ecological transitions on the organisation of work». It is therefore likely that these issues will be dealt with at the inter-professional level soon. Some agreements concluded at this level cannot be referred to as proper inter-professional collective agreements, so they are loosely referred to as ‘soft law’. In this respect, the CPME (employers’ confederation of SMEs) concluded a “deliberation” on CSR in VSE-SMEs in¹⁵ 2017 with five trade unions¹⁶. The unanimity reached within the employee confederations contrasts with the employers’ division, since the other employers’ interprofessional organisations refused to sign the document. The aim of this deliberation – which takes the form of an agreement – is to offer professional branches and an experimental framework to identify sectoral indicators and to promote CSR strategies in small enterprises (as understood in ISO 26000 standard). The deliberation is mainly focused on: clarifying the role of representative institutions in CSR, negotiating CSR agreements, creating monitoring indicators, and promoting framework agreements between main and subcontracting SMEs. The deliberation also encourages action in favour of environmental protection. The target of VSEs is interesting, since according to a national survey less than one employee in two (44%) believes that their company is environmentally committed (BVA survey for Club MediaRH, April 2019). This agreement (in the sense of a general

¹⁴ Proposed social agenda dated October 10 2018, by Medef (Mouvement des entreprises de France), CPME (Confédération des petites et moyennes entreprises) and U2P (Union des entreprises de proximité). –V. Liaisons sociales Quotidien, October 12 2018, 2. – The proposal 2020 from Medef is on the same path: *Proposal for an autonomous social and economic agenda for a useful, renewed paritarism that accompanies transitions* (this new proposal emphasises the climate transition for the companies).

¹⁵ Joint deliberation of the social partners on CSER in VSE-SMEs of December 21st 2017, Liaisons sociales Quotidien, June 18 2018, 2.

¹⁶ CFDT, CFE-CGC, CFTC, CGT and FO.

commitment) intends to turn CSER into a tool for strengthening social dialogue.

3. Professional Branches

The professional branch level remains a privileged channel for collective bargaining. Following recent reforms (2016-2017), the branch-level bargaining is now given two additional tasks: to define employment terms and working conditions, as well as other aspects expressly referred to by the law¹⁷ (minimum wages, job classifications, etc.) and to deal with aspects of general interest, e.g. regulating the competition between the companies falling within its scope. Since 2014, France has embarked on a major review of professional branches in order to considerably reduce their number¹⁸. The aim is to better structure institutional social dialogue, focusing on sectors possessing high visibility nationwide. Even in this case, the collective agreement is still intended to deal with employment conditions, vocational training and social rights in the professional categories concerned. Yet the collective agreement is concerned with more aspects. Branch-level collective agreements and conventions are negotiated and concluded by the trade unions and employers' organisations representing the branch in question. Branch-level collective bargaining most often takes place at national level (around 75% of agreements). Since 2013, industry-level collective bargaining activity has increased (around 1,300 agreements concluded in 2018)¹⁹.

Negotiations usually involve wages, job classifications, gender equality, vocational training and financial participation. There has also been a significant increase in agreements regarding bargaining conditions. In some professional branches (e.g. public works)²⁰ CSER agreements are also concluded to encourage companies to promote environmental awareness. Some of these agreements, which concern general policies, are called "declarations", depriving them of the normative connotation making them immediately binding and turning them into a soft-law tool. One example of this is the Declaration of the social partners of public works for infrastructure for ecological transition and employment (November 25 2016). This declaration is interesting because it is sector-based (Public Works) and involves the most relevant employers'

¹⁷ Labor Code, articles L. 2253-1 and L. 2253-2.

¹⁸ Going from 700 branches to 200 branches (or even less).

¹⁹ Collective Bargaining in 2018, Report cited above, 193.

²⁰ Agreement on Corporate Social Responsibility of 7.04.2011.

federations in the sector and four employee representative federations. It is specified that companies in the public works sector should put forward solutions for climate change, the increase of the efficiency of resources, the preservation of biodiversity, the reduction of pollution (improvement of the living environment). This sector undertakes to identify the new skill needs linked to the ecological transition, to provide ecological training for public works professions, to channel the funds for professional training into the ecological transition, to promote training and research development through partnerships with relevant players. This is *per se* an action programme applied to the entire profession.

