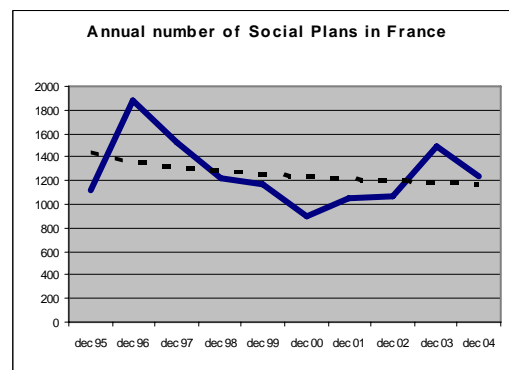
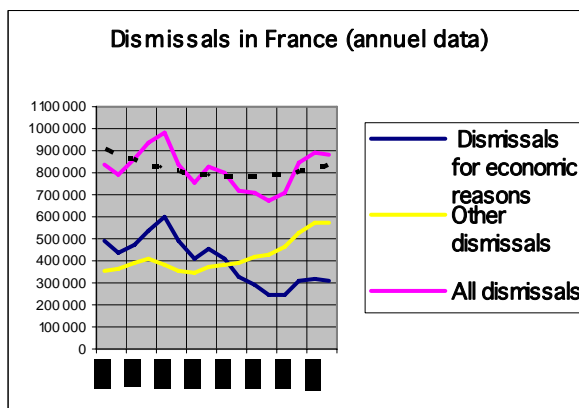


RESTRUCTURING IN FRANCE

The French economy has undergone a significant change since the seventies when the term “restructuring” first imposed itself as an important element of the political discourse. Since then, growing role of financial markets and shareholders, overall increase in competitive pressure and internationalisation of companies, profound changes in corporate governance and internal organisation have had considerable effects on restructuring practices. Painful and bulky branch restructuring, conducted jointly by companies and the state in the seventies and the eighties, has been ousted by permanent and varied projects on a smaller scale implemented by companies alone. While much has been done to adapt laws and practices to new realities, restructuring has long been viewed as an exceptional event and the existing system is hardly suited to tackle the problem of permanent change. This tends to reinforce the strong anti-restructuring feel in the French society.

Nature and scale of the phenomenon in France

Whilst no comprehensive monitoring of restructuring is carried out in France, two indicators could give us an idea as to the scale of the phenomenon.



Two crucial factors must be taken into account in analysing these figures. Firstly, the statistics show convincingly that while the number of Social Plans has been gliding down in the nineties, it remains substantial hitting its lowest peak of 900 at the turn of the century. Secondly, the number of redundancies (dismissals for economic reasons) has diminished since 1994-1995, but the number of dismissals for “other reasons” has gone up sharply during the same period.

If the total number of redundancies and all the other dismissals is calculated, the trend appears to have been stable for the past decade despite a slight recent increase for which the current economic situation of the country can be held accountable.

The confusion between redundancies proper and a part of dismissals for “other reasons” (that are actually redundancies according to three recent studies) does not allow us to come up with a precise figure. The approximate number could be roughly estimated at 500 000-700 000 individuals every year.

However, it would be somewhat simplistic to regard redundancies and dismissals as the sole measure of the scale of restructuring in France. It should be stressed that the contracting forms on the French labour market have changed since the eighties: the proportion of open-end contracts has been diminishing whereas that of fixed-term contracts has been rising rapidly. The statistics of recruitments during the period of relative economic expansion 1997-2000 give strong reasons to believe that this process of labour flexibilisation in France is far from having reached its peak: indeed, we can forecast its further progression in the years to come.

The magnitude of restructuring in France does not seem to have decreased, but managerial practices have surely changed. On the one hand, companies tend to favour personal deals or use the option of personal dismissals whenever they can. On the other hand, they prefer recruiting employees under fixed-term contracts to render the management of human resources more flexible.

Relevant actors

Companies

The management has the right to reorganise the company (and lay off redundant workforce) in accordance with the principle of free enterprise, but this must be done within the tight procedural framework defined by the legislation. Restructuring is an area where numerous regulations apply. The law imposes strict procedures of information and consultation as well as some minimal obligations for employers.

