



## PHS-QUALITY Project

Job Quality and Industrial Relations in the Personal and Household Services Sector - VS/2018/0041

### COUNTRY REPORT: FRANCE



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*This paper related to the action PHS-QUALITY is made by the beneficiaries and it reflects only the author's view. The Commission is not responsible for any use that may be made of the information it contains.*

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## Contents

1. Collective actors and fragmented employment rights in PHS in France .....	4
1.1. Different forms of employment relationship .....	4
Table 1: Registered PHS workers by applicable employment statute.....	5
1.2. Employment and working regulations depend upon type of employer and history.....	6
Private domestic employers and their representative body.....	6
Home-help associations and their representative bodies .....	7
Personal service enterprises (SAPs) and their representative bodies.....	8
Divided trade unions.....	9
Table 2: Recognised representative employer and trade union organisations by PHS sector, 2019. .....	10
2. Different forms of legal protection .....	10
2.1. Applicability of statutes .....	10
2.1.1. Private domestic employees (SPEs) .....	10
2.1.2. Employees of service providers .....	13
2.2. Workers' rights .....	14
2.2.1. Definition and remuneration of working hours .....	14
2.2.2. Extent of working hours.....	16
2.2.3. Travel time .....	17
2.3. Social protection .....	18
2.3.1. Health and disability .....	18
2.3.2. Training .....	20
Table 3. Levies for professional training. ....	20
2.3.3. Unemployment.....	21
2.3.4. Pensions.....	21
2.4. International regulations: minimal impact.....	22
3. Conditions for collective bargaining and the existence of the social partners in the three sectors...	23
3.1. State representation during negotiations, approval and extension.....	23
3.2. Representativeness of collective actors.....	25
Table 4: Social representativeness of employers' organisations, based upon legal representativeness data from 2017 and surveys from 2014. ....	26
3.3. Codetermination funds.....	27
Table 5: Social dialogue funding provided for in the three collective agreements.....	29
4. Public policies to support demand.....	30

4.1. Social security benefits .....	30
4.2. Fiscal benefits .....	31
4.3. VAT rates.....	31
4.4. National insurance exemptions .....	31
4.5. Cesu .....	31
5. Role of social partners by sector .....	32
5.1. Private domestic employment (SPE).....	32
5.2. Private domestic employment (BAD).....	33
5.3. Private domestic employment (SAP).....	34
6. Recommendations .....	35
7. List of interviews.....	37
Abbreviations .....	37
Literature.....	37

In France, the equivalent of “personal and household services”<sup>2</sup> (PHS) straddles three collective bargaining categories: private domestic employees (*salariés du particulier employeur*, SPE), the non-profit home-help sector (*branche de l’aide, de l’accompagnement, des soins et des services à domicile aide à domicile*, BAD) and personal service enterprises (*entreprises de services à la personne*, SAP). What these have in common is that their activities are undertaken largely in the home environment<sup>3</sup> and that a number of them attract entitlement to tax and social benefits.<sup>4</sup> Activities associated with the Personal Services Tax Credit are defined in the French Labour Code (*Code du Travail*)<sup>5</sup> and are carried out in private homes. In the light of this definition, we have decided not to include childminders caring for the children in their own home (*assistantes maternelles*) in this report since they do not fall under the definition of “personal services” for tax purposes.

For the sake of brevity, henceforth we refer to the three sectors described above collectively as “personal and household services” (PHS) and individually by their French abbreviations: SPE (private domestic employees), BAD (Home-Help and Domestic Support, Care and Services Sector which is non profit) and SAP (personal service enterprises). The activities covered by these sectors are carried out by largely by women, who also tend to be older than the average employee, are more likely to have an immigrant background and are paid less than the rest of the employed population. The statistical institute linked to the French Ministry of Labour, DARES, reports that PHS personnel in 2015 had an average age of 46 years (versus 41 years for the economically active population as a whole), were 87.3% female (versus 50.1% for all

<sup>2</sup> This is the English term most closely resembling the French *services à la personne*.

<sup>3</sup> Note that, per the extended professional accord of 12 October 2007 concerning the scope of personal service enterprises, the collective agreement for this sector also includes “group childminding” (*crèches, kindergartens*, etc.).

<sup>4</sup> Most notably, a tax credit as defined in Article 199-6 of the French General Tax Code (*Code général des impôts*, CGI).

<sup>5</sup> Articles L7231-1 and D7231-1 of the Labour Code.

employees) and were more often born abroad (14.5%, versus 5.5% for all employees). Moreover, they held fewer recognised educational qualifications than the rest of the population: only 7.5% had a post-baccalaureate diploma, compared with 38.4% of all employed workers (Kulanthaivelu et Thiérus 2018). They also received much lower wages than the rest of the working population: on average €8,200 net per annum, as against €19,400 for all employees. They are more prone to health problems, too (Kulanthaivelu et Thiérus 2018), and have higher than average occupational accident rates. Whilst the statistical populations do not correspond exactly with those above, we know that accidents at work affect 9.86% of home based care workers (national economic activity classification category 8810A), compared with 3.34% in the entire working population surveyed by CNAM, the National Conservatory of Arts and Crafts. The figures for SPEs (category 9700Z) are not known.<sup>6</sup> Finally, the majority of PHS personnel are in forms of involuntary part-time work (ibid.). Despite all these insecurities, however, those workers are nevertheless covered by a package of social rights whereby they are recognised as part of the workforce and enjoy at least some of the protections that entails, even though that status remains marginal for some of them. Their situation today, although precarious, is thus far removed from that of domestic workers at the beginning of the twentieth century, who lived in with their employers and were deprived of many basic rights. The purpose of this report is to elucidate the role played by social dialogue (that is, between the organisations representing employers and employees at the branch level) in shaping the status of PHS personnel in France, and by extension the conditions in which this dialogue takes place. We first show how the fragmented employment rights of these workers are explained by the emergence at various times of various collective actors, with different identities and divided amongst themselves, dedicated to establishing those rights (part 1). Next, we consider the current substance of those rights (part 2). We then examine the conditions in which they are established, first analysing the collective bargaining between the social partners (part 3) and after that the importance of the public policies funding demand for PHS (part 4). We then look at the social partners' practices in establishing employment rights for PHS personnel, not only through collective bargaining but sometimes also in other ways (part 5). Finally, we make a number of recommendations (part 6).

## 1. Collective actors and fragmented employment rights in PHS in France

### 1.1. Different forms of employment relationship

The term “personal and household services” covers jobs that can be exercised under two main forms of relationship: **employment of an individual by a natural person** (private employer) (representing 56% of all hours declared in this sector, either directly or through an agent) or the purchase of services from a **service provider** (44% of all hours declared) ((Kulanthaivelu 2018)), which in most cases employs a worker. In this case, the employer is an organisation, been a **legal person**.

**When a householder (natural person) is the employer**, households can either undertake the associated administrative formalities themselves (direct employment, representing 50% of all declared PHS hours) or use the services of an agent, who assumes responsibility for managing

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<sup>6</sup>[http://www.risquesprofessionnels.ameli.fr/fileadmin/user\\_upload/document\\_PDF\\_a\\_telecharger/etudes\\_statistiques/AT\\_2017/AT2017-%20par%20NAF%20\(n-2019-040\).pdf](http://www.risquesprofessionnels.ameli.fr/fileadmin/user_upload/document_PDF_a_telecharger/etudes_statistiques/AT_2017/AT2017-%20par%20NAF%20(n-2019-040).pdf), accessed on 17 February 2020.

the employment relationship in return for a fee although the householder remains the worker's formal employer (6% of all hours declared). In either case, the worker is considered a private domestic employee ("*salarié du particulier employeur*", SPE), whose rights are defined in Part VII of the Labour Code and in the collective agreement for SPEs adopted in 1999, extended sector-wide in 2000<sup>7</sup> and with codicils subsequently added on several occasions. In a number of cases, relationships between such employees and agents hired by their private employers have been reclassified by the courts as relationships subordinate to the agent, thereby switching the applicable law from that covering SPEs to that covering service providers.<sup>8</sup>

**When PHS clients use a service provider**, the person working at their home is either self-employed (0,4% of all hours worked in PHS) or salaried. In the latter case, their employer may be public or private, commercial or non-commercial. In 2016, 9.4% of hours worked by service providers were accounted for by public bodies and 35.2% by private companies, so 54.3% were on behalf of non-profit private organisations. Each of these organisational types has its own employment statutes: staff of public-sector bodies are covered by civil-service law, employees of non-profit organisations by the Collective Agreement for the Non-Profit Home-Help Sector (*branche aide à domicile*, BAD)<sup>9</sup> and personnel in the commercial sector by the Collective Agreement for Employees of Personal Service Enterprises (*entreprises de services à la personne*, SAP).<sup>10</sup>

All three collective agreements in this domain (SPE, BAD and SAP) have been extended sector-wide, which means that they apply to all personnel working in the fields covered and not only to members of the signatory organisations. In the case of the SAP agreement, however, some codicil have not been extended or following a ruling by the French Council of State,<sup>11</sup> several provisions have been removed from the extension and the relevant provisions of the Labour Code now apply in their place.

Table 1: Declared PHS workers by applicable employment statute.

Employer type	Hours worked, 2016 (x 1m)	Percentage of all hours worked, 2016	Labour Code applies in full?	Applicable collective agreement
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<sup>7</sup> Collective Agreement for Private Domestic Employees of 24 November 1999, extended by ministerial decree of 2 March 2000.

<sup>8</sup> Court of Cassation, Social Division, judgments no. 12-28.706 and 12-28.707 of 21 October 2014.

<sup>9</sup> Full title: Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector of 21 May 2010, extended by ministerial decree of 1 January 2012. This Agreement covers only non-profit providers. For the sake of brevity, in the text this is referred to henceforth as the "Collective Agreement for the Home-Help Sector" (BAD).

<sup>10</sup> Collective Agreement for Personal Service Enterprises of 20 September 2012, extended by ministerial decree of 3 April 2014.

<sup>11</sup> Council of State, 381870 of 12 May 2017.

<b>Private domestic employers (directly or through agent)</b>	482	56%	No (employees are covered only by Part VII of Labour Code)	Collective Agreement for Private Domestic Employees (SPEs)
<i>...of which: through agent</i>	50	6%		
<b>Public bodies</b>	36	4.10%	No (employees are covered by Civil Service Code)	Public law
<b>Non-profit associations</b>	206	24%	Yes	Collective Agreement for the Home-Help Sector (BAD) (Non Profit)
<b>For-profit enterprises, exc. self-employed</b>	133	15.50%	Yes	Collective Agreement for Employees of Personal Service Enterprises (SAPs)
<b>Self-employed</b>	3	0.40%	No	Self-employed status
<b>Total</b>	<b>861</b>	<b>100%</b>		

Sources: the authors and Kulanthaivelu (2018).

The combination of statistical and legal data summarised above reveals that with the exception of the self-employed, French PHS declared workers are therefore covered near systematically by at least parts of the Labour Code or they are civil servants. When they are employed in the private sector, they are covered by collective agreements and their extended codicils. Those who are self-employed are not affected by these regulations, but they currently make up only a very small part of the total workforce. Those who remain unregistered also lack the rights provided for in the statutes, but – although hard to enumerate – they also comprise only a small share of the total market compared with the situation in other countries; this is due to the very strong incentives in France to register (see part 3).

## 1.2. Employment and working regulations depend upon type of employer and history

In France, the framework of an employment relationship very much depends upon the type of employer. This situation is a product of historical factors, since three distinct employer types emerged prior to the end of the 2010s: private domestic employers, non-profit associations and, later, commercial enterprises.

