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Sheltered Job Passages as an Answer to Redundancy

Contrasting Approaches in France and Germany

1 Introduction

During the past two decades, both France and Germany have been undergoing deep structural changes of their economies. The relative significance of large manufacturing plants as employers declined. The predominantly male, semi-skilled and possibly immigrant worker who used to be the backbone of the social movements of the late sixties and early seventies became the victim of industrial restructuring in the nineties. Long-term unemployment grew to be the driving force behind rising unemployment levels.¹

Contrasting with predominant public concern about "atypical" or "contingent" forms of employment ("*précarisation*"), long job tenure, especially in manufacturing plants, was found to be a major risk among job-losers of unemployment to extend into the long term². The reasons can be found both in the individual and the labour market environment:

- a) Low or outdated skills, lack of practice in skills marketing, and unrealistic aspirations regarding the market value of one's skills form a syndrome of low employability on the side of individuals who had been firmly integrated into the employment system until they lost their jobs;
- b) simultaneous downsizing programmes of many companies within an industry and apprehensions of employers in new start-up industries against workers from old "rust" industries form an employment environment which is very hard to penetrate for job-seekers in their middle ages.

Both in France and Germany, traditions of actively dealing with redundancies which result from structural change date back to the mid-eighties (cf. Bosch 1992). The approaches which evolved, however, are very different at their present state of development. They reflect the different institutional set-ups of the two countries in the fields of employee representation and public labour market policies.

¹ In Germany, those ten per cent of the unemployed who experience the longest spells of unemployment "cause" or "suffer" between 40 and 50 per cent of the total unemployment volume.

² Mutz et al. 1995; Eberts 1999: 123.

And yet, both models have one fundamental trait in common: In order to facilitate both the separation of employees from their old employment relationship and their search for a new one, redundant workers are offered a special status which is different from unemployment and financially more attractive. This intermediate period is intended to serve as a "sheltered job passage" between the old job and the new. The fresh victims of redundancy get a privileged treatment in comparison to other job-seekers in order to help them enhance and advertise their employability before it is degraded owing to longer periods of unemployment.

Such an immediate intervention into the "unemployment process" conforms with the EU employment guidelines 1 and 2 for the year 2000 which call for preventive intervention – however, it is far ahead of them in terms of timing: Where the EU calls for intervention during the first twelve months after entering unemployment, the German and French interventions usually set in before the employment relationship winds up. They provide means for a voluntary separation and a shortening of the notice period if the worker is no longer needed. In this way, otherwise unproductive final stages of employment relationships are put to productive use for employability training.

2 Historical origins

Since 1945 and until 1986, French employers intending to dismiss workers for economic reasons had to obtain permission from the labour inspector. When economic restructuring became endemic, this reactive approach of administrative employment retention must have become obsolete and ineffective. It was replaced in 1987 by a general regulation in favour of conversion agreements (*conventions de conversion*). This was first introduced by a national agreement (*accord interprofessionnel*) and then incorporated into the Labour Code.

In Germany, the instrument of short-time allowances was officially extended from cases of cyclical under-utilisation to cases of structural redundancy in 1988. Only two years later, in the privatisation and restructuring process which followed German reunification, this type of short-time was used in huge numbers to contain the flood of unemployment which would otherwise have flooded even sooner from industrial establishments. In order to make enterprises leaner and more attractive for privatisation without yet making the redundant workers unemployed, it was then accepted that special *Employment and Training Companies* would take over the labour contracts and act as substitute employers.³

As a result of a fundamental reform of German labour market policy which took effect in 1998, the eligibility requirements for short-time allowances in cases of redundancy were lowered: The precondition is now a restructuring of the production unit – proof of the restructuring process of a whole industry is no longer required. If short-time is to last longer than six months, the employer must envisage training for the workers concerned. Since 1996, training costs for short-timers can be subsidised from the national ESF programme.⁴

³ Cf. in more detail Knuth/Bosch 1994, Knuth 1997.

⁴ Cf. Deeke 1999.