4. Company-level Bargaining

The enterprise level refers to the local level – i.e. it includes establishment, group or inter-company negotiations. This bargaining level is therefore to be understood in a broad sense. Following the 2016 and 2017 reforms, company-level bargaining has been regarded as the most relevant one. The law reasserts the primacy of the enterprise-level agreement over the branch-level one²¹, specifying when the latter might prevail if includes at least the same safeguards as the former²². The subsidiarity of the branch agreement in relation to the enterprise agreement is legitimised by the ‘majority agreement rule’ now imposed by law²³. The latest reforms reflect the legislator’s will to strengthen and promote collective bargaining in all companies, irrespective of their sizes. To this end, new mechanisms have been introduced to enable companies without trade union representatives to negotiate agreements with other actors²⁴. In very small enterprises without collective representation, the employer may submit a draft collective agreement directly to the staff through a referendum. However, the subsidiary – rather than alternative – nature of this practice is not such as to call into question the acknowledged prevalence of representative

²¹ Labor Code, Article L. 2253-3.

²² Labor Code, Articles L. 2253-1 and L. 2253-2.

²³ The majority nature of the agreement is assessed in relation to the number of votes obtained by trade unions in company elections. However, the procedures for concluding the branch-level agreement differ from those of the company-level agreement. The latter must necessarily be concluded by trade unions representing 50% of the votes obtained in elections. The branch-level agreement may be concluded with at least 30% of votes, provided that it is not opposed by the majority of trade unions operating at the branch level): Labor Code, art L. 2232-6.

²⁴ With an employee mandated by a representative trade union in the branch or with elected employee representatives.

trade unions. When they are in the company, they retain a major role in social dialogue. In 2018, there were approximately 62,000 texts (agreements and amendments) concluded in companies and then registered²⁵. The main topics of negotiation concern trade union rights and employee representative institutions, wages, financial participation and working time.

At the company level – and more specifically at the group level – sustainable development and profession of faith the environment are fully covered by collective bargaining, without however being predominant. Examples of this type of agreements include the Terega Group’s agreement on the promotion of gas use and a positive environmental balance (May 2018) and the Total Group’s agreement on sustainable development (March 2016). There are also agreements specifically dedicated to CSR (a broader theme than environmental issues). The Casino Group’s CSR Agreement (April 2014), the GDF Group’s European CSER Agreement (2008), the Merck Santé Group’s Agreement to Live-CSR (2010) and the Valéo Group’s CSR Agreement (2012) can be mentioned here. However, two observations can be made here. Firstly, these groups have a European or even global dimension, which raises questions about the normative scope of these agreements (mandatory nature, applicable law, etc.). Secondly, it is especially during negotiations on specific topics (profit-sharing, teleworking, quality of life at work, etc.) that clauses incorporating environmental criteria are found. Negotiations on environmental issues are therefore scattered in agreements whose primary purpose does not necessarily reflect this secondary concern.

5. Informal Social Dialogue

It seems that the environmental issue has been given little consideration in formal social dialogue, being dealing with by means of “soft law” instruments, the legal value of which raises questions from a CSR perspective. This form of dialogue can be found at all levels, even if it is more frequent at company- and group level (especially internationally). In this sense, “charters”, “codes of good practice” or “codes of good conduct” are often drawn up unilaterally by managers or, in certain sectors, by professional unions (i.e. employers’ unions)²⁶. Some

²⁵ Ministère du travail, *La négociation collective en 2018, Bilan et rapport*, 2019, 206.

²⁶ Example: the *Environmental Charter* adopted by the Union Nationale des Industries de Carrière et Matériaux de Construction (stone quarry and construction material industry).

documents take the form of guides²⁷. Sometimes charters are adopted in the framework of agreements signed with staff representatives²⁸ but concluded disregarding the legal provisions on the validity of the negotiated acts. These agreements are then qualified as atypical agreements or unilateral commitments of the employer; they do not have the legal nature of a genuine collective company agreement²⁹. Most of the times, these charters affirm the company’s adherence to sustainable development values and lay down principles of action that reflect the will to promote environmental protection³⁰. These texts are based on a purely voluntary approach. They are an integral part of the communication strategy of the company or group and do not always carry real legal value. Some charters, for example, mention the need to develop internal communication and awareness-raising actions for employees on the commitments made in terms of environmental protection, but are totally devoid of any comminatory character. Nevertheless, their legal effectiveness can be recognised depending on their content³¹. When they grant employees additional rights or benefits, the existence of a unilateral commitment by the employer may be accepted in order to compel the latter to comply with its obligations³². However, a unilaterally drawn up charter (or code of conduct) may not be the source of obligations for employees, the violation of which could give rise to sanctions³³. However, the impact of these charters should not be minimised insofar as, on the one hand, they raise awareness among employees to adopt eco-