### Private domestic employers and their representative body

The employment of salaried workers by households is part of the tradition of domestic service (Causse, Fournier, et Labruyère 1998), which gradually lost its own specific status over course of the twentieth century. Whilst that period was characterised by the steady development of labour laws protecting wage earners, until quite recently persons employed directly by other individuals were excluded from them (Castel 1995). Not until its recodification in 1973 did the Labour Code for the first time cover domestic workers in a specific volume, but only then largely to state that most of the other provisions contained in the code did not apply to them. However, an employers' organisation founded in 1948, the Federation of Employers of Household Personnel (*Fédération des Employeurs des Gens de Maisons*), later to become the Federation of

Private Domestic Employers of France (*Fédération des Particuliers Employeurs de France*, FEPEM) did endeavour to fill this void (Laforge 2003). In the 1950s, for example, FEPEM helped to establish a number of collective agreements at *département* (ie local authority) and sometimes regional levels. A first national collective agreement for domestic workers was signed in 1951, but never implemented (ibid.); it was not until 1980 that such an agreement, introduced by the government, was applied, at least in theory, to every private domestic employee-employer relationship anywhere in the country.<sup>12</sup> In the meantime, FEPEM had contributed towards the creation first of a National Mutual Provident and Pension Fund for Household Personnel (*Mutuelle Nationale de Prévoyance Sociale et de Retraite des Employés de Maison*, MUTUEM),<sup>13</sup> and then later a compulsory supplementary pension scheme and the Pension and Provident Institution for Household Personnel (*Institut de Retraite et de Prévoyance des Employés de Maison*, IRPEM), which would later become the Supplementary Pensions Institution for Household Personnel (*Institut de Retraite Complémentaire des Employés de Maison*, IRCEM). The national collective agreement of 1980 was superseded in 1999 by the new Collective Agreement for Private Domestic Employees (SPEs), and shortly afterwards this was extended to cover the entire sector. In 2016 a new Employment Act introduced recognition of the status “private domestic employer” to the Labour Code, whilst at the same time also replacing the term “domestic worker”, which dated from the 1970s, with “employee of the private domestic employer” – amendments which brought the code into line with terminology introduced fifteen years earlier in the collective agreement. According to certain social partners, recognising the status of the “private domestic employer” should make it possible “to adapt the law beyond exclusions or default provisions”. In 2019, the social partners in the “employee of the private domestic employer” sector chose OPCO EP Entreprises de Proximité, the skills agency for local businesses, to support professional staff training in their field.<sup>14</sup>

#### Home-help associations and their representative bodies

The period immediately following the Second World War saw the emergence of numerous charitable associations in the field of home help, formed with the aim of relieving the domestic difficulties faced by people with disabilities, the elderly and working-class families. Often reliant upon community networks and volunteers to undertake their activities, these organisations sought financial backing from the public authorities. Out of one grouping in this domain, the Rural Family Movement (*Mouvement Familial Rural*), was born the National Union of Home-Help Associations in Rural Areas (*Union Nationale des Associations d'Aide à Domicile en Milieu Rural*, UNADMR), one of the two main federations of such organisations of the 1970s. Others aligned themselves with working-class family movements (Duriez 1995). Eventually, though, these associations evolved into service providers to people receiving substantial benefit payments for personal care needs. Several collective agreements existed in this sector prior to the 2000s – covering family support workers (2 March 1970), rural home helps (6 May 1970) and domestic help and support organisations (11 May 1983) – but none of these was extended

<sup>12</sup> Collective Agreement for Domestic Workers, 1982, *Journal officiel de la République française* [Official Journal of the French Republic], no. 3180.

<sup>13</sup> Archives of the CFDT Services Federation.

<sup>14</sup> Order of 29 March 2019 approving a skills agency (local businesses) for the sector.

sector-wide by the government. In 2002, the social partners in this domain finally signed a joint agreement on wages (Ledoux 2011), covering the scope of the three previous agreements. Continuing this progress towards the harmonisation of regulations across the sector, a single collective agreement for non-profit service providers was negotiated in the 2000s, adopted in 2010 and extended sector-wide in 2012.

Today, a number of bodies represent non-profit organisations in PHS: the Rural Home-Help Association (*Association d'Aide à Domicile en Milieu Rural*, ADMR), the National Union for Home Help, Care and Services (*Union Nationale de l'Aide, des Soins et des Services aux Domiciles*, UNA), the National Federation of Associations to Aid Working Families (*Fédération nationale des associations de l'aide familiale populaire*, FNAAFP/CSF) and the Adessadomicile National Federation (*Adessadomicile Fédération Nationale*). In 2019, these federations joined forces to establish a single representative body for collective bargaining purposes: USB Domicile. Any further regrouping efforts will have to await the next electoral cycle, however, since in the meantime UNA has joined NEXEM, a federation representing employers in the social and medical-social sectors with a strong presence in residential disability care. UNA is thus pursuing rapprochement with the residential care sector, whereas the other federations mentioned remain strongly attached to the identity and specifics of home intervention. These divergent positions were also apparent when it came to selecting a skills agency (OPCO) for the sector: UNA alone favoured OPCO Santé, the health-sector agency, whereas the other home-help federations preferred – and ultimately chose – Unifformation, the OPCO with a focus upon social cohesion.

Personal service enterprises (SAPs) and their representative bodies

Commercial businesses were long absent from PHS in France. In fact, the creation of organisations to represent them predates the actual existence of companies in the field. The Union of Personal Service Enterprises (*Syndicat des Entreprises de Services à la Personne*, SESP) owes its establishment in 1995 to the National Confederation of French Employers (*Confédération Nationale du Patronat Français*, CNPF), some of whose members were interested in entering PHS. SESP later founded the Federation of Services to Individuals (*Fédération du Service aux Particuliers*, FESP); both organisations are affiliates of the Movement of Enterprises of France (*Mouvement des Entreprises de France*, MEDEF, former CNPF). A split from SESP led to the establishment of the Federation of Personal and Local Services (*Fédération des Services à la Personne et de Proximité*, FEDESAP), affiliated to the Confederation of Small and Medium-Sized Enterprises (*Confédération des Petites et Moyennes Entreprises*, CPME), which places a greater emphasis upon “defending” small businesses.

The activism of CNPF and SESP members eventually allowed the emergence and development of SAPs, thanks to a law of January 1996<sup>15</sup> extending the scope of tax relief in PHS (Article 199-16 of the General Tax Code) to spending by private individuals with commercial service providers approved by the State.<sup>16</sup> In the 2000s, SESP and FEDESAP participated in the drafting of a collective agreement for SAPs, a process that was completed in record time. The agreement was signed in 2012. Two more organisations joined this agreement in 2016 and 2018:

<sup>15</sup> Law no. 96-63 of January 1996.

<sup>16</sup> This law thus created the status of “approved PHS company”, entailing entitlement to tax benefits.



respectively, the National Union of Homes and Private Residences for the Elderly (*Syndicat National des Établissements et Résidences Privées pour Personnes Âgées*, SYNERPA) and the French Federation of Nursery Enterprises (*Fédération Française des Entreprises de Crèches*). More recently still, the social partners in this sector chose the OPCO EP Entreprises de Proximité (former AGEFOS PME), the skills agency for local businesses, to provide training support for their workforce.<sup>17</sup>

#### Divided trade unions

As for trade-union representation of PHS employees, all the main confederations are active: the French Democratic Confederation of Labour (*Confédération française démocratique du travail*, CFDT), the General Confederation of Labour (*Confédération Générale du Travail*, CGT), the French Confederation of Christian Workers (*Confédération Française des Travailleurs Chrétiens*, CFTC) and Workers' Force (*Force Ouvrière*, FO). In each case, however, the various collective agreements fall under the auspices of different component federations. For example, it is CFDT Services and CGT Commerce that negotiate the collective agreement for SPEs, whereas CFDT Public Health and CGT Social Action do that for the agreement in the non-profit home-help sector (BAD). Likewise, two different FO federations also cover these two agreements. Only the CFTC has a single federation, Public Health, responsible for all the agreements in PHS, but it is no longer considered representative in two of the sectors. Like the employers' federations, the various trade union organisations in this domain remain very attached to the unique identity of their "own" agreements (Ledoux 2011; Lefebvre 2013). However, this fragmentation has negative consequences for the sector in that it reinforces its complexity, with divided representation and rights which are difficult to interpret, making them hard to defend. It is also important to understand what protections are offered by the combination of these various collective agreements with laws and decrees.

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<sup>17</sup> Order of 29 March 2019 approving a skills agency (local businesses).

Table 2: Audience of representative social partners by collective agreement, 2019.

Collective agreement	Legal status of agreement	Trade union federations	Employers' organisation(s)
Private Domestic Employees ( <b>SPEs</b> ), 1999	Extended branch-wide in 2000	- CGT Commerce (39.24%) - CFDT Services (20.05%) - FGTA-FO (19.51%) - FESSAD UNSA (21.20%)	- FEPEM (100%)
Non-Profit Home-Help Branch ( <b>BAD</b> ), 2010	Approved in 2011, Extended branch-wide in 2012 (Approval of the Ministry of Social Affairs required before extension procedure)	- CFDT Public Health (47.42%) - CGT Social Action (38.46%) - FDTA-FO (14.11%)	- USB Domicile (100%), made up of: + ADMR + UNA + Adessadomicile + FNAAFP/CSF
Personal Service Enterprises ( <b>SAPs</b> ), 2012	Extended branch-wide in 2014	- CGT Commerce (15.63%) - CFDT Services (39.45%) - FDTA-FO (14.29%) - CFTC Public Health (30.63%)	- SESP (44.3%) - FEDESAP (32,3%) - SYNERPA (13.7%) - FFEC (9.8%)

Source: [https://travail-emploi.gouv.fr/IMG/pdf/resultats\\_de\\_la\\_representativite\\_syndicale\\_par\\_branche\\_-\\_2017.pdf](https://travail-emploi.gouv.fr/IMG/pdf/resultats_de_la_representativite_syndicale_par_branche_-_2017.pdf).

## 2. Different forms of legal protection

Since the Labour Code covers PHS personnel in different ways, depending upon whether they are employed directly by individuals or by service providers, it is important to better understand the applicability of laws, decrees and collective agreements in these two cases (2.1) before examining particular social rights in more detail (2.2). We then look at how such employees are covered by social protection schemes (2.3) and finally consider how the provisions of international law may apply in France (2.4).

### 2.1. Applicability of statutes

#### 2.1.1. Private domestic employees (SPEs)

PHS personnel employed directly by individuals do not benefit from most of the protective provisions in the Labour Code,<sup>18</sup> since this covers them only in specific provisions<sup>19</sup>. “*Employees of the private domestic employer*” are located in a specific part of the Code, which does not provide them with any special protection but rather to exempt them from certain protective clauses. Specifically, Article 7221-2 states that “*only applicable*” to these employees are those provisions of the code pertaining to sexual harassment, psychological harassment, the Labour Day public holiday (1 May), paid holiday leave, special leave for family reasons and medical supervision.

The above list has been subject to many interpretations. Jean-Yves Kerbourc’h asserted in 1999 that the legislation as it applies to SPEs comprised “*exclusions, exceptions, amendments and sometimes parallels to general law... so that there remains uncertainty as to the extent to which labour law is applicable to these workers*”, a situation case law and the collective agreement had tried to rein in (Kerbourc’h 1999). Even though the new wording of the Labour

<sup>18</sup> Alison Dahan, “Le particulier employeur, décryptage d’une application spécifique du droit” [The private employer, deciphering a specific application of the law], *Actualités sociales hebdomadaires*, December 2018.

<sup>19</sup> Title II of Volume II, Part VII, Labour Code.