3 Sheltered Job Passage in France and in Germany: Basic Outline

3.1 France

In France, an employer about to dismiss employees with two years tenure or more and under the age of 57 must conclude a conversion agreement (*convention de conversion*) with the unemployment insurance fund and must offer the workers concerned to join that agreement. Failure to do so will cost the employer a penal contribution to the fund amounting to one month's wage or salary of the worker concerned. If the employee decides to accept, the employment relationship will end by mutual consent early in the legal notice period of two months. For a maximum duration of six months, the employee enters a special status as a participant under a conversion agreement (*adhérants à une convention de conversion*) which is comparable to the status of participants in further training. During the first two months, participants receive an allowance roughly equal to their former net wage; during the following four months, this is reduced to about 85% of former net pay. In any case, they receive clearly more than unemployment compensation.

This is not the only incentive to join a conversion agreement. In France, new unemployment entrants incur a waiting period of eight days before receiving unemployment compensation. In addition, the wage replacement rate of unemployment compensation will decrease after a maximum of nine months for those under 50 years old. By contrast, participants of conversion agreements receive their special allowance from the first day. After two months, this allowance will decrease, too, but it will still be higher than unemployment compensation. If they do not get a new job during the conversion measure, they will pass on to claiming unemployment compensation without a waiting period.

Another incentive mechanism relates to the treatment of severance payments. Severance payments which exceed the legal minimum (10% of a monthly salary per year of tenure) will result in a period of suspension before receiving unemployment compensation. This suspension will last until 50% of the exceeding amount of the severance pay has been withheld as unemployment compensation. By contrast, participants of a conversion agreement keep whatever they have received as a severance payment. The same applies to compensation for holiday entitlements which could not be realised because the employment relationship was ended.⁵

The former employer pays what he will normally save by abridging the notice period: two monthly salaries – plus a *per capita* lump sum of FF 4,500 which is regarded as the training cost economised by dismissing the worker. Obviously this is not enough to cover the total cost of the sheltered job passage: If participants stay beyond the first two months, their allowances for up to another four months have to be borne by the unemployment insurance fund. Furthermore, the services extended to participants will usually cost a lot more than FF 4,500.

⁵ In case of unemployment, such a compensation would be regarded as retrosepctive pay for a certain number of days during which the unemployment compensation claim is supended.

The measures are taken charge of by the public employment service. The employer's responsibility is fulfilled when the offer to the worker has been made and the fees are paid. The employee representation has no say in these matters at all. Thus, the measures will take effect if

- the employer follows the law, and
- the employee chooses to accept the offer to participate.

Given the clear incentives⁶ for employees, target group attainment is over 80%. Statistical monitoring of participation and outcomes is comprehensive, and the rates of re-employment are much higher than those of the unemployed.

The activities of participants are embedded in a personal action plan (*plan d'action*) which has the form of a contract between the participant and his personal job coach at the public employment service. The traditional relationship of claims, obligations and sanctions which is characteristic of the bureaucratic welfare state is superseded by a voluntary bilateral contract with a concrete person which is both legally and morally binding. This is certainly the state of the art in job placement coaching. It cannot, however, be implemented in unlimited numbers without being buried in bureaucratic routine.

3.2 Germany

In Germany, a major plant restructuring or workforce reduction must be negotiated with the works council with the objectives to arrive at a reconciliation of interests and to draw up a social plan which is designed to compensate the financial damage employees may incur as a result of the restructuring. If the restructuring entails dismissals of a certain magnitude an instrument of active labour market policy is available which the employer and the works council may include in their scheme: short-time working for reasons of structural redundancy.

The redundant workers are released from work, and instead of their normal pay they receive a short-time allowance which is paid out by the employer but restored from the unemployment insurance fund. The wage replacement rate for workdays lost equals the replacement rate of unemployment compensation. Bank holidays and paid holidays, both important in Germany, must still be rewarded by the employer in full because they would have been paid without working anyway. As a result, average net income of short-timers is slightly above unemployment compensation. It is often topped by the former employer in order to guarantee around 80% of former net income, which is compulsory under some collective agreements. Since the employer is still responsible for social security contributions and holidays, labour costs per unit time are reduced to zero but to around 35 per cent⁷ of normal gross labour cost, with eventual net income guarantees going on top of this. In practice, the wage replacement for redundant workers functions like a wage subsidy granted to the employer.

⁶ The primary motive to join a conversion agreement is of financial nature (Cloarec 1998).

⁷ Depending on paid holiday entitlements of the workers concerned and the incidence of bank holidays during the period of short-time.