²⁷ E.g. CSR Guide (Medef, 2012): *Les Patrons se dotent d’un guide de la RSE*, in *Liaisons sociales Quotidien*, June 14 2012, n. 16121; The Medef and ORSE publish a guide on sectoral CSEER initiatives, in *Liaisons sociales Quotidien*, July 22 2016, n. 17127.

²⁸ Solvay Group Charter on *Sustainable Development and Corporate Social Responsibility* adopted by agreement between the Group’s management and the European Works Council.

²⁹ Agreement on the Valeo Group’s CSR (2012) which integrates the Group’s charter and code of ethics but signed with the representatives of the European Works Council Bureau.

³⁰ B. Teyssié, *Les chartes éthiques*, JCP S 2021, 1018.

³¹ I. Desbarats, *La RSE en droit français: un champ d’évolutions normatives*, in *Droit social*, 2015, 572.

³² Cass. soc., 14 Jan. 2003, n. 00-43879; Bull. civ 2003, V, n. 7. Some charters include a commitment to provide employees with specific training programmes: e.g. the Antalis Group’s Sustainable Development Charter and the Randstad France Group’s Sustainable Development Charter.

³³ Unless regularly incorporated into the company’s internal rules; V. Cass. soc 8 déc. 2009, Bull. civ 2009, V, n. 276.

responsible behaviour and³⁴, on the other hand, they may encourage companies to take into account the objectives and commitments stated during the negotiation of their collective agreements. There is nothing to prevent CSER from being interfered with at a second stage in collective bargaining rounds. An important national report by the former Director General of Labour (J.-D. Combrexelle)³⁵ submitted to the Prime Minister, suggests precisely the “opening to collective bargaining of new fields of labour relations”, including Corporate Social Responsibility (CSR).

On the borderline between collective bargaining and the development of company charters, there are also public policy actions that take the name of “environmental collective agreements” or “charters”, but in singular normative environments. These documents include sustainable development commitments that can be signed by companies, or professional organisations (generally employers’ organisations) directly with the public authorities. Thus, within the framework of the National Food Programme (PNA)³⁶, operators in the agri-food sector³⁷ have the possibility of concluding collective agreements with the State that set quantifiable objectives.³⁸ Four examples can be highlighted here:

- the agreement signed by Herta and the Ministry of Agriculture (February 2014) includes various commitments on sustainable production and processing methods and the preservation of natural resources;
- the agreement signed by the Davigel company (July 2016), aimed at «improving the sustainability of production, processing and distribution methods», in particular by reducing the ecological footprint when distributing products (commitment to reduce the energy consumption of its vehicles) and by increasing the volumes of products from farms committed to approaches that promote production with a lower environmental impact;

³⁴ For example, by taking into account in the evaluation of employees their action in favour of environmental protection in the exercise of their professional activity: e.g. GDF-Suez Group’s Environmental Charter.

³⁵ Report to the Prime Minister, Collective Bargaining, Labour and Employment, September 2015, Proposition 31 (<https://www.gouvernement.fr/partage/5179-rapport-la-negociation-collective-le-travail-et-l-emploi-de-jean-denis-combrexelle>).

³⁶ Inter-ministerial mechanism to promote safe, healthy, sustainable and accessible food for all.

³⁷ Interprofessional organisations, professional federations, trade unions, or even one or more companies justifying a significant impact on a family of products: art R 230-36 of the rural and sea fishing code.

³⁸ Art L. 230-4 of the rural and sea fishing code.