Code established a clear restriction by the insertion of the word “only” before “*the following provisions are applicable*”, subsequent jurisprudence has allowed the interpretation that the list is not exhaustive: the Court of Cassation (Laforge 2003) has reiterated that other provisions of the Labour Code may apply to “employees of the private domestic employer” when they explicitly so provide or when they refer to an “employer” without making any distinction by type of employer. This is the case in respect of the general provisions concerning the statutory minimum wage (*salaire minimum interprofessionnel de croissance*, SMIC),<sup>20</sup> severance pay<sup>21</sup> and concealed work.<sup>22</sup> For example, severance pay is thus payable even in the event of the death of the employer.<sup>23</sup> Likewise, the provisions of general law with regard to the jurisdiction of employment tribunals and collective bargaining have been recognised as applicable to “employees of the private domestic employer”. In some cases, moreover, not only has general law been ruled applicable but it is also more favourable to the employee than the collective agreement. For example, in respect of the letter of notification to be issued prior to a pre-dismissal interview: under the collective agreement this must be provided one clear day in advance, but in general law that is two clear days beforehand. There is a similar advantage with respect to severance pay, and here again ordinary labour law applies – not the collective agreement.

Nonetheless, the rights of SPEs at work remain limited in the Labour Code: many other areas of general labour law have been recognised as not applying them, including the provisions concerning employing enterprises and legal persons. Consequently, their contract of employment lapses automatically upon the death of the employer or the sale of the home in which they work.<sup>24</sup> And at the collective level these workers “*are not covered by the obligation to draw up internal regulations, nor the provisions for staff representatives, trade-union representatives or a Staff Council*” (a “Social and Economic Committee” with effect from 2020) (Kerbourc’h 1999). Likewise, case law has established that all provisions of the Labour Code pertaining to the definition of effective work, working hours, part-time work, night work, overtime, rest periods, health and safety at work and economic redundancy do not apply to SPEs.

Certain texts even expressly state themselves that they do not cover “employees of the private domestic employer”. For example, the Circular of 3 March 2000 specifically excludes these personnel from the legal limit it imposes on the working week, 35 hours (Dahan : 21). And Article L6331-57 of the Labour Code provides for a lower social levy for the professional training of SPEs and childminders, 0.15%, than the 0.55% in general law. Case law, too, clearly indicates that certain rights do not apply in this domain; for example, the ruling by the Court of Cassation that the provisions of the Labour Code relating to working hours and part-time

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<sup>20</sup> Court of Cassation, Social Division, 31 March 1982: Bulletin civil V, no. 242, p.178 (quoted by Géraldine Laforge, op. cit.): “It follows from Article L141-1 of the Labour Code that the legislation on the statutory minimum wage applies to domestic workers.”

<sup>21</sup> Court of Cassation, Social Division, judgment no. 10-11.525 of 29 June 2011.

<sup>22</sup> Court of Cassation, Social Division, judgment no. 12-24.053 of 20 November 2013.

<sup>23</sup> Court of Cassation, Social Division, judgment no. 86-43.165 of 5 December 1989.

<sup>24</sup> Article 13, Collective Agreement for Private Domestic Employees, effective 2019.

work are found inapplicable to “employees of the private domestic employer”.<sup>25</sup> Whilst the general rules relating to the monitoring of workers’ health do cover this group in principle, moreover, Article L4625-2 of the Labour Code nevertheless includes specific provisions transferring statutory responsibility for the organisation of this monitoring, its procedures and the choice of occupational health service to the collective agreement.

SPEs are also excluded from any official scrutiny of their working conditions, since the Labour Code states that, when work is performed in “*occupied dwellings, inspectors may enter only with the prior permission of the occupants*”.<sup>26</sup> Here we see clearly that the contradiction between the principle of the sanctity of the home, protected by the Civil Code and the Criminal Code, and the powers of the Labour Inspectorate has been resolved in favour of the former (Laforge 2003). Effectively, then, inspectors are more or less precluded from monitoring compliance with the regulations applicable to SPEs.

However, the collective agreement for SPEs<sup>27</sup> and its codicils are formulated in favour of the employee in a number of areas in which they are exempt from general labour Code. On some points they even go beyond the statutory provisions, in fact, by conferring specific additional rights. In the event of absence through sickness or accident, for instance, an invalidity allowance supplementary to the beneficiary’s social security entitlement is provided for,<sup>28</sup> such that they are guaranteed a basic monthly income equal to 76% of their capped gross monthly salary.<sup>29</sup> An additional levy of 0.20% for professional training is included in the collective agreement, supplementing the 15% provided for by the specific law applicable to “employees of the private domestic employer”.<sup>30</sup> A social fund has been created to provide individual or collective assistance for employees in financial difficulties,<sup>31</sup> and agreement has also been reached to set up an occupational health service and to provide individual and collective preventive health monitoring.<sup>32</sup> We can therefore conclude that collective bargaining has been remarkably effective in establishing social protections in the broad sense of the term – more so than it has in regulating actual working conditions.

The social partners have thus been able to partially reproduce provisions of the Labour Code in the collective agreement, and to “*make provisions applicable that were not*” (Kerbourc’h 1999). In a few exceptional cases, they have even gone beyond that – the disadvantage then being that parity with the status of workers governed by general law has not necessarily been maintained when that itself has evolved. As Laure Machu and Jérôme Pélisse remind us (Machu et Pélisse 2019), a derogation from general law does not in itself necessarily entail a

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<sup>25</sup> Court of Cassation, Social Division, judgment no. 16-25.280 of 7 March 2018. Court of Cassation, Social Division, judgment no. 16-12809 of 7 December 2017.

<sup>26</sup> Article L611-8, Labour Code.

<sup>27</sup> Adopted in 1999, extended sector-wide in 2000.

<sup>28</sup> Article 19, Collective Agreement for Private Domestic Employees.

<sup>29</sup> Appendix VI, Collective Agreement for Private Domestic Employees.

<sup>30</sup> Appendix V, Collective Agreement for Private Domestic Employees – accord of 25 March 2016 concerning lifelong professional training, Chapter IV, Article 12; Article L6331-57, Labour Code.

<sup>31</sup> Codicil of 13 September 2010 concerning the Social Fund.

<sup>32</sup> Intersectoral framework agreement of 24 November 2016 concerning regulations for the organisation and choice of occupational health services, for individual and collective monitoring and for preventive occupational health.

situation deeply unfavourable for the employees concerned. Rather, its effect depends entirely upon the balance of power between the social partners. Those social partners have neglected to systematically track the evolution of general law and the balance of power between employee and employer representative organisations puts the former at a disadvantage. However certain aspects of labour law have not been “picked up” in the collective bargaining arena or have even remained far removed from general law. The collective agreement still provides for a 40-hour working week, for instance, whereas general law has been moving towards 35 hours. Also, the definition of “effective work” and the rights associated with dismissal are less advantageous for workers in the collective agreement than in general law. We shall return to this later.

### 2.1.2. Employees of service providers

French labour law has seen a series of reforms over the years, which have gradually transformed the hierarchy of standards and sometimes relieved professional sectors of their function as economic regulators. In 1982, for instance, the so-called Auroux laws authorised collective agreements – at sector and later at company level – to deviate from legislative provisions on working hours. Subsequently, the law of 4 May 2004 authorised company agreements to diverge from sectoral ones, although it also imposed hurdles: sectoral negotiators could make such derogations impossible. Nevertheless, this general trend has accelerated in recent years: between 2012 and 2016, several new legislative texts have allowed company agreements to deviate from sectoral ones in the field of working hours and times of employment (Machu et Pélisse 2019). The Labour Act of 8 August 2016 further strengthens the possibility of prioritising the company agreement over the sector’s in respect of working hours and leave entitlement (Mehrez 2019). The so-called Labour Ordinances of 22 September 2017 (also known as the “Macron Ordinances”) add even more momentum to this trend: they allow a collective, sectoral or company agreement to contain provisions less favourable than those found in law or in a broader agreement. In the case of working hours and holidays, the legislative provisions now apply only in the absence of a sectoral or company agreement. Consequently, at present a company agreement always takes precedence over a sectoral one except in a limited number of areas listed in Article L2253-1 of the Labour Code, namely: hierarchical minimum wages, job classifications, codetermination funds, professional training funds, complementary collective guarantees (mutual and provident funds), the terms and duration of trial periods, workplace gender equality, certain measures pertaining to working hours (minimum part-time hours, overtime premiums, etc.) and the total duration of fixed-term contracts. Nevertheless, the so-called “locking clauses” at sectoral level, which prevent company or organisational agreements less favourable for employees, have remained in effect after 1 January 2019 insofar as they cover a specific group of domains defined in law (known as “Block 2”)<sup>33</sup> and have been confirmed by the social partners.

Faced with this upheaval in the hierarchy of standards, the social partners in the two PHS service-provider sectors have responded in different ways: those in home help (BAD) have

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<sup>33</sup> “Ordonnances Macron: l’accord d’entreprise a la primauté” [Macron Ordinances: the company agreement takes precedence], RF Social 178, October 2017.

decided to “lock” a set of regulatory provisions, whereas all have been left “unlocked” for personal service enterprises (SAPs).

Specifically, the clauses “locked” for BAD cover:

- preventing the effects of exposure to occupational risks;
- occupational integration and the continued employment of workers with disabilities;
- qualifying conditions for election as a trade union representative, plus their number and recognition; and,
- bonuses for dangerous or unhealthy work.<sup>34</sup>

As a representative of a federation of non Profit home-help associations explains: *“In collective bargaining, we are very attached to the sector and to its regulatory role; we want to keep our bargaining mechanisms within the framework of Block 1, which must remain at sectoral level. We want to safeguard certain points, to avoid other arrangements being put in place by individual associations.”* (Interview with BAD federation representative, 2019.)

By contrast, the SAP sector has yet to adopt any such “locks”.

However, any deviation at company level from a sectoral agreement depends upon the ability of the individual firm’s management to strike a deal with its staff representatives. In this regard, not all bosses are equal: whilst large companies are in a position to offer their personnel quid pro quos which expedite acceptance of such alternative arrangements, smaller ones may not be able to do so.

## 2.2. Workers’ rights

It is impossible for us to consider here the full constellation of rights and obligations applicable to PHS personnel, so instead we have decided to focus upon two particular aspects which are extremely important to them and their employers alike, namely their rights in respect of the definition of working hours and in respect of remuneration for travel time.

### 2.2.1. Definition and remuneration of working hours

PHS personnel are subject to a vague definition of the dividing lines between work, non-work and overtime. Depending upon the legal regime governing their professional activities, however, this lack of clarity is much greater for some than for others. SPEs are not covered by the definition of “effective work” in the Labour Code, for instance, whereas employees of service providers (ie BADs and SAPs) are. Moreover, although no definition of “effective work” is found in the collective agreement for SPEs either, it still provides for three forms of remuneration at below the statutory minimum wage for “attendance” duties at rates linked to that for effective work. These are:

- 1) hours of “responsible attendance”, remunerated at 2/3 of the hourly rate of pay for effective work;
  - 2) hours of “night attendance”, remunerated at a rate of 1/6 of the contractual wage;
- and,

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<sup>34</sup> Codicil 37-2017 of 19 December 2017 concerning legal security in the non-profit home-help sector.

- 3) “nursing duties”, remunerated at 2/3 of the hourly wage for effective work<sup>35</sup> (Krupka 2019).

Hours of “responsible attendance” are defined as periods during which *“the employee is at liberty to use their time as they see fit, whilst remaining vigilant in order to be able to intervene if necessary”*.<sup>36</sup> From this, we can extrapolate a definition of “effective work” as that undertaken in periods when the employee is not “at liberty to use their time as they see fit”. This is quite far removed from the definition found in the Labour Code and also adopted in the other two collective agreements (BAD and SAP), which states that effective work is “that time during which the employee is at the disposal of the employer and complies with their instructions without being able to go about his or her own personal activities freely.”<sup>37</sup> (ibid.).