Since the alleged legal purpose of short-time in a redundancy situation is the "avoidance" of mass dismissals, short-time allowances will only be granted if the employment relationships of the redundant workers are extended beyond their notice periods. The maximum duration is 24 months, but short-time allowances will only be granted beyond a period of six months if measures of training or other kinds of suitable support for re-employment are envisaged. The balance of financial burdens between the employer and unemployment insurance fund depends on the duration of the short-time period: Given a 65 per cent wage subsidy, an extension of notice periods by a factor of almost three will be cost-neutral for the employer, whereas anything beyond that will produce additional costs. For the unemployment insurance fund, short-time allowances are cheaper than unemployment compensations because in the case of the latter contributions to pension and health insurance funds will be transferred from the unemployment insurance fund.

Short-time workers who are redundant but still formally employed must be separated from the regular payroll. This is why it came to be accepted that even their labour contracts are transferred to a legally separate entity for which there is no official name. In my English writings, I have established the term "employment and training company" (ETC), or *société pour la promotion de l'emploi* (SPE) in French. In order to put more emphasis on the philosophy of the job passage, a term which would translate as "job transfer company" (*Transfergesellschaft*) is now coming into use in Germany.

The transfer of redundant employees to an employment and training company has important implications both for the contractual relations and for the position of workers in case of subsequently claiming unemployment compensation. The workers concerned voluntarily trade their open-ended labour contract which is about to be terminated for a fixed-term contract with a substitute employer which lasts longer than their notice periods. Thus, the original employer gets a leaner payroll much sooner while the worker gets a longer guarantee of a formal employment status. By voluntarily severing the labour contract, the workers sell whatever legal employment protection they might enjoy, while the employer excludes the risk of legal action from the side of the workers.

Like in France, the job passage has a bearing on the treatment of severance payments. Selling one's notice period would normally result in a suspension of unemployment compensation claims. But if a worker sells his open-ended labour contract for a fixed-term contract and becomes unemployed later on because the term has expired, there is no such penalty.

Without training and re-employment measures, short-time in an employment and training company would just mean "buying time" before entering unemployment – or rather losing time in terms of employability. The only reason why we may discuss short-time for reasons of redundancy as a type of sheltered job passage is that the former employer ought to organise re-employment measures. The weak spot of the legal provisions is that such measures must only be "envisaged" if short-time is to last for more than six months. But after six months with no work and guaranteed but lower pay, workers will have turned to other activities like moonlighting, and nobody will show up for a training course. It is legally sufficient if the em-

ployer convinces the public employment service of his good intentions to organise some sort of re-employment training or job-search coaching. There is no effective administrative guarantee that anything happens in practice.

The active use of short-time as a job passage depends entirely on the commitment of the local social partners and the professional ethics of the respective employment and training company. It is their responsibility to organise re-orientation, vocational and employability training, job centres and work experiences with potential new employers as well as to win the willingness of the workers to participate. It is at the discretion of the employer and the works council to design the scheme in such a way that participation in training measures becomes the content of the labour contract with the employment and training company. The social compensation plan may provide financial incentives to join the ETC, to take part in the activities offered and to take up a new employment relationship as soon as possible. In principle, the employer will have to finance training costs – which is certainly not a very powerful incentive to proceed beyond symbolic training offers. However, the employer may receive up to 90% of the training costs as subsidies from the European Social Fund under the former Objective Four, now incorporated into Objective Three.

In sharp contrast with France, it is the social partners at plant level who design the job passage. The public employment service plays a passive role of granting or refusing short-time allowances and ESF subsidies. As a result, official statistics only cover recipients of short-time allowances. We do not know how many of them participate in any organised activities aimed at re-employment, and we are not informed about the nature of these activities and their outcome. The only source available is the ESF evaluation in which training for short-timers is one of many sub-programmes to be evaluated.⁸

4 Comparison and Conclusions

- A national employment system will be best prepared for innovation and change if it supports the restructuring of companies and workplaces as well as the movement of employees from one employer to the other – rather than engaging in futile legislative attempts to preserve jobs which are no longer economically viable.
- However, sustainable change is not supported by plain deregulation which takes obligations away from employers. By contrast, employment systems should be re-designed in such a way that the employee herself or himself, the employer and the public share responsibility for the worker's lasting employability beyond the current employment relationship.
- The French tradition of state intervention has resulted in a comprehensive system of sheltered job passages with high target group attainment and appreciable re-employment outcomes. The fundamental preconditions of this success are legal obligations on the employers' side and attractive financial conditions for job-losers. The employer's obligation

⁸ Cf. Deeke 1999.

is associated with rather small financial burdens. The bulk of the cost is assumed by the unemployment insurance funds, and the management of implementation lies in the hands of the public employment service alone.