- the agreement signed in June 2014 by the National Refreshments Union (which includes among its members: Coca-Cola entreprise, Danone eaux France, Nestlé waters France, Pepsico France ...). This agreement includes sustainability commitments (reduction of water consumption, reduction of the impact of packaging and promotion of recycling);
- following the same approach, in the road haulage sector (TRM), the Ministry of Ecology, Sustainable Development and Energy and the French Environment and Energy Management Agency (ADEME), in consultation with professional organisations, have drawn up a document open for signature by companies in the sector and entitled: *Charter of voluntary commitments to reduce CO2 emissions*, known as the *CO2 target charter*. By signing it, the company undertakes to implement a three-year action plan to achieve quantifiable objectives.

These agreements are more like a form of partnership with public institutions allowing companies to obtain a sort of label³⁹. This approach is part of the communication strategy of companies wishing to improve and enhance their image in the eyes of the public, financial partners and customers who are increasingly sensitive to environmental issues⁴⁰. Moreover, the only sanction provided for in the event of failure to comply with the commitments and objectives set, is the withdrawal of State recognition or labelling. This sanction and the publicity given to it are necessarily likely to affect the image of the companies involved⁴¹. These measures are part of the numerous CSR measures.

6. Transnational Agreements

CSER is one of the preferred topics for companies or groups of companies with a transnational, international or global dimension. This is true of collective bargaining, although the environmental dimension is a

³⁹ For agreements under the PNA (national food programme), it is the Minister in charge of Food who grants State recognition: art R 230-36 of the Rural Code. For the TRM sector, the signature of the CO2 objective charter allows the company to use the *Objectif CO2* logo and to benefit, according to precise criteria, from an environmental label issued by the Ministry and ADEME.

⁴⁰ The signature of the CO2 objective Charter leads to the registration of the signatory company on the list on the website.

⁴¹ The withdrawal decision is made public on the Department's website.

special dimension backed up by the promotion of fundamental social rights. This level of negotiation poses many difficulties which will not be dealt with here. These include the problem of recognising the representativeness of the partners, the enforceability of the agreement, the identification of a competent judge (or dispute resolution body) and the applicable law. Here we will focus only on the content (green or eco-friendly clauses).

The European Union space has provided a fruitful framework for free negotiations, without depending on the normative mechanisms of the European Union. There is therefore an interesting community dialogue between European social partners, which goes beyond the institutional dimension alone to also deal with subjects that are free and not programmed by the European Commission (autonomous agreements)⁴². One thinks of the framework agreements on telework (2002), stress at work (2004) or the framework agreement on inclusive labour markets (2010). Some agreements have an inter-professional scope and an evasive texture, while others are sectoral, and become more specific to concern a branch of activity (agriculture, seafarers, telecommunications, etc.). A 2006 agreement is worth mentioning here because it relates to the protection of workers' health in the handling and use of crystalline silica⁴³ (risk of lung cancer). The environmental issue is not directly addressed but the targeted industrial sectors are numerous (chemicals, ceramics, construction, cosmetics, electronics, coatings, pharmaceuticals, etc.). The agreement mentions that crystalline silica is abundant in nature and represents approximately 12% of the earth's crust, with the industrial sector focusing on the use of quartz and cristobalite. The agreement promotes good practices, including for non-employees occupationally exposed to silica dust. In general, these European agreements serve as a guide for national negotiations (declination) or are transposed by national agreements. Sometimes the Council of Ministers of the European Union takes a decision to make them more immediately enforceable. However, the impetus for environmental promotion through collective bargaining is still sluggish within the European Union, contrary to the initiatives of large European or international companies or groups.

For the time being, Union law accompanies professional or interprofessional agreements. A European framework is still pending for

⁴² B. Teyssié, *Droit européen du travail*, 6th ed. LexisNexis, 2019, 648 et seq.

⁴³ Agreement No 2006/C 279/02 of April 28, 2006 on the protection of workers' health through the observance of good practice in the handling and use of crystalline silica and products containing it.

collective agreements with a European dimension for companies or groups. There is no directive on the subject, but a simple resolution of the Parliament is shaping the landscape (2013)⁴⁴. In practice, however, a useful anchoring point can be found when there is already a European works council within the scope of negotiation. This is the case, for example, of the recent agreement of the Michelin group setting up a world works council (Agreement of January 27 2020). This global employee representation body is designed as an economic, social and environmental observatory between the group’s management and the trade unions of the various countries concerned⁴⁵. It is based, according to press releases, on the achievements of the Michelin⁴⁶ European Works Council.