As for “night attendance”, the collective agreement states that this is “compatible” with daytime employment and that *“if the employee is called upon to work on several occasions every night, all night-time hours are considered to be hours of responsible attendance. This situation can only be transitory. If it continues, the contract will be reviewed”*.<sup>38</sup> Here, the worker’s entitlements become contradictory – hence the idea that the contract should be reviewed. After all, a situation in which an employee has to intervene on several occasions during “night attendance” is recategorised as “responsible attendance”, but that has been defined as a period in which they are free to do as they wish, which is surely incompatible with those multiple interventions. Finally, we note the existence in the collective agreement of a definition of “night nursing duties”. These require that the employee *“be close to the patient and available to intervene at any time. These duties are not compatible with a full-time day job. The employee remains close to the patient and does not make use of a private room. Their remuneration is calculated on a basis such that it cannot be less than eight times the hourly wage for twelve hours of attendance per night”*<sup>39</sup> (i.e. 2/3 of the hourly wage).

By contrast, the extended provisions of the two collective agreements covering employees of service providers include no such arrangements. Although the agreement for SAPs did until recently contain a provision similar to the “night attendance” rule described above, it was withdrawn following legal action by the CGT. What these agreements do provide for is “on-call” times, which are defined pursuant to the Labour Code as periods during which the employee remains at home and ready to intervene if required. These are therefore considered as periods of effective work. In addition, these two agreements include measures more favourable for employees than the provisions of the Labour Code and absent from the collective agreement for SPEs, although individual company agreements may deviate from them. For example, meal times can be considered as effective working time if the employee is still available to the employer during them.

Moreover, the Labour Code fixes the maximum daily duration of a night shift as eight hours but allows collective agreements to derogate from this limit. In the agreement for SPEs, night

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<sup>35</sup> Article 6, Collective Agreement for Private Domestic Employees, extended by decree of 7 March 2016.

<sup>36</sup> Article 3, Collective Agreement for Private Domestic Employees, extended by decree of 7 March 2016.

<sup>37</sup> Article L3121-1, Labour Code.

<sup>38</sup> Article 3, Collective Agreement for Private Domestic Employees, extended by decree of 7 March 2016.

<sup>39</sup> Article 6, Collective Agreement for Private Domestic Employees, extended by decree of 7 March 2016.

attendance is considered compatible with day work and can last up to twelve hours at one stretch.<sup>40</sup> In the BAD agreement, the social partners have agreed to extend the permissible duration up to ten hours in the absence of any alternative arrangement in a company agreement. As for SAPs, the arrangements governing night work in their collective agreement have been struck down by the Council of State.<sup>41</sup> As a result, such work is now only possible if allowed for in a company agreement or with a derogation granted by the Labour Inspectorate (Dahan et Granet 2019 : 68).

### 2.2.2. Extent of working hours

Definitions of working hours also differ widely between the collective agreements. For SPEs, at 40 hours the duration of a **full-time** working week deviates from the legal norm of 35 hours. In the case of employees of service providers, 35 hours remains the reference period but derogations are allowed in company agreements. It means that paid overtime begins only beyond 40 hours a week for SPEs; for the staff of service providers, such arrangements are left to company agreements.

The legal regimes for **part-time** work also differ. Whilst Law no. 2013-504 of 14 June 2013, supplemented by Law no. 2014-288 of 5 March 2014 and the Ordinance of 29 January 2015, in principle establishes the minimum part-time working week at 24 hours, except where a collective agreement subject to conditions is applicable (Dahan et Granet 2019), this threshold does not cover SPEs. And in BAD, a separate accord has been reached in respect of part-time working. This makes it easy for non-profit associations to offer very limited hours, with the collective agreement stating that *“working hours cannot be less than 70 hours per month or 200 hours per quarter or 800 hours per year”*. That is, the equivalent of 17 hours per week. But, the agreement continues: *“When a particular situation does not correspond with these possibilities, employment contracts of a shorter duration may be concluded following consultation with the staff representatives, if they exist”*.<sup>42</sup> By contrast, as of 2019 the social partners in the SAP sector had reached no agreement on the part-time minimum. This means that the reference norm in their legal framework remains 24 hours per week except in “cases of emergency” – a very vague categorisation. Derogations are possible, then, but 24 hours is still the standard for the time being.

Moreover, **Sunday working** is also treated differently in the three agreements. Whilst the collective agreement for SPEs provides that they can be worked at the request of the employer, with a 25% increase in pay, its BAD counterpart allows – in the absence of any alternative arrangement agreed at the organisational level – the employer to ask staff to work no more than every second Sunday, for either a 45% premium on their pay or compensatory leave equal to 45% of the time worked on Sundays or public holidays, in the absence of a collective agreement. Under the agreement for SAPs, meanwhile, the employer can ask an employee to work two Sundays a month, with a pay premium of 10%. Again, though, this can be overridden by an in-house agreement.

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<sup>40</sup> Article 6, Collective Agreement for Private Domestic Employees, effective 2019. When an employee has to intervene on several occasions during a night, they are deemed to fall under the provisions for “responsible attendance” rather than “night attendance”.

<sup>41</sup> Council of State, 381870 of 12 May 2017.

<sup>42</sup> Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector, effective 2019: point 24.4, Article 24, Chapter V, Title III.



### 2.2.3. Travel time

The three legal regimes governing PHS personnel digress or provide for derogations from the general labour law in respect of interruptions to the working day. Such interruptions are generally due to the fact that workers travel from one “client” to another during the day. How such arrangements are managed varies substantially between SPEs and those employed by service providers (Krupka 2019).

As for the situation in general law, as of 2019 Article L3123-6 of the Labour Code states that there can be no more than one unpaid interruption in the same day. For SPEs, by definition the period between interventions on behalf of two different employers is not considered as working time and neither the travel time itself nor the expenses incurred are reimbursed by the employers.

The BAD collective agreement limits the number of permitted interruptions during a working day to three, while its counterpart for SAPs sets the maximum at four (Krupka 2019). Travel time for employees of service providers can theoretically be considered effective working time, notwithstanding whether the employer is a non-profit association or a company, but this categorisation is subject to certain conditions. In the case of associations, the initial version of the draft of the collective agreement stated that only the time spent travelling between two **successive** working sessions was considered effective working time.<sup>43</sup> Even if adopted, this wording attracted strong opposition, with certain trade unions refusing to sign because of this wording : *“This is the trap of negotiation: don’t sign and you risk ending up with nothing, do sign and you become complicit. We fought to get rid of that word – we’d done surveys and there were girls who were losing €300 a month. That wasn’t possible.”* (Interview with trade unionist, 2019.)

However, the so-called DOMIDOM ruling by the Criminal Division of the Court of Cassation<sup>44</sup> reversed this interpretation. Based upon Article L3121-1 of the Labour Code, under which the duration of effective working time is defined as *“that time during which the employee is at the disposal of the employer and complies with his instructions without being able to go about his or her own personal activities freely”*, the court recognised that *“the time spent travelling for professional purposes between the domicile of one client and that of another client, during the same day, constitutes a time of effective work and not a break from work as long as the employee is not relieved of accountability towards their employer during that journey”*. This judgment was an important factor in changing the funding regime for interruptions to the working day in BAD, leading to the adoption of Codicil no. 36-2017 of 25 October 2017 (approved by decree of 4 June 2018), under which, *“The time required to travel between two successive periods of effective work during the same half-day is considered to be effective working time and is remunerated as such, as long as the said periods are consecutive. When successive periods of effective work during the same half-day **are not consecutive**, the time required to travel between the two locations is calculated and that period is considered to be effective working time and is remunerated as such.”* This represents a significant development by comparison with the previous situation, since it also deems the journey time between two

<sup>43</sup> Article 14.2 of Title V, Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector, adopted in 2010 and extended in 2012 (BAD).

<sup>44</sup> Court of Cassation, Criminal Division, judgment no. 3459 of 2 September 2014 (1380.665).

successive but non-consecutive interventions as effective working time. The true effectiveness of the extension introduced by this codicil is questionable, however, since it is accompanied by a suspensory clause whereby this provision will come into force only upon its approval *“and the effective financing of the time and costs of travel linked to successive periods of work during the same half-day by all the funding bodies, including the State and the département councils”*.

As for the collective agreement for SAPs, point 1f of Section 2 of Chapter 2 of Part II states:

*“in the event of an interruption lasting less than 15 minutes, the waiting time is remunerated as effective working time;*

*“in the event of an interruption lasting more than 15 minutes (excluding the journey between two intervention locations), the employee is discharged for that period from accountability to their employer and therefore, no longer being at their employer’s disposal, is at liberty to engage in personal activities as they see fit; however, this period between two interventions neither counts as effective working time nor is remunerated as such.”* This original wording was subsequently extended to add the proviso, *“with the exception that the time taken to travel from one place of work to another place of work does constitute effective working time and is therefore remunerated as such, whatever its duration.”*

In addition, the applicable **mileage allowances system** differs depending upon the situation. For home helps, the allowance is fixed at a rate of €0.35/km.<sup>45</sup> Under the collective agreement for SAPs, the rate in this sector is now €0.22/km<sup>46</sup> after the Council of State<sup>47</sup> overturned the allowance previously fixed by the social partners, €0.12/km, in a legal action brought by the CGT. Here again, though, specific company agreements may provide for a different – and even a lesser – amount.

### 2.3. Social protection

All employees in France, including PHS personnel, are in theory protected by the social security system. This provides state-backed insurance cover in four domains: sickness, retirement, accidents at work and work-related illness, occupational illness and family. The question is: to what extent do employees actually have access to these rights?

#### 2.3.1. Health and disability

As workers, PHS personnel have automatic basic social-security cover for sickness. A law of 14 June 2013 provides for the “generalisation” of supplementary private healthcare cover for employees in the private sector, but this does not seem to extend to SPEs since it refers explicitly to employing “organisations”. This is the interpretation found on the website “particulieremploi.fr”,<sup>48</sup> for private domestic employers: it states that *“the Federation of Private Domestic Employers (FEPEM) therefore considers that these employers are not subject to any obligation to subscribe to supplementary health insurance for their employees”*.

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<sup>45</sup> Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector, effective 2019: Article 14.3, Chapter 1, Title V.

<sup>46</sup> Collective Agreement for Personal Service Enterprises, codicil of 31 January 2019.

<sup>47</sup> Council of State, 381870 of 12 May 2017.

<sup>48</sup> <https://particulieremploi.fr/complementaire-sante-pour-le-salarie-a-domicile-etes-vous-au-point/>, accessed on 14 November 2019.

However, the collective agreement for this sector includes a compulsory provident scheme for those unable to work through illness or invalidity. This is operated by a dedicated institution, IRCÉM, to which private domestic employees (along with “*assistantes maternelles*” childminders) are required to pay contributions in return for entitlement to an allowance if they are forced to stop work due to illness, an occupational or non-occupational accident or the like, which we know are significant risks in this population.

The amounts insured are up to 100% of the monthly reference salary in the event of **incapacity for work** (due to illness, occupational or non-occupational accident, etc.) and 95% of annual net reference salary in the event of **permanent disability**, both minus the beneficiary’s actual or notional social security benefits, pension or annuity.<sup>49</sup> Note here that a subsequent agreement<sup>50</sup> guarantees a basic monthly income equal to 76% of gross monthly salary capped at the ceiling for calculation of social security entitlement (“tranche A”), but this has not been extended, which means that employers who are not members of the FEPEM are not obliged to apply it.<sup>51</sup>

In the case of both the incapacity allowance and the permanent disability allowance, the amount payable as negotiated by the social partners is equal to the total basic daily guarantee as defined above minus the beneficiary’s actual or notional social-security entitlement. When an employee does not declare enough working hours to qualify for social-security payments, notional payments are calculated and considered as if the person concerned had indeed received them. This means that the collective scheme does not “compensate” for a lack of social-security coverage. In the case of sick leave, whilst entitlement to social-security benefits begins after a three-day waiting period, the equivalent delay before qualifying for an allowance under sickness insurance provided for by the social partners is eleven days.<sup>52</sup>

BAD has established an extended provident scheme and basic supplementary health insurance cover. Under this, the incapacity allowance in the event of illness or accident confirmed by a medical certificate amounts to 70% of gross salary and is payable for a maximum of 60 days of sick leave credited per year, calculated on a rolling basis. In the event of permanent invalidity, permanent occupational disability, occupational accident or occupational disease entailing a degree of disability, the income substitution allowance is fixed at 75% of the gross reference salary.<sup>53</sup>

The social partner signatories to the collective agreement for SAPs have also set up a provident scheme which has yet to be instituted, meaning that individual employers remain subject to their legal responsibility to cover their employees through supplementary health insurance.