- The German tradition of autonomous bargaining of the social partners at various levels is a valuable asset when it comes to designing tailor-made solutions for individual establishments and specific groups of workers. In Germany, it is not the state but the works councils backed by trade unions who will make the employer responsible for the destiny of redundant workers and who will bargain the employer's financial contribution. The trust which employees invest in their representatives gives the latter a powerful role in counselling redundant workers and in convincing them that a job passage is not a catastrophe but a challenge. The role of employee representatives in moderating job passages is something which Germany should take even more advantage of – and which France, with its different traditions, will probably not be able to copy.
- On the other hand, a job passage support system which depends on decentralised bargaining bears many uncertainties. A slight majority of the German wage and salary earners are employed in establishments which are either too small to be covered by legally regulated representation or where the workforce simply has not cared to elect representatives. Even if a works council does exist the German instruments for constructing sheltered job passages are much too clumsy to be handled by employers and works councils in small establishments. The extent of support which job losers in larger establishments will get depends not so much on their objective need with respect to enhancing their employability but rather on the commitment of the HRM department and the works council, the bargaining power of the works council, and the ability of the employer to pay. Where the French system privileges redundant job-losers over other job-seekers, the German system also privileges redundant workers from big and financially powerful companies over job-losers getting the sack from small and financially weak employers. In some cases, the abundance of money corrupts good intentions, turning the alleged job passage shelter into a golden cage with feather beds in which people lose rather than gain employability.
- As a result, we find in Germany a very fragmented system of job passages which is only available to a very small proportion of job losers. Its outcomes are unknown because they are not monitored in any systematic way. It appears that the future challenge for Germany would be to strengthen the role of works councils while at the same time establishing a comprehensive basic system of sheltered job passages which is available also to job losers from establishments where no employee representation exists.
- If job passages are sheltered by a prolonged employment relationship, as is the case in Germany, job-losers retain their old peer relationship with other job-losers from the same company. This may serve as a resource of moral support in the first stage of re-orientation when participants must face up to the loss of their job and when they are to assess the professional competence which that job gave them. On the other hand, the restriction of the old collective may severely limit the scope for re-orientation in the second stage when it

comes to the development of individual action plans which may call for many different kinds of training for each individual participant.

- The French approach, by contrast, is designed to function without employee representation, without active commitment of the employer and thus without the resources of the old collective. It is based on individualisation of the participants from the beginning. This may be a barrier difficult to overcome for the less educated participants. Together with the fact that the financial incentives progress with previous salaries, this barrier might explain the high degree of adverse self-selection which we find among the target groups in France: Those with the least employability are least likely to opt for a conversion agreement, and if they do so, they will make less use of the training possibilities which are offered to them.⁹
- Both systems are rather complicated with regard to the financial incentive structure. But the German system seems to contain another important factor of complication. Deliberately I used the logical and pragmatic English language to compare the two systems in a semantic medium about equidistant from the two national origins. Doing so, I found the German system much harder to explain than the French. Maybe this is because I know less about the French system which makes it easier to generalise. But maybe it is also due to the fact that the German approach, other than the French, is not straightforward but bears many contradictions:
 - The law declares the avoidance of mass dismissals as the purpose of short-time for structural reasons – but the instrument only procrastinates the end of the employment relationship.
 - The workers concerned sign an new labour contract in order not to work but to receive a transfer payment.
 - In order to facilitate the workers' outplacement on the labour market they experience an implacement in an artificial enterprise created for the sole purpose of giving them social protection.

This is difficult to explain even to German workers which may contribute to the rarity of the German approach in practice.

The only reason why the complicated and artificial structure of Employment and Training Companies is necessary in Germany is the lack of a special status between job loss and unemployment – a status which France has created for the participants of conversion agreements. So I come to the conclusion that the French approach is more straightforward and comprehensive than the German. Germany should find an equally clear approach but keep the social partners at plant level involved.

The reason why I was invited to this conference is that a French research partner liked the collective elements of the German approach. So we end up with national desires for what is lacking in the respective national culture: The French tend to dream of more collectivity,

⁹ Cf. Cloarec 1998.

community or corporatism as an intermediate stage between the individual and the state, while many Germans would like the state to solve the problems which the corporations are unable to solve.

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