That being said, and in terms of substance, certain eco-compatible subjects are more easily addressed from the point of view of social responsibility⁴⁷, well-being at work⁴⁸, ethics (social charter)⁴⁹, the promotion of teleworking⁵⁰ or exposure to heat and cold⁵¹. In reality, in this age of globalisation, the European framework is not always sufficient to satisfy the aspirations of transnational, intercontinental or global companies. Global agreements are booming, as large companies have understood the usefulness of management by social standards, which protect fundamental rights but also their brand image, especially as these companies know how to communicate on this type of agreement⁵². This makes it possible to create a synergy between subsidiaries in order to anticipate foreseeable tragedies. Conventional CSER becomes a receptacle for human rights, the UN Global Compact,⁵³ ILO standards⁵⁴, SDOs and

⁴⁴ European Parliament resolution, 12/09/ 2013, Social Links Europe, 2013, No. 337, 1.

⁴⁵ Liaisons sociales quotidien, February 6, 2020, 1: The Michelin Group is setting up a worldwide social dialogue body.

⁴⁶ AEF, The Michelin World Committee is officially created by an agreement with IndustriALL Global Union, dispatch 820773, of January 28, 2019.

⁴⁷ Agreement of 17 May 2013, Geopost Group; Agreement of 7 January 2017, Pernod Ricard Group.

⁴⁸ Agreement of May 23, 2013, Lafarge Group; Agreement of November 27, 2014, Bayer Group.

⁴⁹ Agreement July 10, 2013, Air-France KLM Group (social and ethical charter).

⁵⁰ Agreement May 16, 2017, Generali Group.

⁵¹ Agreement July 10, 2018, DS Smith Packaging Group (employee exposure to heat stress).

⁵² R. Bouguignon, A. Mias, *Les accords cadres internationaux: étude comparative des ACI conclus par les entreprises françaises*, Report for the ILO, 2017 (www.ilo.org).

⁵³ Global agreement on social responsibility between Rhodia and ICEM, March 25, 2008; Corporate social responsibility, Global agreement, Total, January 22, 2015.

other CSR tools. The legality of international collective agreements is questionable because such tools are confronted with issues relating to international law and are deployed without any real framework⁵⁵. Many of these agreements are thus conceived as «gentlemen’s agreements»⁵⁶ simply taking the appearance of a contract and, when it is more than that, the actors face a puzzle as to the material and territorial scope of application. As one author points out, the international collective agreement “still does not exist as a legal category, even though it is linked to legal orders that are conducive to inter-normativity”⁵⁷. In relation to the content of the green clauses, IFAs are often declamatory: one naturally finds references to support a just transition, to the⁵⁸ reduction of the environmental⁵⁹ footprint, to environmental protection⁶⁰ or to a sustainable development policy⁶¹, including by reference to SDOs or ISO standards (26000 or 14001)⁶². Some agreements specify how they are committed to “environmental management”⁶³ and intend to link the control of professional risks and the reduction of the environmental footprint of their activities, in particular by aiming to decarbonise the environment⁶⁴, control energy consumption and combat climate change. References are made to the production of conventional waste, recycling and recovery,

⁵⁴ International Agreement for the Promotion of Social Dialogue and Diversity for the Respect of Fundamental Rights at Work, Carrefour, October 3 2018.

⁵⁵ M.-A. Moreau, *La spécificité des accords mondiaux d’entreprise en 2017: originalité, nature, fonctions*, ILO Report (www.ilo.org).

⁵⁶ B. Teyssié, *Droit du travail – Relations collectives*, LexisNexis 11th ed. 2018, 837.

⁵⁷ I. Daugareilh, *Enjeux et limites du contrôle des ACI: l’exemple des entreprises françaises*, in *La responsabilité sociale de l’entreprise, vecteur d’un droit de la mondialisation?*, Bruylant, coll. *Paradigme*, 2017, 54.

⁵⁸ EDF Group Global Framework Agreement on Corporate Social Responsibility, June 19, 2018.

⁵⁹ Global Framework Agreement on Social, Societal and Environmental Responsibility between the Renault group and the Renault Group Committee and Industrial, Global Union, July 2nd, 2013.

⁶⁰ Global Agreement on Fundamental Rights, Société Générale, 4 February 2019.