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<sup>49</sup> Appendix VI, “Provident Scheme”, joint agreement of 24 November 1999.

<sup>50</sup> Codicil of 13 September 2010 concerning health and accident cover.

<sup>51</sup> The IRCÉM website, however, provides information about this agreement in its non-extended form: <https://www.ircem.com/faq/faq-prevoyance/faq-prevoyance-salarie/>, accessed on 5 December 2019.

<sup>52</sup> Article 19, Collective Agreement for Private Domestic Employees. Note that there is an agreement reducing this period to seven days, but that has not been extended (codicil of 13 September 2010 concerning health and accident cover).

<sup>53</sup> Codicil no. 182014 of 29 October 2014 concerning the provident scheme, extended by decree of 16 July 2015.

### 2.3.2. Training

The three collective agreements under discussion all include professional training policies funded through dedicated levies over and above those provided for by law. As we have seen, in the case of SPEs a levy of 0.20% has been agreed by the social partners to supplement the 0.15% required under the Labour Code. In addition, a separate joint agreement ratified in law by a decree<sup>54</sup> has set up a mandate system for SPEs, allowing an intermediary to act as their notional employer when they are undergoing training, since a large number of these personnel have multiple employers and work only a limited number of hours for each of them, making it difficult for any one of them to bear the cost of training alone. This system is intended to make the right to training more effective.

In the case of the BAD collective agreement, the social partners have voted to impose professional training levy rates of between 1.04% and 1.49% of the employers total payroll bill, depending upon the size of the organisation. This is added to the compulsory levy for continuing staff education (0.55% to 1% of the total payroll bill).<sup>55</sup> As for SAPs, a 2015 agreement provides for an agreed additional levy in addition to that required by law: 0.10% of the total payroll bill for companies with fewer than ten employees, 0.40% for those with eleven or more. Table 3 summarises the differences between these rates.

Table 3. Levies for professional training.

	<b>Compulsory levy</b>	<b>Additional agreed levy</b>	<b>Total</b>
<b>Private domestic employers</b>	0.15%	0.20%	0.35%
<b>Home-help organisations, up to 10 employees</b>	0.55% <sup>56</sup>	1.49% <sup>57</sup>	1.59%
<b>Home-help organisations, 11 or more employees</b>	1% <sup>58</sup>	1.04% <sup>59</sup>	2.04%
<b>Personal service enterprises, up to 10 employees</b>	0.55%	0.10%	0.65%
<b>Personal service enterprises, 11 or more employees (for already 3 years)</b>	1%	0.40% <sup>60</sup>	1.40%

Source : the authors, based upon applicable regulations.

<sup>54</sup> Accord of 19 December 2018 supplementary to the Collective Agreement for Personal Service Enterprises, concerning the creation of a specific body within the skills agency; Decree no. 20181344 of 28 December 2018 relating to the contributions paid by certain categories of employers.

<sup>55</sup> Article 24, Codicil no. 24-2017 of 23 May 2017 to the Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector concerning professional training, extended by decree of 19 January 2018 (*Journal officiel de la République française*, 26 January 2018).

<sup>56</sup> Article L6331-2, Labour Code.

<sup>57</sup> Article 25, Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector.

<sup>58</sup> Article L6331-3, Labour Code.

<sup>59</sup> Article 25, Collective Agreement for the Home-Help and Domestic Support, Care and Services Sector.

<sup>60</sup> Accord of 2 October 2015 supplementary to the Collective Agreement for Personal Service Enterprises, concerning lifelong professional training, extended by decree of 7 April 2016.

These differences are valued by the players in BAD, one of them explaining, “*We have been investing in training for a very long time, paying a levy of 2.04%. The commercial world is paying at about the legal rate, and the same for several themes. Our economic logic is not the same: the aim in the social economy is to work on professional training, to provide career development prospects and a certain quality of work, whereas the very object of a business is to create profits.*” (Interview with official of BAD employers’ federation.)

### 2.3.3. Unemployment

Since the unemployment insurance reform of 2019, employees must have worked at least 130 days or 910 hours in the past 24 months – 36 months if they are aged 53 or over – in order to qualify for the unemployment benefit Return-to-Work Allowance (*Allocation de retour à l’emploi*, ARE). SPEs recorded an average of **557 working hours** in 2016 (Kulanthaivelu 2018), equivalent to 1,114 hours for the two years 2016 and 2017 if we assume that their workload is constant year on year. If that assumption is correct, then the average employee does meet the ARE criteria. However, the close proximity of that average to the 910-hour threshold suggests that a good proportion of these employees – in particular those below 53 years of age – fail to validate their entitlement to unemployment benefit.

The situation is different for employees of service providers, who worked an average of **913 hours** in 2016 (Kulanthaivelu 2018) and therefore more than 1,800 hours over two years if we again assume that their employment situation is steady. Most thus qualify easily for ARE should they need it. The difference between these two groups is not surprising, as the rules governing SPEs make it far easier for them work on a limited part-time basis than employees of service providers.

### 2.3.4. Pensions

When it comes to pension entitlements, the differences between SPEs and staff employed by service-provider organisations are even more significant. In 2019, an employee had to be paid at least €1,504 per quarter to trigger entitlement to general state pension for a quarter. That extrapolates to a salary of €4,513.50 for three quarters and €6,018 for four quarters. With a total average annual net salary of **€5,247** (Kulanthaivelu et Thiérus 2018), SPEs working exclusively in personal service therefore only qualify for only three-quarters of the nominal annual state pension ( $4,513.50 < 5,247 < 6,018$ ). With an average annual salary of €7,807, by contrast, employees of PHS service providers are more likely to manage to generate entitlement to a full four quarters of pension each year.

However, the social partners in the SPE sector have included provisions for a supplementary pension scheme in their collective agreement.<sup>61</sup> This is managed by IRCEM. The rates of employee and employer contributions are 3.93% and 3.94% respectively. But in 2018, the average quarterly pension paid out under this plan was just €336.15, or €112 per month<sup>62</sup> – a very modest amount indeed.

<sup>61</sup> Article 27, Collective Agreement for Private Domestic Employees.

<sup>62</sup> IRCEM (2019), *Déclaration de performance extra-financière 2018* [Non-Financial Annual Statement, 2018], p. 12: [https://www.ircem.eu/wp-content/uploads/2019/07/Groupe-IRCEM\\_Rapport\\_RSE\\_2018\\_DER.pdf](https://www.ircem.eu/wp-content/uploads/2019/07/Groupe-IRCEM_Rapport_RSE_2018_DER.pdf), accessed on 5 December 2019.

#### 2.4. International regulations: minimal impact

While several of the French trade unions attending the International Labour Organisation (ILO) Assembly which led to the adoption of its Convention 189, on domestic workers, called immediately for its ratification, until recently “C189” was almost absent from the national debate. For example, ministerial representatives we met in the summer of 2019 were no more aware of it than certain representatives of employers’ federations. This was less so in the case of the unions. Nevertheless, the first major mobilisation in France in favour of ratifying C189 was not organised until 17 June 2017, when several organisations – an alliance of unions and non-profit associations: the CFDT, UNSA, the CGT, the Association of Parental and Humanitarian Assistants (*Amicale d’Auxiliaire Parentale et Humanitaire*) and Action Aid France – called a demonstration on Place du Trocadéro in Paris. On 16 June 2018, the same alliance organised a second gathering at which they held a mock “trial” with testimony from a genuine victim of domestic slavery, Zita Cabais Obra, then an active member of the CFDT. In 2019, a petition was started by the unions to demand ratification of C189, but no further demonstrations have taken place and the representatives of the union federations in PHS itself do not seem to regard such ratification as a principal objective of their activism.

Of the employers’ organisations, only FEPEM makes (numerous) references to C189 on its website – as does the European Federation for Family Employment and Home Care (EFFE), with which it is affiliated. A FEPEM representative told us: *“In general terms, the convention encourages common-sense thinking. In the particular case of France, certain aspects are regressive by comparison with local law – notably with regard to the concept of controls in the home. We do not face a modern form of slavery and so controls in the homes of private individuals must be undertaken with respect for the concept of inviolability enshrined in our principles.”* (Interview with FEPEM representative, 2019.) The developments that have marked the sector in France in recent years are therefore unconnected to any role on the part of the ILO, as a driving force. On the union side, several representatives of the federations in PHS indicated to us that they know about the convention without having any direct engagement with it: *“We were made aware because we worked on Convention 189 and the recommendation. We monitor the work on it, but for us it’s not a theme in its own right. That’s a matter for the confederation.”* (Interview with PHS trade unionist, 2019.) For this activist, moreover, the problems facing the employees she defends are somewhat different from those referred to in C189: *“Some are not migrants, they’re integrated, they’ve been trained, but we never speak about those who travel to see clients at their own expense, who have extended working times, who are forced to work part-time under contracts out of line with the law...”* (ibid.).

In view of all these differing rights, what should we consider the role of the social partners in the collective agreements? Before we can analyse that question, two major constraint-resource matrices in the French system need to be mentioned: the conditions for collective bargaining and the existence of social partners in the three sectors (part 3) and demand-side support policies (part 4).

### 3. Conditions for collective bargaining and the existence of the social partners in the three sectors

The conduct of the social partners in PHS cannot be understood without taking into account the constraints and resources that directly affect their ability to participate in social dialogue. These are of three types. First, the “rules of the game” for extending collective agreements sector-wide are not the same across the board and, certainly in the case of home helps, severely constrain contractual freedom (section 3.1). Second (section 3.2), the quality of social dialogue depends upon the kinds of actors empowered to negotiate or to block agreements due to their representativeness. For this reason, the new system of trade union and employer representation implemented gradually since the reforms of 2008 and 2014 plays a decisive role in social dialogue. At the same time, we can also imagine that this new system influences social dialogue practices – to the extent that the positions adopted by the various social partners in collective bargaining can impact their electorate (trade unions) or their membership (employers’ federations) and therefore their future audience during the next electoral cycle. Third (section 3.3), looking beyond the social partners’ authority to sign agreements, the content of those agreements also depends upon the capabilities of the various actors involved and the resources available to them, their knowledge of the sector and the possibilities provided by the law and their proficiency as negotiators and representatives. The generation of capacity and resources can even become an issue in the social dialogue and a result of the agreements signed as its outcome.

#### 3.1. State representation during negotiations, approval and extension

The rules for negotiating agreements vary between the three sectors under consideration, not least because the State does not intervene in the same way in each of them: its representation both in the negotiations themselves and in the procedures for applying the resulting agreements sector-wide are different. In the BAD and SPE sectors, the collective bargaining process includes a representative of the labour authorities (Joint Committee). This is not the case in the SAP sector; there, according to a representative of the Ministry of Labour (Directorate-General of Labour): *“We do not follow the negotiations. We have very little insight because all we see is the finished product. But we can obtain information when there are difficulties.”*

The approval procedures are also different. Agreements covering home helps (BAD) must be approved by the Ministry of Solidarity and Health – specifically the Directorate-General of Social Cohesion (*Direction Générale de la Cohésion Sociale*, DGCS) – before they can be extended by the Ministry of Labour to apply sector-wide. This need for ministerial approval of agreements and conventions in the medical-social sector, introduced in 1975, is justified by the use of public money to fund the structures involved.<sup>63</sup> In order to avoid approvals being refused, once a year the Directorate-General of Social Cohesion summons the social partners in the sectors over which it can exercise a veto and outlines what overall payroll bill it will accept in the coming year. As a BAD negotiator explains: *“So in fact it is not a free negotiation. Unlike most professional sectors, we are still under state control. Every year... the Directorate-General of*

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<sup>63</sup> Article 3146, Social Action and Family Code.