Trade-unions

Trade-union density in France is low and covers just 10% of the total workforce. The lean membership is divided between 5 recognised national confederations (CGT, CFDT, FO, CFTC, CGC) and at least three other unions (UNSA, FSU, Groupe des 10) which have not been given the same recognition but are quite active. Each confederation is organised by branch. Unlike their British or German counterparts, French trade unions have not merged. On the contrary, new unions have appeared during the last decade.

Despite the weak union coverage, the collective bargaining coverage is very high (more than 90% of the total workforce) because of its mandatory extension. A rather protective legislation makes trade-unions quite powerful since any employer must recognise them inside the company, whenever one employee has been appointed by a union as its representative.

Works Councils

Works Council is an institution representing the workforce whose existence is mandatory in any company of more than 50 employees. Elected by the workforce, the representatives often (though not necessarily) belong to trade-unions. Works Council is the sole interlocutor of the management in case of restructuring accompanied by collective redundancies, although trade-union representatives are invited to the meetings during the information/consultation procedure. Recent legislative changes tend to reintroduce trade-unions into the process by way of the so-called “agreements on the method”. These are specific legal documents whose signature between the employer and the dominant trade-unions makes it possible to organise the information/consultation procedure in a more flexible way, breaking some of the provisions of the Labour Code.

Public actors

Public authorities represented by the Labour Administration (part of the Ministry of Labour and Solidarity) can play an important role in restructuring in France. They may try to break a deal or, at least, to attenuate conflicts between parties. The Labour Administration has the right issue a “statement of neglect” recommending that the employer improve on the measures of the Social Plan, if it judges them insufficient or inadequate. Although this document does not entail immediate sanctions, its importance in case of litigation is incontestable. Besides recommendations, the Labour Administration can participate in funding certain measures of the Social Plan, provided the company adopts a socially responsible attitude.

Local authorities

It is important to mention the growing role of the local authorities in dealing with restructuring. Firstly, they must be associated to the process when big companies proceed to massive lay-offs that have a serious negative impact on the local economy. When the company's size is more than 1 000 employees, the management must bring in a substantial financial contribution to foster the development of the local economy (from 2 to 4 minimal wages per redundant employee). In this situation, the local representative of the state (the Prefect) calls for a meeting with the company, interested local authorities and social partners who are members of the regional inter-professional unions. Secondly, local authorities - in some cases at least - pilot redeployment programmes themselves when their region is badly hit by restructuring and numerous small and medium sized companies are concerned. Setting up an inter-enterprise redeployment platform or acting vigorously on the local labour market to retrain people or create new jobs can then be a suitable option.

Procedure to follow in case of collective redundancies

As soon as a company proceeds to collective redundancies in France, the law obliges it to follow rather stringent procedural rules. However, such rules concern only companies of more than 50 employees that make redundant more than 9 individuals over the period of less than 30 days.

During the official procedure of information and consultation, the management presenting a restructuring project will deal with the Works Council. The French law gives the Works Council the right to obtain detailed information and even to resort to the services of an accountant (paid by the company). The management cannot go ahead with the project before a valid consultation of the Works Council on the project has been completed.

The procedure places the Works Council (and the trade-unions that are members of it), into a position to delve into the reasons of the restructuring project, put forward alternative economic solutions and seek means to avoid and/or minimise the number of redundancies. However, the opinion of the Works Council in France is purely consultative and the management might well choose not to take it into account. The obligations imposed upon the employer are strict but they concern only informing the Works Council and taking notice of its opinion. The only area where employee representatives do have some influence is the content of the Social Plan (a special document containing a set of measures destined to find solutions for the employees who are being made redundant). Its content is normally subject to at least some negotiation between parties since employees have the right to demand that the Plan be declared null and void by the Judge, given the resources of the company, the characteristics of the employees who are being made redundant, and the legal requirements.

The selection of those employees to be made redundant must, in principle, be operated on the basis of objective criteria that “take into account the family circumstances, especially lonely parents, the seniority of service in the company, the personal situation of the employees who present social characteristics rendering their professional reinsertion highly problematic, such as disability or age”. However, the use of the adverb “particularly” in legal texts authorises the application of criteria other than social and employers have admitted using “professional competence” as one of the criteria, which re-introduces a very strong subjectivity in the choice of the individuals to be made redundant. This is amplified by the reluctance, to say the least, of employee representatives to engage into the discussion on this issue, since they feel like choosing the colleagues who will be sacrificed. The consequence is that the rule is frequently dodged and the choice of the employees is in fact discretionary.