⁶¹ Agreement on fundamental rights and the global social base, BNP Paribas, 18 September 2018; Global Framework Agreement on Working Conditions, Corporate Social Responsibility and Sustainable Development, Safran, 18 October 2017; Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development, GDF-Suez 19 November 2010.

⁶² Agreement on the social responsibility of the EDF Group, December 10, 2008.

⁶³ Global Framework Agreement on Corporate Social Responsibility of the PSA Group 2017.

⁶⁴ European Agreement on the Social Responsibility of the Gaz de France Group, July 2, 2008

landscaping and the dissemination of environmentally friendly technology. A bold formulation was found, inviting the companies covered by the global agreement to apply a “precautionary approach to environmental problems”⁶⁵ (far-reaching reference to the precautionary principle)⁶⁶. Or, for an important Belgian group, the assertion that it was integrating the principles of sustainable development into its decision-making processes⁶⁷. Other clauses relate to patronage⁶⁸ aimed at supporting actions of general interest⁶⁹ via local organisations within the framework of environmental or solidarity projects taking into account the essential needs of local communities. These agreements show great inventiveness, even going so far as to promise special attention to the quality of the food supply and alternative models of catering in the workplace (short and organic circuits)⁷⁰. In this context, three clauses deserve special mention in view of the nature of the commitment they enshrine.

Example 1 (subcontracting): In order to ensure that the agreement is not merely declamatory, a type of clause has been identified concerning the consequences of misconduct, particularly by subcontractors. It stipulates that “any serious breach of the legislation concerning the health and safety of direct and indirect employees, environmental protection and fundamental social rights and which is not corrected after a warning, will lead to the termination of relations with the company concerned in compliance with contractual obligations”⁷¹. This type of clause is

⁶⁵ Global Framework Agreement on Social Responsibility and Sustainable Development, Solvay, 3 February 2017.

⁶⁶ The precautionary approach is present in the EDF agreement (December 10, 2008). But it concerns the voluntary attitude of anticipation and monitoring in scientific and technological fields.

⁶⁷ Global Agreement on Sustainable Development, Umicore, 21 October 2015. For a commentary on this agreement: A. Lamine, *Analyse de l'accord Umicore, mise en oeuvre et valeur juridique*, in *La responsabilité sociale de l'entreprise, vecteur d'un droit de la mondialisation ?* préc. 79.

⁶⁸ Agreement on Fundamental Rights and the Global Social Base of BNP Paribas, 18 September 2018; European Agreement on Corporate Social Responsibility (CSR), Pernod Ricard, 7 January 2017 (the agreement refers to the creation of the Observatory of the Sea (1966). The Paul Ricard Oceanographic Institute is still reportedly the only private environmental sponsorship initiative in Europe).

⁶⁹ Agreement on the social responsibility of the EDF Group, December 10, 2008.

⁷⁰ Building the world of work together within the Renault group – Framework agreement on changes in working life, July 9, 2019.

⁷¹ Lafarge Agreement, Corporate Social Responsibility on international labor relations, May 21, 2013; EDF Agreement, EDF Group Social Responsibility, December 10, 2008.

interesting in practice. The measure should be put into perspective with the evolution of French law (2017) which imposes a duty of vigilance in the subcontracting and supply chain of large transnational corporations (prevention of serious violations of human rights, fundamental freedoms, health and safety of persons and the environment)⁷².

Example 2 (global warming): “To contribute to the reduction of climate change, the Group undertakes to regularly measure its impact on the generation of greenhouse gases, the main one being CO₂, whether through its direct activities (production sites) or its purchases (emissions due to raw materials or packaging materials purchased from suppliers). This primarily concerns upstream industrial activities, but will have to be extended to distribution activities (transport to and within markets). Thanks to these assessments, priorities will be established to take action to reduce these emissions, notably in dialogue with suppliers but also by encouraging logistics teams to work on several levers: type of transport, load optimisation, planning. When this is not feasible, the Group encourages its subsidiaries to consider the possibility of participating in offsetting actions as defined by recognized programs in this area (carbon credits)⁷³. This excerpt was chosen because it illustrates how the group, among all other environmental measures, emphasizes the global issue of global warming. The work of the logistics teams is highlighted as well as a general philosophy of compensation and optimization.