*Social Cohesion calls in the social partners for what's known as the salaries conference. And so around the table we have social partners in the sector's collective bargaining... and there the DGCS gives us the cardinal rate for the year. It's this famous budget and they tell you: 'Listen, with regard to the different indicators for year X, you have a cardinal rate of a 1% increase in the payroll bill, GVT [seniority incrementation] included.' So depending upon your GVT, you have more or less room for manoeuvre. Say you have 1% in all. You deduct your GVT – imagine that's 0.30% – so you're left with a 0.70% increase in total payroll, and of that 0.70%... Well it's your budget starting with a total payroll which has to be more than 3.7, 3.8 million [euros]. You have a budget envelope and that's what you use. You say to yourself: 'Our negotiation for this year, it has to fit into that.' That's to say, the sum of the cost of all our agreements has to go in there. And if it doesn't, your approval (of the agreement) is refused."*

This meeting at the DGCS is important and symbolic: it brings together all the actors involved in the sector's collective bargaining process. In reality, the annual rate of increase in the payroll bill is the result of an exchange with the Minister of Solidarity's office. First proposed by the central government based upon the Budget Bill (Projet de loi de Finances, PLF) and the Social Security Budget Bill (Projet de Loi de Financement de la Sécurité Sociale, PLFSS) for the year in question, it is then submitted to a National Approval Committee, which delivers its opinion before the final decision by the minister. The Assembly of French *Départements* (ie local authorities) is represented on the approval committee, but it disputes the whole procedure: for the *départements*, that is illegitimate because it leads to the imposition of expenses upon them.

In fact, the procedure for approving collective agreements and accords in the medical-social sector gives them theoretical powers of enforceability against the financing bodies: the *départements* should be obliged to finance non-profit structures for social care in such a way that they are able to respect those agreements because both the profits and the debts of these structures can be recovered by them. Moreover, the collective agreements and their codicils have direct effects upon local finances. This approval procedure therefore serves as a very strong constraint on the social dialogue in BAD, whereas it does not apply to the other two agreements (SPE and SAP) even though the activities they govern are funded indirectly from the public purse, as we shall see in part 4.

Finally, with regard to sector-wide extension, once adopted – and if necessary approved in advance of extension by the minister – the agreements in the three branches are submitted to a subcommittee on extension. Its opinion is not binding; its members *"express themselves individually and if there are disagreements the reasons [are examined]"*. (Interview with Directorate-General of Labour representative, 2019.) Established in 2017, this group of independent experts – four economists and a lawyer – assesses the social and economic effects of an extension and may be consulted by the minister and by sector organisations.

Further indirect intervention by the State can also affect negotiations in the SAP and BAD sectors: changes to their charges are monitored by the authorities such that *"no provider of services to dependent persons can increase prices beyond a certain defined amount, be they companies or non-profit associations. This is the price framework. And that amount is not high enough: [the employers' federations] tell us that they cannot raise wages."* (Interview with trade unionist, 2019.) In other words, the prices of services are set freely when a contract between a



service provider and a beneficiary is first signed, but their subsequent evolution is supervised. In 2020, for example, the increase is limited to 3% under a decree “pertaining to the prices of certain assistance and support services in the home” issued jointly by the ministers responsible for the economy and for health on 24 December 2019. This defines the “*maximum rate of change in prices for home help and support services delivered by providers not authorised to work with recipients of social care*” and states that that rate takes into account wage evolution (based upon the rate of change of the minimum wage in year n-1) and changes to the cost of services (based upon service prices index 001763847 calculated by national statistical institute INSEE for the month of September in year n-1), as well as any observations by professional federations in the sector regarding economic constraints encountered. The defined rate is thus seen by the authorities as a means of “*protecting both the financial equilibrium of service providers and the tenability of the price increase for users*”. It should be noted that, exceptionally, in 2020 a specific exemption was provided for in order to link this procedure with the calculation of *département* reference rates for the care of the elderly and people with disabilities. In 2019 this increase was limited to 1.42%.

### 3.2. Representativeness of collective actors

Pursuant to the laws of 20 August 2008 and 5 March 2014, including several subsequent amendments, the conditions for the representativeness of trade unions and employers’ organisations at sector and organisational level have changed over the years. The aim of this movement has been to reconnect legal representativeness – which provides entitlement to particular prerogatives – with social representativeness. That is to say, “*the ability to speak without incurring denial or to provide positive proof of the consent of the represented*” (Bérout, Le Crom, et Yon 2012). Specifically, the presumption of representativeness has been removed; it is now established using “audience measurements”, with different criteria for trade unions and employer organisations.

**On the union side**, representativeness is established by means of “*mechanisms which borrow from the procedures of political democracy, in particular the election and the majority*” (Andolfatto 2014). Henceforth, seven criteria are taken into consideration: respect for national values, independence, financial transparency, length of establishment (a minimum of two years), audience, influence (characterised primarily by activity and experience), membership numbers and contributions. At the sector level, a union’s “audience” is established by its performance in staff representative and council elections. In the case of small and medium-sized enterprises and SPEs, however, there is a specific electoral procedure with online and postal voting. Only staff who pay national insurance premiums are eligible to vote, since the electoral roll is compiled using data from the Central Agency of Social Security Bodies (*Agence Centrale des Organismes de Sécurité Sociale*, ACOSS). (Interview with the ministry of labour, 2019.) For unions, it is difficult to mobilise the electorate of SPEs because – unlike with childminders – they do not have a list of these workers.

An organisation is recognised as representative at the sector level from the moment it wins at least 8% of the votes cast. To be adopted, a sectoral agreement or accord must be signed by unions representing at least 30% of the votes cast for recognised organisations (i.e. votes for

non-representative unions do not count towards these percentages) and not formally opposed by unions that have won at least 50% of the votes cast.

**On the employers' side**, an organisation's representativeness is now established using six criteria: respect for national values, independence, financial transparency, length of establishment (a minimum of two years), influence (characterised by activity and experience) and activity, experience and audience. The latter aspect is measured by the number of companies that are voluntarily members of the organisation or by the number of persons covered by the French social security system they employ.<sup>64</sup> In practice, this means an organisation must represent either at least 8% of employers or the employers of at least 8% of workers in a sector in order to be recognised as representative.

Table 4: Social representativeness of employers' organisations, based upon legal representativeness data from 2017 and surveys from 2014.

<b>Employer type</b>	<b>Applicable collective agreement</b>	<b>Number of employees of members of employers' organisations</b>	<b>Number and percentage of employees of members of recognised representative organisations</b>
<b>Private domestic employers (directly or through agent)</b>	Private Domestic Employees (SPEs)	938,000 (245,000 full-time equivalents)	32,438 (3.46%, or 13.24% of full-time equivalents)
<b>Non-profit associations</b>	Home-Help Sector (BAD)	240,900	166,048 (68.93%)
<b>Private enterprises, exc. self-employed</b>	Personal Service Enterprises (SAPs)	157,000	109,354 (69.65%)

Sources: (Thiérus 2016) and Ministry of Labour and [https://travail-emploi.gouv.fr/IMG/pdf/resultats\\_de\\_la\\_representativite\\_par\\_branche\\_professionnelle-2.pdf](https://travail-emploi.gouv.fr/IMG/pdf/resultats_de_la_representativite_par_branche_professionnelle-2.pdf)

As Table 4 reveals, however, the representativeness of employers' organisations in PHS is difficult to certify. FEPEM nominally represents the employers of nearly one million workers, but it has nevertheless only managed to demonstrate a membership of 32,438 households during the last electoral cycle for private domestic employers (plus 6,381 employers of "*assistantes maternelles*" childminders).<sup>65</sup> In its representativeness returns to the Ministry of Labour, it includes the Union of Private Employers (formerly a breakaway organisation from FEPEM and a member of FESP) as well as employers' agents that canvass it. These limited figures seem not be explained by the cost of membership, which is modest: during a call to FEPEM,<sup>66</sup> we were informed that lifetime membership costs €12. As one member put it: "*FEPEM membership is an entry cost, as a private domestic employer is likely to remain or again become one at every stage of their life.*"

<sup>64</sup> Article L20151-1, Labour Code.

<sup>65</sup> [https://travail-emploi.gouv.fr/IMG/pdf/resultats\\_de\\_la\\_representativite\\_par\\_branche\\_professionnelle-2.pdf](https://travail-emploi.gouv.fr/IMG/pdf/resultats_de_la_representativite_par_branche_professionnelle-2.pdf).

<sup>66</sup> Call to telephone number 08 25 07 64 64, made in November 2019.

The reforms to the representativeness regime have profoundly transformed the conduct of sectoral social dialogue: several traditional participants, such as the CFTC, have been ousted from the negotiating tables for the BAD and SPE collective agreements, whilst in the latter “new” ones like UNSA have appeared. Moreover, the decisions taken by the social partners may have had repercussions for their memberships or electorates. We note, for instance, that the CGT has achieved recognition as representative in the SAP sector by systematically opposing the agreements negotiated there, whilst the reform-based strategy of the CFDT in this same sector also seems to have borne fruit. On the employers’ side, the position of FESP has caused the loss of several major members; claiming that its policy did not sufficiently defend service providers, O2 and several others left during 2019 to join FEDESAP. The president of the FESP, Maxime Aïach, is a director of service providers Acadomia and Shiva, whose business model is essentially agent-based. Agreements signed by trade unions and employers’ organisations within the framework of sectoral social dialogue can therefore affect their electorates or memberships and, ultimately, the extent of their audiences. And that is a vital factor for organisations, since it not only determines their right to negotiate or block agreements but also has financial implications.

### 3.3. Codetermination funds

Social dialogue is vital for trade unions and employers’ organisations alike as a source of finance, and thus contributes towards their institutionalisation (Yon 2012). Since 2014-2015, a national codetermination fund has been set up to help fund both kinds of organisation. This arrangement does not preclude the social partners from obtaining additional sectoral funds, however, and all three sectors in PHS have done this by extending their collective agreements. Their contribution rates are very different, though: 0.22% in the SPE sector, 0.04% in BAD and 0.10% in the SAP sector. Here we see the effects of the ministerial approval required for the BAD agreement, which makes it more difficult to impose levies.

These codetermination funds are also used differently in each sector, although in all cases roughly 50% overall goes to the employer block and 50% to the union side. None publicly reports details of its spending, although the accounts of the all recipient organisations are now published.

**In the private domestic employment sector**, the fund supports both the Joint National Committee for Staff Employment and Professional Training (*Commission Paritaire Nationale Emploi et Formation Professionnelle*) and the National Intersectoral Council for Social Dialogue (*Conseil National Interbranches du Dialogue Social, CNPDS*).<sup>67</sup> In each of the two bodies, a first tranche of 2.5% is allocated to cover costs incurred by employees and employers during collective bargaining and a second tranche is used to finance “the organisation and monitoring of collective bargaining”. On the employee side, costs include reimbursing the wages of participants in collective bargaining and spending on data gathering, advice, information, expert consultants and studies. For the employers we find the same items plus “secretarial costs, costs

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<sup>67</sup> Codicil of 18 May 2000 concerning the development of codetermination; codicil of 10 July 2013 concerning the financing of codetermination; intersectoral agreement of 29 March 2017 concerning the strengthening of codetermination and social dialogue.

of compiling the sectoral report, etc.” These funds even help employers’ organisations to pay their permanent staff. FEPEM also receives payments from the codetermination fund established under the collective agreement for “*assistantes maternelles*” childminders, which is paid in part to the CNPDS, covering both that agreement and the one for SPEs and working to bring them closer together.