Conflicts and their resolution

It is difficult for the company to breach the procedural rules because in such a case employees can turn to interlocutor proceedings court and obtain an emergency ruling that suspends the whole process. They can also sue the employer after the end of the procedure, which might result in serious damage compensations.

Conflicts between the company and its employees in case of restructuring and collective redundancies are frequent. In fact, the Works Council in France must be necessarily consulted, but not necessarily taken heed of. Besides militant actions commonly used by employees to change the course of events (strikes, demonstrations and appeals to mass media), they have two basic means of influence: lengthening the procedure and suing the employer. It should be noted, however, that the most recent legislative evolutions tend to incite parties to look for a negotiated solution by signing the so-called "agreements on the method" mentioned earlier. Such agreements habitually trade legal security and fixed calendar for the employer against certain concessions in terms of information/consultation and/or redeployment efforts for the employees.

If employees are unhappy about the way the procedure was conducted and/or the measures contained in the social plan, they can go to Labour Court after dismissals have taken effect. Employer can be sued by the Works Council (for not having followed the procedure correctly or for impeding the Works Council to exercise its functions) as well as by individual employees who can challenge the measures of the Social Plan or the motive of the dismissal. The time of the judgement can be very long (up to two years) but the procedure often results in damage compensations.

Social measures and redeployment of redundant employees

What happens to the redundant employees after the procedure of information and consultation? The French legal tradition in the area has been characterised by a great deal of voluntarism and the legal rules today specify clearly that redeployment of any employee must be looked for whenever the latter is being made redundant, provided the company possesses sufficient resources.

Consequently, Social Plans elaborated during the legal procedure must in principle aim to provide solutions for all of the redundant employees. Alas, this happens very rarely. A small albeit significant part of workers will benefit from "passive" measures, i.e. withdrawal from the labour market. Generally, this concerns aged employees who can retire, use an early retirement scheme or get a disability pension. These are funded by the state, the state and the company or, in some cases, by the company exclusively.

As for active measures, two approaches are prevalent in France depending upon the size of the company. The legal rules tend to internalise obligations for companies of more than 1 000 employees and externalise them for companies under this threshold.

The first must propose to any worker a “retraining leave” that maintains the legal link between the employer and the employee for 4 to 9 months and provides the latter with roughly 75% to 100% of their former income. The management must also set up a special “redeployment taskforce”, composed of professionals in human resources who are often exterior to the company. The objective of the this taskforce is to assist all the redundant employees in finding a suitable solution by using various aids that encourage professional and geographic mobility and are usually included into any Social Plan. Besides, the Follow-up Committee comprising management and employee representatives should see to it that the Social Plan is being properly executed. The Labour Administration is often associated to this committee as well.

Smaller companies must also set up a redeployment taskforce to which the same rules apply. However, they can benefit much more easily from public funds to finance its operation. Besides that, any individual who has been made redundant in a company of less than 1 000 employees has the right to an Individual Redeployment Agreement. This agreement, funded mainly by the state, must offer almost 100 % of the previous gross wage during the two first months and approximately 85% during the six following months. In this case, the link between the employees and the company is severed and it is the Public Employment Service that will assist them in looking for a new job.

If individuals have not found a job upon the end of these funding schemes, they will benefit from the general unemployment allowance.

Big issues and possible areas of innovation

The main problem of the French system is that it is mainly designed to deal with redundancies of more than 9 individuals in companies of more than 50 employees. To this basic inequality of the system that does not really address redundancies in small companies, one should add inequalities arising from the specific characteristics of the companies and regions where redundancies take place. Employees are significantly better off if they are made redundant by a big company having considerable financial resources and in a geographical area enjoying dynamic economic development. The situation is completely different when they are laid off by a SME going bankrupt in an economically distressed region.

Besides that, there are several other problems that the French system of dealing with restructuring has been repeatedly running into. Restructuring projects are often announced to employee representatives at the very last moment, the actions of various potential actors are not properly co-ordinated, the results of redeployment programmes are mediocre and the issues of local economic development are not addressed everywhere and in the same manner.