Example 3 (promotional action)⁷⁴: “Eurosport ensures that the productions, products and innovations it develops incorporate, in their design and use, the challenges of sustainable development. On the one hand, employees are regularly made aware of the subject of sustainable development through headings in the company’s internal publications, particularly on the intranet site. On the other hand, like any media group, Eurosport’s major environmental impact is its ability to raise public awareness of this issue”. This provision is illustrative of how the collective labour agreement can become the vehicle for widespread internal and external promotional actions in favour of sustainable development. Above all, it is interesting given that it affirms a principle of “integrated” sustainable development at all stages of the group’s economic action.

⁷² Law n. 2017-399 28 March 2017, known as the Sapin II law: Article L. 225-102-4 Commercial Code.

⁷³ Pernod Ricard agreement, abovementioned.

⁷⁴ Global Agreement on Fundamental Social Rights, Eurosport, 10 October 2012

6. Conclusion

The topics of collective bargaining with an environmental sounding (more or less proven) are varied. There are the classic ones relating to health, safety and the environment, especially in high-risk companies. But there are also awareness-raising and promotional actions in favour of eco-responsible behaviour or aid for the transformation of sectors that are moving towards energy transition (green jobs, qualifications, bio-waste, virtuous mobility, reduction of the carbon footprint, remuneration policies, etc.). It is interesting to note that the work of the Citizen's Convention for the Climate⁷⁵ (June 2020) highlighted the challenges of transforming the production apparatus and trades. Many economic players will see their activity disappear under the effect of several factors (including the appearance of new technologies). Adaptation is vital. It is crucial to support companies and employees in this transition. In terms of the environment, innovation cannot only be technical; it must also be social, and therefore cultural. Social dialogue at all levels (cross-industry, branch, group, company) deserves to play a driving role in accompanying the societal change that future generations will be facing.

Like a living doctrine, social ecology is also spreading more widely in collective bargaining spaces. The law is gradually distilling subjects with a strong influence on collective labour relations. Firstly, it broadened the scope of reporting on extra-financial performance for companies with more than 500 employees (2012)⁷⁶. It then introduced an environmental alert right for employee representatives (2013)⁷⁷. The legislator has strengthened conventional initiative and innovation by giving primacy to company agreements (2016-2018). In 2019, it adopted a law on mobility obliging companies to negotiate on virtuous transport⁷⁸. In the same year, the Pact law amended the civil code by stating that all companies are managed with social and environmental issues in mind⁷⁹. In March 2021, a law inspired by the Citizen's Climate Convention is being debated in the National Assembly, reinforcing the environmental rights of staff

⁷⁵ The citizens' convention was decided by the President of the Republic. Built on the format of discussion groups based on a conception of participatory democracy (national level), it has 150 members, made up of citizens and representatives of civil society. Its purpose is to formalise proposals with a view to the preparation of possible bills: www.conventioncitoyennepourleclimat.fr.

⁷⁶ Labor code, art. L. 2312-25, II, 2°.

⁷⁷ Labor code, art. L. 4133-1.