According to a federation representative: “*The FEPEM budget is a little more than €10 million for a hundred employees.*” (Interview with FEPEM representative, 2019.) It should be added that the codetermination fund is not the only arrangement of this kind. For instance, there is also an information and promotion fund for domestic employment<sup>68</sup> derived from a social levy of 0.05% of the total payroll bill for childminders and SPEs.<sup>69</sup>

One of the participants in the social dialogue in the SPE sector explains that “*the social partners are concerned with the promotion of domestic employment amongst the general public, parents, carers and all those looking for information about assistance at home.*” (Interview with FEPEM representative, 2019.) A 2018 report on the two sectors in which FEPEM is active, private domestic employment and childminding by the “*assistantes maternelles*”, states that it dealt with 28,879 telephone calls to a free helpline (although the number listed on its website, 08 25 07 64 64, actually charges callers €0.15/minute). According to a FEPEM representative: “*A third of the FEPEM workforce is assigned to the Private Employment Economic Interest Group [GIE Particulier Emploi]. Managed jointly with provident fund IRCÉM Prévoyance and training institute IPERIA, this organisation handles public relations for 23 regional establishments, administers the website [www.particulieremploi.fr](http://www.particulieremploi.fr) (40-50,000 visitors per month) and hosts social partners attending regional codetermination committees.*”

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<sup>68</sup> Professional intersectoral agreement of 27 February 2017 establishing an information and promotion fund for domestic employment.

<sup>69</sup> This fund aims:

“- to finance information campaigns and supporting programmes for private employers of the workers referred to in [Article L7221-1 of the Labour Code](#) and of childminders as referred to in [Article L421-1 of the Social Action and Family Code](#), including persons wishing to become such employers;  
- to promote a human resources policy in the domestic employment sector;  
- to enhance the working relationship between individuals by supporting virtuous and responsible practices (combating illegal employment, etc.); and,  
- to allow private domestic employees and childminders to access social and cultural activities.”

Table 5: Social dialogue funding provided for in the three collective agreements.

Collective agreement	Provision in respect of codetermination	Percentage of levies allocated to codetermination fund	Hours worked, 2016 (x 1m)	Total payroll (€)	Nominal or actual amount allocated to codetermination fund
<b>Private domestic employees (SPEs)</b>	Codicil of 10 July 2013 concerning codetermination funding	Employer levy equal to <b>0.22%</b> of total gross salaries	482	4,698,236,109 (declared by IRCEM)	€10,336,119 (approximately 70% of which is allocated to the National Intersectoral Council for Social Dialogue for Childminders and SPEs and to management costs; the remainder, approximately €3,100,835, is allocated to the Joint National Committee for Staff Employment and Professional Training in the Private Domestic Employment Sector)
<b>Home-help sector (BAD)</b>	Codicil no. 26-2016 of 27 January 2016 concerning codetermination, amending Article 3 of Title II of the collective agreement	<b>0.040%</b>	206	3,502,000,000 (nominal payroll, based upon an hourly fee of €15)	€1,400,800 (nominal)
<b>Personal service enterprises (SAPs)</b>	Accord of 18 December 2009 concerning codetermination funding	Levy of <b>0.10%</b> of gross payroll costs, payable entirely by employers	133	2,261,000,000 (nominal payroll, based upon an hourly fee of €15)	€2,261,000 (nominal)

In **BAD**,<sup>70</sup> 0.01% of the levies collected are used to fund codetermination committees, 0.020% go to employer and union organisations (50-50 split) and 0.010% is paid in time credits to the representative trade union federations in this sector. This is because the codicil on codetermination signed by the social partners provides explicitly for arrangements to advance the position of union officials within their structures.

In the **SAP sector**,<sup>71</sup> the sums collected are divided into three parts: one helps cover management costs, the second finances social dialogue as in the two other collective agreements and the third is allocated to representative organisations in order that they can

<sup>70</sup> Codicil no. 26-2016 of 27 January 2016.

<sup>71</sup> Agreement of 18 December 2009 concerning the financing of codetermination; revising codicil thereto of 9 November 2018.

contribute “towards the costs of structures and action on behalf of the sector and its promotion”.<sup>72</sup> A union representative explains: “For companies it works the same, although the rates change: it’s a drawing right. To receive money, we have to prove that we’ve spent money. So if we don’t act for the workers, we have no money. We can also claim my salary, part of the legal costs because there’s advice, actions etc... We have newspapers distributed, we can pass that on. It’s not only actions on the ground, it’s tools and people.” (Interview with union representative, 2019.)

As we can see, the three sectors have been unable to create instruments of the same types to finance the social partners. And the structuring of those instruments varies, too: whilst the BAD collective agreement has introduced a tool to encourage worker unionisation, the other two place more reliance upon the institutionalisation of social dialogue. This result is not very surprising, given that the BAD employers’ federations have traditionally been fairly close to the trade-union movement. One of the directors of UNA between 2012 and 2016, Yves Verollet, was himself a former official of the CFDT. Nonetheless, the alternative policy of institutionalising social dialogue, facilitated by generous financing from codetermination funds, would not be possible without a set of demand-side policies allowing the cost of the contributions to be pooled indirectly.

#### 4. Public policies to support demand

Several public-policy instruments help support demand for PHS. These contribute towards developing the market and make it possible to socialise the cost of services and national insurance premiums. The social partners, in particular the employers’ federations, vigorously defend these various arrangements, highlighting the fact that they have made it possible to formalise employment in this domain, to legalise previously informal work, to allow a mostly female workforce to better combine family and working life and to meet new needs on the part of employing households.

##### 4.1. Social security benefits

Three main benefits are available to facilitate the use of PHS: Personal Autonomy Allowance (*Allocation Personnalisée d’Autonomie*, APA), Disability Compensation Benefit (*Prestation de Compensation du Handicap*, PCH) and Personal Childcare Subsidy (*Complément de Libre Choix du Mode de Garde*, CMG). All are universal, but adjusted in accordance with the applicant’s means. APA and PCH make it possible to pay for “human care” after the establishment of a homecare plan by the local authorities (*départements*), preceded by a home visit. This plan can be used to buy services from a provider or to employ a worker directly. That can also be a member of the family, although the rules vary slightly: any member of the household except the beneficiary’s spouse can be employed using APA, but that exception does not apply to PCH: the spouse can be employed, too. In addition, APA requires that caregivers be paid a salary whereas PCH, in addition to the service provider or direct employment options, also provides for the remuneration of a “family carer” – that is, the “the spouse, cohabiting partner or person

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<sup>72</sup> Ibid.

with whom the beneficiary has concluded a civil covenant of solidarity, an ascendant, descendant or collateral up to the fourth degree of the beneficiary or... of their spouse or partner who provides human care... and who is not salaried for that care”.<sup>73</sup> Within the PCH framework, a “family carer” is not salaried and any organisation intervening to care for persons suffering a loss of autonomy must be approved by the local authorities (*départements*). To these three main benefits we can also add “social assistance” (domestic help), a service provided by local authorities which is means-tested and recoverable from the estates of deceased beneficiaries, as well as personal provision from pension funds.

#### 4.2. Fiscal benefits

The very old fiscal benefit for households using PHS was increased substantially in 1991 under the law on domestic work, which created a tax discount for those directly employing a domestic worker or buying such services from a non-profit association or agency. Later, commercial SAPs and agencies were also included in this list.<sup>74</sup> In 2017, the discount was converted into a tax credit available to all households, including economically inactive ones. The rate has remained unchanged since 1991: 50% of expenses are covered by this credit. Moreover, the current basic ceiling of €12,000 can be increased in certain cases: by €3,000 in the first year in which a household employs a domestic worker, by €1,500 per dependent child and per member of the household over the age of 65 and by up to €20,000 in the event of disability. If households use a company that specialises in odd jobs, computer assistance or gardening work, on the other hand, the ceiling is lowered.

#### 4.3. VAT rates

VAT rates reduced to 10% or 5.5% apply to PHS. Since 2019, the reduced rate applies only to activities related to essential living functions for the elderly and disabled, and only when provided by approved or authorised bodies other than agencies.

#### 4.4. National insurance exemptions

Provider organisations may benefit from exemptions from employers’ national insurance premiums – with the exception of those levied in respect of accidents at work and occupational illnesses – for home help, for the care of children with disabilities or for assistance to the elderly and disabled.<sup>75</sup>

Private employers can benefit from the same exemptions if they are members of “frail” groups (persons aged over 70, recipients of APA, PCH, etc.). For all private employers, to these exemptions is added a flat-rate deduction from employers’ national insurance premiums of €2 in mainland France and more in the overseas *départements* and territories.

#### 4.5. Cesu

Cesu, the “universal service employment cheque” scheme, has been established to facilitate and encourage the use of PHS by simplifying the administrative procedures. It comprises two

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<sup>73</sup> Article R245-7, Social Action and Family Code.

<sup>74</sup> Fiscal benefits to support home-help users were available as early as the 1960s, but covered a much smaller group and fewer services than today and were less generous (Ledoux 2011: 145).

<sup>75</sup> Article L241-10, Social Security Code.

very different components: “declarative” (“Cesu déclarative”) and “prepaid” (“Cesu préfinancé”).

“**Cesu déclarative**” aims to facilitate the remuneration of domestic workers employed directly by households. As an employer, normally the householder would have to declare the employee by submitting a form to the relevant social security body and then pay the corresponding national insurance premiums. When using Cesu, by contrast, its management organisation is responsible for declaring the employee and also calculates the national insurance premiums payable. It then debits this amount from the householder’s bank account and pays the relevant social security bodies. It also issues the employee’s pay slip. Employers can choose a Cesu+ option, too, in which case the worker’s wages are also paid through Cesu and debited from the householder’s account with tax deducted at source. If the employee’s working week does exceed eight hours, using Cesu further allows the employer to avoid drawing up a contract of employment.

“**Cesu préfinancé**” is a means of payment available to staff councils, mutual insurers and *départments* councils. It can be used to make payments both to service providers and to workers employed directly by households, although some *département* authorities use it only for the latter. This is because they find it easier to pay service providers directly. On the other hand, its use in direct employment situations allows them to know how APA and PCH are being spent. This is a frequent topic of public debate.

## 5. Role of social partners by sector

The role of the social partners in PHS has differed considerably between the three sectors under consideration over the past ten years.

### 5.1. Private domestic employment (SPE)

In the SPE sector, the social partners, although not very representative, have managed to sign a set of accords making it possible to include a set of rights in the collective agreement and its codicils from which these workers were excluded in the Labour Code. Although this does apparently constitute a form of “catching up”, we observe it more in the area of social protection than in respect of labour regulation. The measures concerned include the introduction of social levies for the IRCEM supplementary pension provident scheme, for the social action fund or preventive health and for occupational health. According to a FEPEM representative: *“One of the reasons why the status of private employer has been recognised is that the resulting jobs thus benefit from social protection as of right.”* (Interview with FEPEM representative, August 2019.)

This “catch-up” remains incomplete, however. In all areas related to the definition and regulation of effective work and working hours, in particular, boundaries are still quite porous and remote from those found in general law. Advances in social protection are easier to adopt since they are based indirectly upon a form of socialisation, thanks to all the existing benefits available: first and foremost reduced taxation. By contrast, the regulation of actual work seems much more difficult to negotiate because the employers’ federation remains committed to preserving what it calls “the specifics” of employment by households.