This gives us four main areas of innovation in restructuring that appear to be of great importance in France today. The first is early warning and anticipation, the second is creating a collective actor, the third is securing professional transitions and the fourth is fostering local economic development.

As far as early warning and anticipation are concerned, restructuring is not an issue for the majority of stakeholders until fairly late, most often at the moment when layoffs are already intended. Reorganisations that do not have an immediate and perceptible impact upon employment do not attract a great deal of attention. For a variety of reasons, anticipation and early warning are very difficult: in the first place, companies are unwilling to share information with other actors (trade-unions, national or local authorities) whereas the latter do not feel inclined to deal with unpopular subjects unless they really have to.

It logically brings us to the problem of creating a collective actor in the situations of restructuring. Recognising the diversity of stakeholders is an important first step but the main question is how to make use of this multi-actor complexity in order to encourage collective, efficient and anticipatory action in favour of employment. Innovative solutions in France were often spotted in situations where one or several stakeholders refused to play their habitual roles, took initiative and found uncommon solutions, sometimes assuming the functions that others were supposed to perform.

The third area of innovation is securing professional transitions of employees. The demands of additional redundancy payments whenever a restructuring project is announced are a symptom of insufficient credibility of professional mobility policies that have been pursued for years. Despite constraining legal obligations regarding redeployment, a great number of companies and employees consider that damage compensation following dismissals is simpler and surer than professional actions of prevention and accompaniment. In addition, although early retirements have fallen substantially in recent years, they – along with other means of withdrawing individuals from the labour market - remain a highly popular solution for employers and employees.

Finally, the issue of local economic development in areas hit by massive redundancies is very important in France. Although “revitalisation” actions initially emerged “on the ground” in an empirical way, they have been recently enshrined into the French law. For the time being, they are far from being generalised and display a high degree of inequality from one community to another.

ORGANISMES PARTENAIRES DU PROJET

<p>SYNDEX Frédéric BRUGGEMAN, coordinateur international 27, rue des petites écuries – 75010 PARIS France 00.33.1.44.79.15.07 f.bruggeman@syndex.fr www.syndex.fr</p>	
<p>INSTITUT ARBEIT UND TECHNIK - IAT Matthias KNUTH Munscheidstrasse 14 – 45886 GELSENKIRCHEN Allemagne 00.49.2.09.17.07-2.55 knuth@iatge.de www.iatge.de</p>	
<p>WORKING LIVES RESEARCH INSTITUTE - WLRI Steve JEFFERYS Stapleton House, 277-281 Holloway Road – LONDON N7 8HN Grande-Bretagne 00.44.20.7133.3086 s.jefferys@londonmet.ac.uk www.workingagainstracism.org</p>	
<p>LABORATOIRE D'ETUDES SUR LES NOUVELLES TECHNOLOGIES, L'INNOVATION ET LE CHANGEMENT Brigitte RORIVE Faculté d'Economie, de Gestion et de Sciences sociales Boulevard du Rectorat, 19 – B51 – 4000 LIEGE Belgique 00.44.20.7133.3086 B.Rorive@ulg.ac.be www.lentic.be</p>	
<p>UNIVERSITE EUROPEENNE DU TRAVAIL - UET Délégué Général : Claude-Emmanuel TRIOMPHE Coordination scientifique : Rachel BEAUJOLIN-BELLET , professeur à Reims Management School 17, rue des fillettes – 75018 PARIS France 00.33.1.42.05.56.56 cetriomphe_uet@club-internet.fr www.uet.org</p>	
<p>INSTITUT FÜR PSYCHOLOGIE DER ARBEIT, ARBEITSLOSIGKEIT UND GESUNDHEIT - IPG Thomas KIESELBACH Universität Bremen, Grazer Str. 2 – D 28334 BREMEN Allemagne 00.49.421.218.2827 kieselbach@ipg.uni-bremen.de www.ipg.uni-bremen.de</p>	
<p>INSTITUTE FOR MANAGEMENT OF INNOVATION AND TECHNOLOGY - IMIT Ola BERGSTRÖM Stiftelsen IMIT – SE 412 96 GÖTEBORG Suède 00.46.31.772.12.20 Ola.Bergstrom@handels.gu.se www.imit.se</p>	