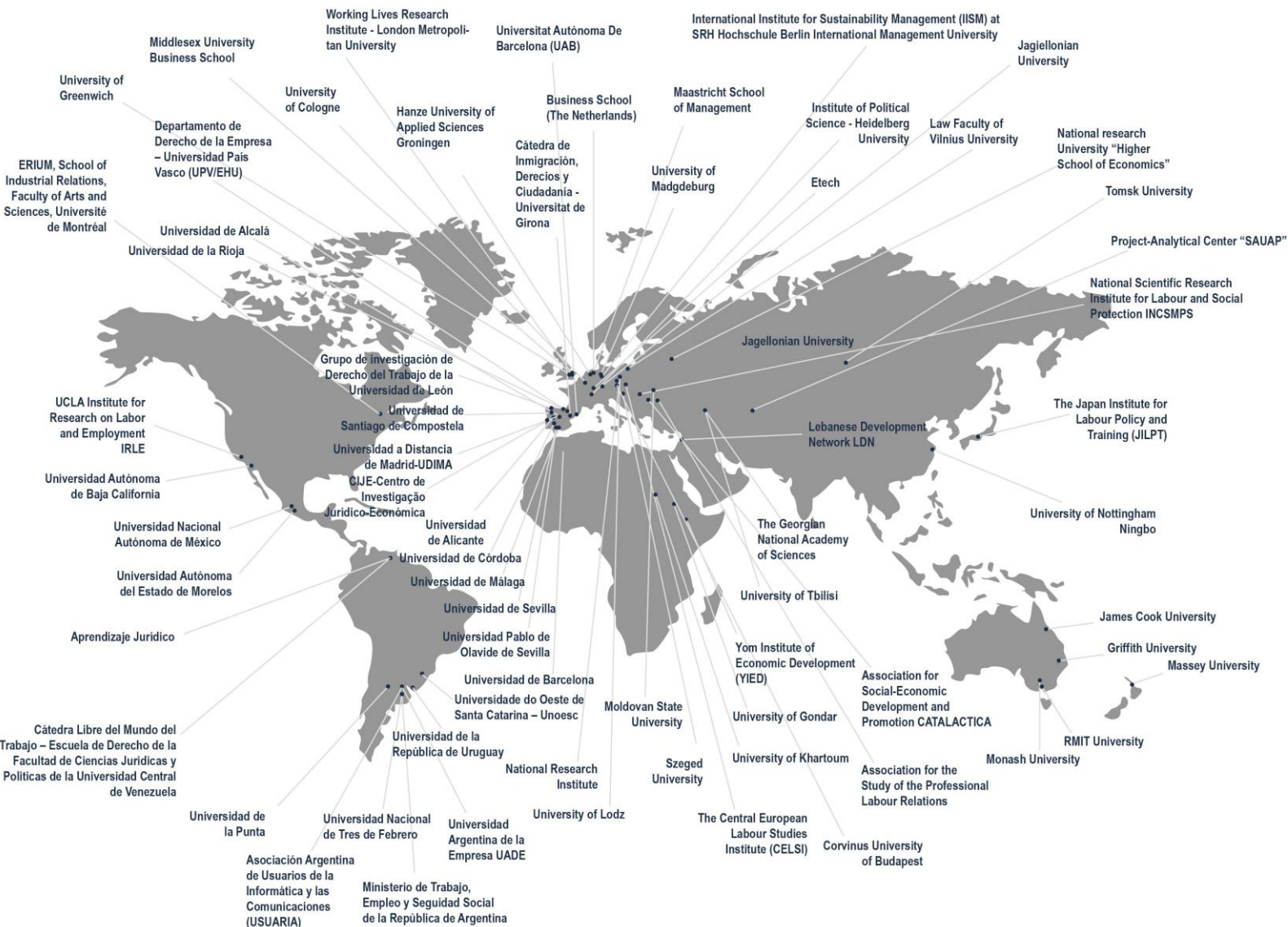
⁷⁸ Labor code, art. L. 2242-17.

⁷⁹ Civil code, art. 1833.

representation (information/consultation) and collective bargaining on the evolution of skills and trades in the face of the green transition⁸⁰. Inevitably, in the light of this development, trade union organisations are gradually deploying their policies and practices on the subject, also thanks to the influence of other civil society actors, such as non-governmental associations. Current events are prompting them to no longer dissociate social and environmental issues. It is true that companies did not wait long to develop CSR programmes, with a lot of publicity, involving employee representatives at several levels. The new generations of working people, who make up the rising cohort of workers, are now accustomed to the risks of environmental disturbances (of which global warming is - alas - only one of the most salient aspects). They are sensitive to this; they will change the company and the labour relations that are being built up in it. This is self-evident. Will they succeed? This is another question based on individual and collective responsibilities.

⁸⁰ Bill against climate change and building resilience to its effects (project n° 3875)

ADAPT International Network



ADAPT is a non-profit organisation founded in 2000 by Prof. Marco Biagi with the aim of promoting studies and research in the field of labour law and industrial relations from an international and comparative perspective. Our purpose is to encourage and implement a new approach to academic research, by establishing ongoing relationships with other universities and advanced studies institutes, and promoting academic and scientific exchange programmes with enterprises, institutions, foundations and associations. In collaboration with the Centre for International and Comparative Studies on Law, Economics, Environment and Work, (DEAL) the Marco Biagi Department of Economics, University of Modena and Reggio Emilia, ADAPT set up the International School of Higher Education in Labour and Industrial Relations, a centre of excellence which is accredited at an international level for research, study and postgraduate programmes in the area of industrial and labour relations. Further information at www.adapt.it.

For more information about the E-journal and to submit a paper, please send a mail to LS@adapt.it.