Since the declared employment of salaried workers by households is very dependent upon social fiscal expenditure, however, the legitimacy of this type of instrument is indefensible if the forms of employment it supports are themselves illegitimate. The social partners therefore pay particular attention to the efforts being made to establish what they call a dynamic of “professionalisation”. In this regard, the president of IPERIA, the FEPEM-affiliated training institute for the SPE and childminding sectors, explains: *“[It is important] to offer everyone the opportunity to define their own personal training trajectory, to validate and gain recognition of their skills, including those which will play a prominent role in the profession in the future: ‘green’ skills, digital skills, interpersonal and behavioural skills which allow employees themselves, in the context of their work, to be actors of change.”* (Branche professionnelle des salariés du particulier employeur et branche professionnelle des assistantes maternelles 2018)

## 5.2. Non-profit organisations (BAD)

In BAD, the social partners have little room for manoeuvre and depend very much upon a favourable political climate. For example, the adoption, approval and sector-wide extension of a major agreement on wages for home help signed in 2002 was only made possible by strong political support in the wake of the implementation of APA. This hidden hand of the State behind collective bargaining and the functioning of the non-profit associations in this sector explains why certain codicils to the collective agreement even go as far as to make public funding a condition for their implementation. One such is Codicil 36,<sup>76</sup> which is both justified by public policy and conditional upon public funding. It states that the social partners in the sector *“recall in this regard the wording of the report annexed to the law of 28 December 2015 on the adaptation of society to an ageing population: ‘Improving the quality of home help. This will involve strengthening the skills and co-ordination of home helps, which means valuing and recognising their efforts to improve their quality in the cost of the interventions. Thanks to the increase in the aid ceilings and to additional efforts on the part of the State in respect of the home-help sector, targeted measures to revise the lowest wages and workers’ travel expenses will be implemented in order to combat job insecurity and to contribute towards stable employment and professionalisation of the sector in line with the proposals made by the social partners within the framework of social dialogue in the home-help sector.”* This preamble is followed, however, by a restrictive clause: *“The provisions of articles V.14.2, paragraph 3, and V.14.3, paragraph 3, will not enter into force until such date as they are approved and effective financing of the time and costs of travel linked to successive working sessions during the same half-day is provided by all the funding bodies concerned, including the State and the département councils.”* Such a condition makes it easy for employers’ federations to accuse the State of refusing to negotiate and thus avoid blame for a failure to implement improvements.

Regarding the organisation of work, throughout negotiations on the BAD collective agreement the unions would like to have included an obligation to provide for a minimum session time of 30 minutes for employees. According to Maryvonne Nicolle, a negotiator for the CFDT in 2009: *“Certain intervention plans drawn up by the funding bodies provide for quarter-hour sessions,*

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<sup>76</sup> Codicil no. 36-2017 of 25 October 2017.

*which entail a real risk of the mistreatment of users... and workers.*<sup>77</sup> A petition was even started on this point, to put pressure on employers. The unions lost this particular battle, as they did for that concerning travel time between two non-successive sessions until the agreement reached was overturned by DOMIDOM ruling (concerning a home-help and personal domestic services enterprise). On the other hand, they did manage to secure a relatively protective system for night work – certainly compared with the arrangements in the SAP and (until it was cancelled) SPE agreements. So even though the president of the ADESSA network of home-help associations declared in 2009 that *“no organisation can finance eight or ten hours of night work at the full rate”*, an option close to that was subsequently agreed. The adopted text distinguishes between permanent night workers – those undertaking two or more interventions of at least three hours per week – and occasional ones. The former benefit from specific compensatory leave, whilst the latter do not.

In BAD, remuneration of travel and commuting costs was an important issue in the discussions on the collective agreement inasmuch as the employers’ federations had previously accepted various different arrangements. The agreement eventually signed in 2010 includes remuneration in the form of mileage allowances for travel between two working sessions but excludes any compensation for the commute to and from work. Up until then, those costs had been reimbursed by ADMR – a federation of employers with a very strong presence in rural areas and many clients living a long distance from their home help’s own base. This issue became the subject of a dispute with the unions, which was resolved in 2011 by annexing a codicil to the collective agreement specifying that ADMR members would continue to pay mileage allowances for commuting. Only with that exception in place did all parties accept the agreement as a whole.

### 5.3. For profit organisations (SAP)

The collective agreement for the SAP sector incorporates several measures inspired by its SPE counterpart or adopted in an effort to devise instruments not used in general law. Initially, for example, negotiations centred on an attempt to introduce a form of flexible part-time contract with a defined minimum number of working hours and an option for the worker to take on additional work above that threshold if they wished. This proposal was rejected by the unions, however. In other respects, the collective agreement for SPEs served as a reference. A representative of an employers’ organisation explains: *“We tried to transpose [that] into the agreement for personal service enterprises.”* However, one such “transposed” provision – concerning night attendance – had to be cancelled after it had been adopted and extended sector-wide following a legal action by the CGT. That union thus found alternative means to annul measures it considered unfair, even once they had been adopted through social dialogue. *“As an example, I have the file of someone who worked 400 hours a month, day and night. She was exhausted. These things are abnormal... So we took the decision to go to the Council of State – it cost €11,000 in lawyers’ fees. We would have liked to have had everything quashed, but on two points we did succeed... It’s only a partial victory, though, because the Macron Ordinances*

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<sup>77</sup> <https://www.directions.fr/Piloter/organisation-reglementation-secteur/2009/9/La-convention-collective-bientot-signee/>

*allow these arrangements back into company agreements.”* (Interview with CGT representative, 2019).

This interview also reveals that neither the provisions introduced into the collective agreement nor their subsequent cancellation on appeal would have been possible without codetermination funding and the professionalisation of social dialogue, which requires expert intervention. *“The collective agreement was signed in 2012 and it was an abomination from the start. There was a row over the scope of the agreement, then after that we had a negotiation led by the lawyers Barthélémy and Associates, financed by ANSP [the National Association for Personal and Household Services] at instigation of FESP, which is the armed wing of MEDEF. It’s very hard to negotiate with them. With FEDESAP and the CGPME [the Confederation of Small and Medium-Sized Enterprises] OK: they piled on the pressure, [but] we blocked that together with the other unions ...”* (ibid.). In addition, codetermination funding has allowed the social partners to finance numerous studies in order to better understand the sectors they represent. For example, the SAP sector has commissioned a sociologist – the founder and managing director of research firm Émicité – to conduct an evaluation of its training policy.

## 6. Recommendations

A number of recommendations can be made.

- 1) **Closer harmonisation with general law.** As we have seen, a large number of provisions found in the Labour Code do not apply to PHS workers, and in particular not to SPEs. A systematic review should be carried out in order to find out whether these exceptions are still in the interests of those workers and their employers. For example, the time may now have come to reduce the standard working week from 40 hours to 35. Or perhaps to better delineate various kinds of work. In the event of night attendance, for instance, should we not define time slots for this work and bring its definition closer that of effective work – in particular when “clients” are confined to their bed or chair and have moderately to severely impaired mental function (GIR dependency categories 1 and 2), making them likely to require substantial nocturnal care? Also, is the attendance category “nursing duties” in the SPE agreement still really necessary?
- 2) **Ratification of ILO Convention 189.** This tool could serve as a lever to make work in PHS more attractive. Many countries have ratified C189, including Belgium, Finland, Germany, Ireland and Italy. Particular attention is drawn to articles 10 and 11.

**Article 10** *Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.... Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.*

**Article 11** *Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.*

- 3) **Allow home visits by labour inspectors, with procedures that take into account the specificities of domestic work.** The Labour Inspectorate plays a key role, alongside the courts, in the enforcement of labour law. This control cannot be based upon administrative documents alone, but also requires checks in situ of occupational health and safety risks. Many countries have implemented innovative arrangements in this respect in recent years: in the United States recipients of domestic care financed from public funds must accept a prior inspection of their place of residence before personnel can start working there, and several countries in South America have put in place specific rules allowing labour inspectors to enter homes. In Uruguay, for example, representatives of the Ministry of Labour and Social Security are authorised to carry out inspections of domestic workplaces in the event of an “alleged violation” of labour or social-security standards (Ruiz 2011; Poblete 2018).
- 4) **Transparency of codetermination funds.** Whilst the institutionalisation and professionalisation of the social partners are undoubtedly linked to the capacity and resources they are allowed for social dialogue, we would suggest to those bodies that they distinguish better between activities carried out in the interests of their grass roots – workers or employers – and in the interests of their own member organisations. To this end, the associations managing the sectoral codetermination funds should publish activity reports for the sake of accountability to their contributors concerning their use of the funds.
- 5) **Consider the socialisation of travel arrangements for service providers.** Given the difficulties surrounding reimbursement of the travel expenses incurred by workers and in order to enhance their value, particularly in rural communities where services are less developed, a vehicle-loan system financed by the National Solidarity Fund for Autonomy (*Caisse Nationale de Solidarité pour l’Autonomie, CNSA*) could perhaps be considered.
- 6) **Procedure for the approval of collective agreements in medical-social sectors.** The procedure for approval of the BAD collective agreement is currently being called into question (El Khomri 2019), but it is arguable that the two other sectors we have considered also receive public financial support through tax credits and other benefits. If so, should the agreements covering them not require State approval as well? Or, conversely, should the State’s veto in BAD be abandoned? These questions are complex insofar as the current approval procedure is supposed to impart powers of enforceability against financing bodies. A general review of the situation should nevertheless be carried out, since the actors involved are in competition with each other but are subject to different legal regimes. As it is, in practice the current power of enforceability seems to lack systematic legal force across departmental jurisdictions whilst at the same time the approval procedure is obstructing a series of changes to the BAD agreement.
- 7) More generally, social partners and the state may work together to ensure a better enforcement of the rules adopted through the social dialogue. If these rules provide minimal rights, workers and employers do not always respect them.

## 7. List of interviews

	<b>Interviewee</b>	<b>Date</b>
1	FNAAFP/CSF representative	2018 – February
2	Former SESP representative	2018 – October
3	Action Aid International (NGO) representative	2019 – June
4	CGT confederation representative	2019 – July
5	CFDT Services Federation representative	2019 – July
6	FEDESAP representative	2019 – August
7	CGT representative	2019 – August
8	Ministry of Labour (DGT) representative	2019 – August
9	FEPEM representative	2019 – August
10	Former UNA representative	2019 – October
11	ADESSA representative	2019 – August
12	Ministry of Labour (DGT) representative	2019 – October
13	Ministry of Social Affairs (DGCS) representative	2019 – October
14	Former CFTC representative	2019 – November

### Abbreviations

<b>Abbreviation</b>	<b>French</b>	<b>English</b>
ADESSA	Réseau des Associations d'Aide à Domicile	Network of Home-Help Associations
ADMR	Association d'Aide à Domicile en Milieu Rural	Rural Home-Help Association
BAD	Branche de l'aide à domicile	Home-help sector
CFDT	Confédération Française Démocratique du Travail	French Democratic Confederation of Labour
CFTC	Confédération Française des Travailleurs Chrétiens	French Confederation of Christian Workers
CGT	Confédération Générale du Travail	General Confederation of Labour
CNPF	Confédération nationale du patronat Français	National Confederation of French Employers (superseded by MEDEF)
CPME	Confédération des Petites et Moyennes Entreprises	Confederation of Small and Medium-Sized Enterprises
DARES	Direction de l'Animation de la Recherche, des Etudes et des Statistiques	Directorate for Research, Studies and Statistics
FEDESAP	Fédération des services à la personne et de proximité	Federation of Personal and Local Services
FEPEM	Fédération des particuliers Employeurs de France	Federation of Private Domestic Employers of France
FESP	Fédération des Services aux Particuliers	Federation of Services to Individuals
FNAAFP/CSF	Fédération Nationale des Associations d'Aides Familiales Populaires de la Confédération Syndicale des Familles	National Federation of Associations to Aid Working Families in the Confederation of Family Unions
GVT	Glissement Vieillesse Technicité	Seniority incrementation
IRCEM	Institut de Retraite Complémentaire des Employés de Maison	Supplementary Pensions Institution for Household Personnel

MEDEF	Mouvement des Entreprises de France	Movement of Enterprises of France
OPCO	Opérateur de compétences	Skills agency
SAP	Entreprises de Services aux personnes	Personal service enterprises
SESP	Syndicat des Entreprises de Services à la Personne	Union of Personal Service Enterprises
SPE	Salarié du particulier employeur	Private domestic employee
SYNERPA	Syndicat National des Etablissements et résidences privées pour personnes âgées.	National Union of Homes and Private Residences for the Elderly
UNA	Union Nationale des Associations de Services à Domicile	National Union for Home Help, Care and Services

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